MATTERS TO BE CONSIDERED:

Closed—Minutes of December 9, 1985, Board of Directors' Meeting
Closed—President's Report
Closed—Financial Report

Date sent to Federal Register: March 12, 1986.

Maud Mater,

Secretary.

[FR Doc. 86-5816 Filed 3-12-86; 3:50 pm]

BILLING CODE 6720-02-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., March 19, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Petition for Issuance of Declaratory Order Filed by International Transportation Service, Inc. Regarding Assessment of Charges for Terminal Services at the Port of Long Beach.
2. Section 19 of the Merchant Marine Act, 1920, and the Use of High-Cube Containers on the Highways of Japan.

CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-5817 Filed 3-12-86; 3:51 pm]

BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R.Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-5707 Filed 3-12-86; 11:15 am]

BILLING CODE 6210-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:30 p.m., Tuesday, March 18, 1986.

PLACE: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737-1234.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Outlook.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Delegations of Authority to Central Liquidity Facility President.
6. Final Rule: Part 701.27, Credit Union Service Organizations.
7. Charter Amendment Appeal from American First Federal Credit Union, Brea, CA, Field of Membership Overlap.

TIME AND DATE: 9:30 a.m., Tuesday, March 18, 1986.

PLACE: 1776 G Street NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action Under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Board Briefings. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-5663 Filed 3-11-86; 4:12 pm]

BILLING CODE 7535-01-M

8

RAILROAD RETIREMENT BOARD

Notice is hereby given that the meeting of the Railroad Retirement Board which was scheduled on March 17, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611, is hereby cancelled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Com No. 312-751-4920, FTS No. 387-4920.

Dated: March 11, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-5806 Filed 3-12-86; 3:09 pm]

BILLING CODE 7905-01-M

Federal Register

Friday
March 14, 1986

Part II

Department of Education

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Verification of Application Information; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Verification of Application Information

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Student Assistance General Provisions regulations, 34 CFR Part 668, by adding a new Subpart E to implement for the 1986–87 award year an integrated system for the verification of student aid application information reported by applicants when they apply to have their expected family contribution calculated for the Pell Grant Program, the campus-based programs (National Direct Student Loan (NDSL), College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG)), and the Guaranteed Student Loan (GSL) Program. The Secretary is issuing these regulations to reduce high error rates in data reported by applicants and, thus, to assure, to the maximum extent possible, that eligible applicants receive the correct amount of student financial assistance.

The Secretary is also revoking §§ 690.14(b) and 690.77 of the Pell Grant Program regulations with regard to Pell Grant applications, beginning with applications submitted for the 1986–87 award year. These sections are being revoked because the provisions of Subpart E of Part 668 supersede them.

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

Sections 668.51, 668.52, 668.53, (other than §§ 668.53(a)(5)), 668.54, 668.55, 668.56, and 668.57 shall apply to applications for student financial assistance under the Pell Grant, campus-based, and GSL programs starting with applications for the 1986–87 award year. Similarly, §§ 690.14(b) and 690.77 are revoked with regard to applications for the Pell Grant Program starting with the 1986–87 award year. Sections 690.14(b) and 690.77 will continue to apply to Pell Grant Program applications submitted for the 1985–86 and previous award years.

Sections 668.58, 668.59, 668.60, and 668.61 shall apply to applications for and assistance awarded under the Pell Grant, campus-based, and GSL programs starting with the 1986–87 award year.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, U.S. Department of Education, Office of Student Financial Assistance, Regional Office Building 3, Room 4318, 400 Maryland Avenue SW., Washington, DC 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: The Secretary is issuing these regulations to reduce error in the information reported by applicants on their applications for assistance under the Pell Grant, campus-based, and GSL programs. This information is used to calculate an applicant's expected family contribution (EFC). The EFC is the amount that an applicant and his or her family can reasonably be expected to contribute toward his or her cost of attendance and is used to determine the applicant's financial need for assistance. The applicant's financial need is defined as the difference between the applicant's cost of attendance and the EFC. The applicant may receive assistance under these programs if he or she demonstrates financial need for such assistance.

Implementation of § 668.53(a)(5)

The procedures referred to in § 668.53(a)(5) must be incorporated into an institution's written policies and procedures, following the effective date of § 668.14(g) of the Student Assistance General Provisions regulations. It is anticipated that § 668.14(g) will be published shortly in final form, and will be effective for the 1987–88 award year.

Revisions to the Notice of Proposed Rulemaking

Only a few significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of July 26, 1985, 50 FR 30674–30685. Most of these changes relieve the burden that these regulations place on institutions. The following is a listing of those changes. A full discussion of the changes is contained in the Appendix of comments and responses.

Section 668.53 Policies and procedures.

The Secretary has deleted § 668.53(a)(1)(iii) of the NPRM which required an institution to specify in its written policies and procedures the approved need analysis system the institution uses to recalculate an EFC.

The final regulation, at § 668.53(a)(5) (§ 668.53(a)(1)(vi) of the NPRM), does not specify the procedures to follow in referring for investigation instances where an institution has reason to believe that an applicant has applied for assistance under false pretenses. Rather, the provision requires that institutions establish procedures for making referrals under § 668.14(g). Section 668.14(g) was published in proposed form as part of the Student Assistance General Provisions regulations and is now being considered in light of the public comment.

The Secretary has deleted § 668.53(a)(2) of the NPRM so that an institution does not have to include in its policies and procedures, for purposes of these regulations, the policies and procedures that it follows when it verifies applications over and above the requirements of these regulations.

Section 668.54 Selection of applicants for verification.

Under § 668.54(b), an applicant need not document spouse information or provide the spouse's signature if the applicant is unable to provide the required spousal documentation or signature.

Section 668.55 Updating information.

The Secretary has revised the regulations to provide that an applicant need not reverify his or her household size or number attending postsecondary educational institutions for an award year if the applicant has already verified this information on an earlier application for that award year and there has been no change in the information.

The Secretary has clarified that, unless the applicant would otherwise receive an overaward, an institution need not change any prior award or GSL recommended loan amount on a previously certified GSL loan application if an applicant's household size or number attending postsecondary educational institutions changes between the time an applicant originally updates this information and is subsequently required to update the information on another application.

The Secretary has clarified that an applicant may not update his or her application information if the change is a result of a change in marital status.

The Secretary has provided under § 668.55(b) that a Pell Grant applicant who is not selected for verification shall certify that his or her household size, number attending postsecondary educational institutions, and dependency status have been updated by signing the certification statement on the SAR or a comparable statement used by institutions.

Section 668.56 Items to be verified.

The Secretary has revised the regulations to provide that an applicant must verify the number of family members in his or her household only if the household size is greater than one in the case of an independent student and greater than two in the case of a dependent student.

The Secretary has revised the regulations to provide that an applicant must verify the number of family members attending postsecondary educational institutions only if that number is greater than one.

The Secretary has limited the required items to be verified under untaxed income and benefits to social security benefits, child support, and those other items that an institution may verify using the tax return.

The Secretary has provided that an institution shall require an applicant to verify social security benefits only if (1) the applicant has a comment to that effect on his or her SAR, or (2) the applicant does not submit a SAR to the institution and the institution has information showing the applicant received social security benefits or has reasons to believe the applicant received social security benefits.

The Secretary has provided that the institution shall require an applicant to verify child support only if the institution has information showing that the applicant received child support or the institution has reason to believe the applicant received child support.

The Secretary has clarified the language of § 668.56(b) to indicate that the GSL verification requirements apply only to applicants selected under § 668.54(a) (1) or (2), and not to all GSL applicants.

The Secretary has provided that a Pell Grant applicant who is a dependent student does not have to verify his or her adjusted gross income (AGI), U.S. income tax paid, and untaxed income and benefits for the calendar year preceding the first calendar year of the award year, *i.e.*, the base year.

Section 668.57 Acceptable documentation.

The Secretary has revised the regulations to require, when appropriate, the signature of the applicant's spouse on documents used to verify application information.

The Secretary has deleted the comparable State income tax return as a document to verify income and U.S. income taxes paid.

The Secretary has provided other documentation as an alternative to the U.S. income tax return for verifying AGI and U.S. income tax paid under certain circumstances.

The Secretary has removed the connection between the household size and the number of exemptions on the U.S. income tax return and is requiring that the household size of each selected applicant be verified by a signed statement.

The Secretary has clarified the documentation requirements for instances when the Secretary or an institution has conflicting documentation concerning an applicant's independent student status.

The Secretary has revised the requirements for independent student documentation for Pell Grant applicants under 23 years of age when the Secretary and the institution do not have conflicting documentation. The 1986–87 student aid application, unlike previous ones, provides a place for an applicant's parents to certify the information on the application with respect to the applicant's independent student status. Therefore, if the applicant's parents signed the application form with respect to the factors used to determine independent student status, the Secretary has eliminated the requirement that the parents sign a statement verifying this information.

The Secretary is no longer requiring that the worksheet for other untaxed income and benefits from the student aid application be used to verify untaxed income and benefits.

Section 668.58 Interim disbursements.

The Secretary has revised § 668.58(a)(1) to clarify that he is continuing the current Pell Grant policy of precluding an institution from disbursing Pell Grant funds when it has documentation that conflicts with the information or documentation provided by the applicant and is extending that prescription to the campus-based and GSL programs.

The Secretary has revised § 668.58(c) to provide that an institution may hold a GSL check for up to forty-five (45) days while an applicant is completing the verification process, as compared to the thirty-day limitation set forth in the NPRM.

Section 668.59 Consequences of a change in application information.

The Secretary has revised this section to provide that an applicant's EFC need not be recalculated if the absolute value of the change in dollar items on his or her application as a result of verification is less than $200 for the Pell Grant Program and less than $800 for the campus-based and GSL programs.

The Secretary has revised proposed §§ 668.59(d)(1), 668.59(b) in the final regulations, to provide that the institution may disburse the applicant's Pell Grant award based on the original EFC if the institution determines, after verification, that the applicant's EFC has decreased. The institution shall revise the applicant's Pell Grant award if the applicant subsequently submits a corrected SAR.

The Secretary has revised proposed §§ 668.59(d)(2), 668.59(c) in the final regulations, to provide that an institution shall adjust the applicant's financial aid package for campus-based and GSL aid to reflect a new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount for a GSL loan.

Section 668.60 Deadlines for Submitting documentation and the consequences of failing to provide documentation.

The Secretary has revised proposed §§ 668.60(c), 668.60(d) of the final regulations, to require that an institution shall not process any application for an applicant who does not provide requested information if directed by the Secretary.

Section 668.61 Recovery of Funds.

The Secretary has clarified that an institution shall make restitution from its own funds of an overpayment under § 668.58(a)(2)(ii) not later than the first of either (1) sixty days after the applicant's last day of enrollment or (2) the last day of the award year in which the institution disbursed the funds to the applicant.

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

The information collection requirements contained in these regulations in §§ 668.53, 668.54, 668.55, 668.56, and 668.57 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned an OMB control number. This control number appears as a citation following the appropriate sections.

Assessment of Educational Impact

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

Based on the response to the proposed rules and its own review as discussed in the Appendix of Comments and Responses, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to share this information or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance: No. 84.007, Supplemental Educational Opportunity Grants; No. 84.032, Higher Education Act Insured Loans (Guaranteed Student Loans); No. 84.003, College Work-Study Program; No. 84.038, National Direct Student Loans; and No. 84.063, Pell Grant Program)

Dated: March 7, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: Secs. 435, 481, 484, 485, 487, and 1201 of the Higher Education Act of 1965, is amended; 20 U.S.C. 1085, 1088, 1091, 1094, and 1141, unless otherwise noted.

2. The table of contents of Part 668 is amended by adding a new Subpart E to read as follows:

Subpart E—Verification of Student Aid Application Information

3. Part 668 is amended by adding a new Subpart E to read as follows:

Subpart E—Verification of Student Aid Application Information

§ 668.51 General

(a) *Scope and purpose.* (1) The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, the campus-based, and the Guaranteed Student Loan (GSL) programs.

(2) The regulations also cover the verification by institutions of information submitted under the GSL Program by applicants whose adjusted gross family income is $30,000 or less.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

(20 U.S.C. 1094)

§ 668.52 Definitions.

The following definitions apply to this subpart:

"Approved need analysis system" means a need analysis system which the Secretary has approved for an award year for determining an EFC under the campus-based programs.

"Base year" means the calendar year preceding the first calendar year of an award year.

"Edits" means a set of preestablished factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's costs of attendance.

"GSL Needs Test Tables" means the tables in Appendix B to 34 CFR Part 682 used to calculate a GSL applicant's EFC.

"Student aid application which a person submits to have his or her EFC determined under the Pell Grant, campus-based, or GSL programs.

(20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in an application to have an EFC calculated in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification;

(4) The procedures the institution requires an applicant to follow to correct application information; and

(5) The procedures for making referrals under § 668.14(g).

(b) The institution's procedures must provide that it furnish, in a timely manner, to each applicant selected for verification—

(1) A clear explanation of the documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.54 Selection of applicants for verification.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph. (1) If the edits specified by the Secretary select an applicant for verification, the institution shall require the applicant to verify all of the applicable items specified in § 668.56. The Secretary may enter into agreements with agencies or organizations with approved need analysis systems under which the Secretary provides the edits to the

agencies or organizations and the agencies and organizations indicate to institutions the applications that the edits select for verification.

(2) The institution shall require every applicant to verify the applicable items specified in § 668.56 if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or requests the institution to certify his or her application for a GSL loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated by the applicant submitting an application to an agency or organization with an approved need analysis system that has an agreement with the Secretary described under paragraph (a)(1) of this section.

(3) If an institution believes that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it believes is inaccurate.

(4) If an applicant is selected to verify the information on his or her application under paragraph (a)(1) of this section for an award year, the institution shall require the applicant to verify the information on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for an award year.

(b) *Exclusions from verification.* (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has documentation that conflicts with information reported by an applicant or believes that the information reported by the applicant is incorrect, it does not have to verify applications of the following applicants:

(i) An applicant who is a legal resident of and, in the case of a dependent student, whose parents are also legal residents of the Trust Territory of the Pacific Islands (which includes the Marshall Islands and the Caroline Islands), Guam, American Samoa, or the Northern Mariana Islands.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in § 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, all pages of the applicant's SAR.

(3) An applicant need not document spouse information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.55 Updating information.

(a)(1) Unless the provisions of paragraphs (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If the number of family members in the applicant's household, the number of those household members attending postsecondary educational institutions, or the applicant's dependency status changes as a result of a change in the applicant's marital status, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution or to the Secretary.

(c) If an applicant has received Pell Grant, campus-based, or GSL program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending post-secondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant or campus-based program assistance or certifying a GSL loan application; and

(2) Is not required to adjust the Pell Grant or campus-based program assistance previously awarded to the applicant for that award year, or any previously certified GSL loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d)(1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC

calculated for an award year, the applicant must file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

(2) If the institution has previously certified a GSL loan application for an applicant, the applicant shall not update his or her dependency status on the GSL loan application.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

§ 668.56 Items to be verified.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year.

(2) U.S. income tax paid for the base year.

(3) (i) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant and in the household of the applicant's parents if that aggregate number is greater than two.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant and his or her spouse if that number is greater than one.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The factors relating to an applicant's independent student status.

(6) Untaxed income and benefits for the base year including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive an SAR and the institution has information showing, or has reason to believe, that those benefits were received;

(iii) Child support if the institution has information showing; or has reason to believe, that child support was received;

(iv) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account; and

(v) The following other untaxed income and benefits:

(A) Untaxed portions of unemployment compensation.

(B) Untaxed dividends.

(C) Untaxed capital gains.

(D) Foreign income exclusion if the institution has information showing, or has reason to believe, that the foreign income was excluded.

(E) Earned income credit.

(b) For a GSL applicant selected for verification under § 668.54(a)(1) or (2) of this section—

(1) If the GSL applicant's adjusted gross family income is $30,000 or less, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income; and

(ii) The factors relating to an applicant's independent student status;

(2) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution uses the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies—

(i) The adjusted gross family income;

(ii) (A) For an applicant who is a dependent student, the aggregate number of family members in the houshold of the applicant and in the household of the applicant's parents if that aggregate number is greater than two; or

(B) For an applicant who is an independent student, the number of family members in the household of the applicant and his or her spouse if that number is greater than one;

(iii) The number of family members in the household who are enrolled as at least halt-time students in postsecondary educational institutions if that number is greater than one; and

(iv) The factors relating to an applicant's independent student status; or

(3) If the GSL applicant's adjusted gross family income exceeds $30,000 and the institution does not use the GSL Needs Test Tables, the institution shall require the applicant to submit acceptable documentation described in § 668.57 that verifies the applicable items set forth in paragraph (a) of this section.

(c) For the Pell Grant Program, if an applicant is a dependent student and the applicant's income for the base year is used to calculate the applicant's EFC (student aid index), an institution need not require the applicant to verify his or her base year adjusted gross income, U.S. income tax paid, and untaxed income and benefits.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

§ 668.57 Acceptable documentation.

(a) *AGI and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify adjusted gross income and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who is required in paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of a U.S. income tax return or an IRS listing of tax account information of a relevant individual, the documentation set forth in paragraph (a)(4) of this section if the relevant individual for the base year—

(i) Has not filed a U.S. income tax return but has filed an income tax return with a central government outside the United States or with the Commonwealth of Puerto Rico;

(ii) Has not filed and will not filed a U.S. tax return;

(iii) Has been granted a filing extension by the IRS; or

(iv) Has requested the IRS to provide him or her with a copy of the tax return or a listing of tax account information and the IRS cannot locate the return or provide a listing of tax account information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a copy of the signed income tax return filed by that individual for the base year with the central government or with the Commonwealth of Puerto Rico;

(ii) For an individual described in paragraph (a)(3)(ii) of this section, a statement signed by that individual

certifying that he or she has not filed nor will file a U.S. income tax return for the base year and providing for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(iii) For an individual described in paragraph (a)(3)(iii) of this seciton—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the I.R.S. for the base year, or a copy of I.R.S.'s approval of an extension beyond the automatic four-month extension if the individual requested the additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iv) For an individual described in paragraph (a)(3)(iv) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the base year; or

(B) For a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(iii) of this section to provide to it a copy of his or her completed U.S. income tax return when filed. When an institution receives the copy of the return, it may reverify the adjusted gross income and taxes paid of the applicant and his or her family.

(6) If an individual who is required to submit an IRS Form W–2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each household member in the family and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Unless the institution believes that the information included on the application regarding the number of household members in the applicant's family enrolled in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, which lists—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of each institution.

(2) If the institution believes that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(d) *Independent student status. (1) Unmarried applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require an unmarried applicant selected for verification to submit to it—

(i) A copy of the base year, Federal income tax return of the applicant's parent(s) signed by the filer, or by one of the filers if a joint return, or if the parent(s) did not file and will not file a tax return for that year, a statement to that effect signed by the parent(s); and

(ii) A statement signed by the applicant and the applicant's parent(s) certifying that—

(A) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(B) The parent(s) will not and did not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year or the base year; and

(C) The applicant did not and will not live with the parent(s) for more than forty-two days in either of those years.

(2) *Married applicant.* Except as provided in paragraphs (d)(4) and (d)(5) of this section, an institution shall require a married applicant selected for verification to submit to it a written statement signed by the applicant and the applicant's parent(s) certifying that—

(i) The parent(s) will not claim the applicant as an exemption on their U.S. income tax return for the first calendar year of the award year;

(ii) The parent(s) did not and will not provide the applicant with financial assistance of more than $750 in the first calendar year of an award year; and

(iii) The applicant did not and will not live with the parent(s) for more than forty-two days in that year.

(3) *Conflicting documentation.* (i) Except as provided in paragraph (d)(3)(ii) of this section, if the Secretary or an institution has conflicting documentation regarding any of the three factors used to determine independent student status, the institution shall require an applicant selected for verification to submit to it—

(A) The documentation specified in paragraph (d)(1) of this section if the applicant is unmarried; or

(B) The documentation specified in paragraph (d)(2) of this section if the applicant is married.

(ii) The institution may consider the applicant's independent student status verified even though it or the Secretary has conflicting documentation if the applicant's parent's—

(A) Are deceased;

(B) Are physically or mentally incapacitated; or

(C) Cannot be located because either their address is unknown or they are residing in a country outside the United States and cannot be contacted by normal means of communication.

(4) *No conflicting documentation—Pell Grant Program.* For purposes of the Pell Grant Program, if the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status—

(i) The institution shall consider the independent student status of an applicant to be verified without requiring documentation or statements from the applicant or his or her parents if the applicant will be at least 23 years old on May 31 of the second calendar year of the award year for which aid is requested;

(ii) The institution shall consider the independent student status of a married applicant who is or will be under 23 year old on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant's parents have signed the applicant's original application; or

(B) The applicant's parents are unable or unwilling to provide the required statements; or

(iii) The institution shall consider the independent student status of an unmarried applicant who is under 23 years of age on May 31 of the second calendar year of the award year for which aid is requested to be verified if the institution determines that—

(A) The applicant had sufficient resources to support himself or herself and any dependents for the base year; and

(B) The applicant's parents are unable or unwilling to provide the tax return or statements required in paragraph (d)(1) of this section. For the purpose of this provision, the Secretary considers that the parent(s) have provided the statements required in paragraph (d)(1) of this section if the parent(s) signed the applicant's original application.

(5) *No conflicting documentation—campus-based and GSL programs.* For purposes of the campus-based and GSL programs—

(i) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are not unable to provide the requested information and documentation, the institution may either—

(A) Require an applicant to provide to it the documents specified in paragraph (d)(1) of this section if the applicant is unmarried, or specified in paragraph (d)(2) of this section if the applicant is married, regardless of the circumstances concerning the age of the applicant or the willingness of the applicant's parents to provide the required tax return and statement; or

(B) Follow the requirements contained in paragraph (d)(4) of this section; or

(ii) If the Secretary or an institution does not have conflicting documentation regarding any of the three factors used to determine independent student status and the institution determines that the applicant's parents are unable to provide the requested information and documentation, the institution must follow the requirements contained in paragraph (d)(4) of this section.

(e) *Untaxed incoime and benefits.* An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in § 668.56(a)(6)(i), (iv), and (v) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or will be filed, a statement signed by the relevant individuals certifying that no tax return was filed or will be filed and providing the sources and amount of untaxed income and benefits specified in § 668.56(a)(6)(v);

(2) Social security benefits by submitting to it—

(i) If the applicant's SAR requires that the applicant verify his or her social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant's parents, the applicant, and the parent's children in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR, the document in paragraph (e)(2)(i) of this section or, at the institution's option, a statement signed by the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution believes that the information provided is inaccurate—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(f) For the purpose of this section, an institution may accept in lieu of a copy of a Federal income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840-0570)

§ 668.58 Interim disbursements.

(a)(1) If an institution has documentation that indicates that the information included on an application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the Secretary does not and the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(2) If an institution does not have documentation that indicates that the information included on an application is inaccurate, until the applicant is verified or corrects the information included on his or her application, the Secretary or the institution—

(i) May withhold payment of Pell Grant and campus-based funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, NDSL, or SEOG funds for the applicant's first payment period; and

(B) May employ an eligible student under the CWS Program until sixty (60) days after the date the applicant enrolled in that award year; and

(iii) Shall not certify the applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii) of this section, it shall be liable for any overpayment discovered as a result of the verification process.

(c) An institution may not hold any GSL check under paragraph (a)(2) of this section for more than forty-five (45) days. If the applicant does not complete the verification process within the forty-five (45) day period, the institution shall return the check to the lender.

(20 U.S.C. 1094).

§ 668.59 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant

to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (student aid index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported student aid index (SAI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's student aid index remains at zero on the basis of the verified information and the "Zero SAI Charts" that the Secretary publishes in the **Federal Register.**

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, need not recalculate his or her EFC, or need not adjust his or her Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a change in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a) (2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2)(i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Calculate the applicant's Pell Grant award on the basis of the EFC included on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides it with the corrected SAR.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the corrected SAR.

(c) For the campus-based and GSL programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's expected family contribution; and

(ii) Adjust the applicant's financial aid package for the campus-based and GSL programs to reflect the new EFC if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) (A) No errors in dollar items or errors reflecting a change in dollar items of less than $800; or

(B) No errors in dollar items or errors reflecting a change in dollar items of less than $200 if the institution uses the Pell Grant Program's SAI as the applicant's EFC.

(d) If a GSL applicant reports an adjusted gross family income of less than $30,000 and verification shows that the adjusted gross family income is over $30,000, the institution shall calculate an EFC for the applicant and determine his or her financial need for a loan.

(e) If the institution selects an applicant for verification for an award year who previously received a loan under the GSL Program for that award year, and as a result of verification, the suggested loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in § 668.61(b).

(f) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the applicant's name, social security number, and other relevant information to the Secretary.

(20 U.S.C. 1094)

(Approved by the Office of Management and Budget under control number 1840–0570)

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in § 668.57.

(b) For purposes of the campus-based and GSL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution shall not—

(A) Disburse any additional NDSL or SEOG funds to the applicant;

(B) Continue to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Process a GSL check for the applicant;

(ii) The institution shall return to the lender any GSL check payable to the applicant; and

(iii) The applicant shall repay to the institution any NDSL or SEOG payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the prescriptions listed in paragraph (b)(1)(i) of this section; and

(3) An institution may not hold any GSL check under paragraph (b)(1) of this section for more than forty-five (45) days. If the applicant does not complete verification within the forty-five (45) day period, the institution must return the check to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the appropriate deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication in the **Federal Register.** If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in 34 CFR 690.61, payment must be based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is the same or higher than the student aid index on the original SAR; and

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, shall not process any subsequent application for campus-based and GSL program assistance of an applicant who has been requested to provide information until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies during that award year, or before the deadline date for completing the verification process if that date extends into the subsequent award year, without completing the verification process, the institution shall not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify the applicant's GSL loan application or process a GSL check for the applicant; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(20 U.S.C. 1094)

§ 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under § 668.58(a)(2)(ii) more than he or she was eligible to receive under the Pell Grant, NDSL, or SEOG programs, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) If the applicant does not return the overpayment, making restitution from its own funds by the earlier of the following dates:

(A) Sixty days after the applicant's last day of enrollment.

(B) The last day of the award year in which the institution disbursed Pell Grant, NDSL, or SEOG funds to the applicant.

(b) If the institution determines as a result of verification that a applicant received for an award year a GSL of $200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for such amounts.

(20 U.S.C. 1094)

PART 690—PELL GRANT PROGRAM

4. The authority citation for Part 690 continues to read as follows:

Authority: Sec. 411 of the Higher Education Act of 1965, as amended; 20 U.S.C. 1070a, unless otherwise noted.

§ 690.14 [Amended]

§ 690.77 [Removed]

5. The Secretary amends Part 690 by removing § 690.14(b) and § 690.77.

Appendix—Summary of Comments and Responses

[Editorial Note: This appendix will not appear in the Code of Federal Regulations.]

Section 668.51 General.

Comment: Several commenters expressed confusion over the treatment of the State Student Incentive Grant Program (SSIG) because the preamble to the NPRM states that the SSIG Program is not included under the proposed regulations, but institutions may be required to consider verified data in awarding the applicant's SSIG grant. Some commenters suggested that the SSIG Program should be completely excluded from the final regulations, or that the final regulations should specify that institutions which do not determine SSIG recipients or SSIG award levels are not required to verify the data which resulted in the SSIG award.

Response: No change has been made. The SSIG Program is not covered by these regulations. However, if an institution calculates an applicant's SSIG award and information it discovers by verifying that applicant's application under Subpart E of Part 668 is relevant to the amount of the SSIG award, the institution, under § 668.16(f), must take that discovered information into account in its calculation of the SSIG award.

Comment: Several commenters disagreed with the Secretary's proposal in § 668.51(c) to exempt foreign schools participating in the GSL Program from the verification requirements. These commenters argued that the requirements should be applied consistently to all participants.

Response: No change has been made. These institutions generally do not have the requisite knowledge of need analysis procedures and U.S. tax laws needed to carry out the verification procedures.

Comment: Two commenters suggested that the Secretary clarify the meaning of "State" as used in § 668.51(c) of the NPRM, so that it is clear that Puerto Rico, for example, is considered a "State" for purposes of this subpart.

Response: No change has been made. The definition of a State in the Higher Education Act includes the Commonwealth of Puerto Rico. Moreover, the definition of a "State" is included in § 668.2 of Subpart A of Part 668 that was published as a proposed regulation in the **Federal Register** of December 12, 1984, 49 FR 48494, 48502. When that regulation is republished as a final regulation, that section will apply to Subpart E of Part 668.

Section 668.52 Definitions.

Comment: One commenter suggested a change in the definition of "comparable State income tax return" to read ". . . requires the filer to provide the adjusted gross income and either the amount of U.S. income tax paid or the number of exemptions as reported on the U.S. income tax return," to broaden the number of State tax returns that may qualify. Two commenters recommended that the reference to and definition of a "comparable State income tax return" in these regulations be deleted and that only the U.S. tax return be used.

Response: A change has been made. The Secretary agrees with the commenters that only the U.S. income tax return be accepted as appropriate documentation since it is the only document that includes adjusted gross income and U.S. income tax paid.

Comment: One commenter suggested that the Secretary add a definition for "designated entity" which would mean an agency that administers the student loan program for that educational institution. The commenter believed that this change would allow an institution to choose a designated agency to assist it in the verification process.

Response: No change has been made. These regulations do not prevent an institution from using an outside agent or organization from assisting it in the verification process. However, the institution is responsible for the requirements of these regulations even if it uses an agent to meet its responsibilities.

Section 668.53 Policies and procedures.

Comment: One commenter opposed the requirements of § 668.53 which requires institutions to have written policies and procedures for verifying student aid application information. The commenters believed the Secretary does not have authority to specify institutional policies and procedures.

Response: No change has been made. The Secretary in this section is not specifying the substance of the policies and procedures that an institution must

establish in the implementation of the verification regulations. The Secretary is merely requiring an institution to set forth in writing the policies and procedures it otherwise needs to develop to implement the verification regulations. This prescription is authorized by section 487(a)(3) of the Higher Education Act of 1965 as amended (HEA), which provides that an institution "shall establish and maintain such administrative procedures . . . as may be necessary to ensure proper and efficient administration of funds received from the Secretary . . .", and section 487(b)(1)(B) of the HEA, which authorizes the Secretary to prescribe such regulations as may be necessary to provide for the establishment of reasonable standards of institutional capability to administer the student aid programs.

Comment: One commenter objected to requiring institutions to develop written policies and procedures because the goal of the Secretary is the reduction of error and the Secretary's concern is the production of results and not the creation of procedures. Another commenter opposed the requirements of the section on the grounds that they are unnecessary since well-run institutions would already have such policies in place. A few other commenters suggested that the procedures set forth in this section should only apply to institutions found out of compliance with the provisions of this Subpart after an audit or program review.

Response: No change has been made. The Secretary believes that the development by an institution of written policies and procedures to carry out the verification process will assist that institution's implementation of that process. While the Secretary intends to disseminate a "Verification Handbook" to assist institutions in that task, the policies and procedures called for in § 668.53 will be needed to complement the Handbook since they cover areas involving institutional discretion and flexibility, such as the time frames for providing documents and the consequences of the failure to provide such documents in a timely manner.

While the goal of the Secretary is the reduction of error in the awarding of financial aid, the Secretary does not believe that the procedures used to reach that goal are of no consequence. The Secretary believes that the development of the policies and procedures called for in this section will assist in reaching that result. The Secretary believes, as does the commenter, that well-run institutions will probably develop on their own the procedures and policies called for in this section. There can be no better reason, therefore, for requiring all institutions to comply with those procedures. Clearly this requirement will impose no additional burden on well-run institutions.

Comment: A few commenters asked if the Secretary will provide additional guidance on acceptable policies and procedures. One commenter recommended that the Secretary provide a model to implement the requirements of this section. Two commenters requested that the Secretary provide forms to facilitate implementation of the requirements of this section.

Response: No change has been made. This section requires only that the institution include certain minimum procedures for verifying the data of applicants for Pell Grant, campus-based, and GSL assistance. An institution will develop and implement those policies and procedures that it determines best suit its needs. The Secretary, therefore, believes that additional guidance in this area is not necessary, nor is the development of a model policy and procedures manual.

Comment: Two commenters provided comments on proposed § 668.53(a)(1)(i) regarding the time period within which the applicant shall provide the documentation for verification. One commenter asked if the Secretary will agree to whatever time period is established by an institution. Another commenter indicated that to use a "reasonable" time period is of no use because not only is it difficult to define "reasonable" but also a student may submit documentation after the deadline.

Response: No change has been made. An institution has broad discretion in establishing the time frames under this regulation for the submission of documents. Accordingly, the Secretary neither approves nor disapproves of the institution's choices in that area. However, as in other areas in which institutions have discretion, the institution's time frames may not be unreasonable.

In establishing time frames for submitting documents, an institution establishes a fixed time period of a specific number of days within which an applicant would have to provide the required documents. Its period for response would therefore be, for example, 15 days' or 30 days, not "a reasonable period of time," since the latter would not be of any help to its students.

Comment: A few commenters questioned the requirement in § 668.53(a)(1)(iii) of the NPRM that an institution specify the approved need analysis system that it uses to recalculate an EFC. The commenters stated that an institution is not required to use only one system of need analysis and that there are a number of instances where more than one system may be appropriate.

Response: A change has been made. The Secretary agrees with the commenters and has deleted this provision from the regulations.

Comment: One commenter in responding to the inclusion of the method by which the institution notifies the applicant of the results of verification in § 668.53(a)(1)(iv) of the NPRM indicated that this is a burdensome requirement and that a student should only have to be notified if there is a change in award.

Response: No change has been made. For purposes of this section, an institution may consider that it has notified a student of the results of the verification process if there is no change in the student's award when it disburses that award to that student. The Secretary does not believe that this requirement is burdensome.

Comment: One commenter indicated that the inclusion of the procedures the institution requires an applicant to follow to correct application information in proposed § 668.53(a)(1)(v) is unnecessary because all corrections do not have to be reported.

Response: No change has been made. The Secretary recognizes that an applicant does not need to report all corrections. However, in those cases where an applicant must correct the information on his or her application, the institution shall have written procedures for the applicant to follow if further action is required by the applicant.

Comment: Numerous commenters raised questions and concerns about the provision in proposed § 668.53(a)(1)(vi), § 668.53(a)(5) in the final regulations, that an institution have written procedures for referring to State or local law enforcement agencies for investigation, as required under § 668.14(g), any instance where it has reason to believe that an applicant has applied for assistance under false pretenses. Many comments on § 668.53(a)(1)(vi) were also addressed to § 668.14(g).

Response: A change has been made. The Secretry is retaining, in § 668.53(a)(5), a requirement that an institution's verification procedures include procedures for referrals under § 668.14(g). Section 668.14(g), which is

the subject of the comments, is a part of a proposed rule that was published for public comment in the **Federal Register** of December 12, 1984, 49 FR 48494, 48506. However, since § 668.14(g) has not been published in final form, the Secretary anticipates the procedures referred to in § 668.53(a)(5) will not be required until the 1987–88 award year application cycle, at the earliest.

The Secretary will consider the comments submitted in response to § 668.53 in considering § 668.14(g) prior to publishing that provision as a final rule.

Comment: Several commenters objected to the requirements set forth in § 668.53(a)(2) relating to institutions that impose verification requirements exceeding the requirements set forth in Subpart E. The major point of the objectors was that the requirements in proposed § 668.53(a)(2) are unnecessary since an institution that exceeds the verification requirements of Subpart E will have to establish, for its own purposes, the policies and procedures set forth in § 668.53(a)(2).

Response: A change has been made. The Secretary agrees with the commenters and has deleted this provision from the regulations.

Comment: One commenter questioned what the applicant's rights were with respect to verification referred to in § 668.53(b). This commenter recommended that the Secretary provide a "statement of applicant's rights" to the institutions.

Response: A change has been made. The Secretary did not intend to establish any special rights for applicants under the verification process and has, therefore, deleted this reference in § 668.53(b)(2).

Section 668.54 Selection of applicants for verification.

Comment: Several commenters were concerned about the specificity of the procedures for selecting applicants for verification. Several commenters suggested that the Secretary should allow alternate methods of verification to be determined by each institution. One commenter suggested that the Secretary should not require an institution to verify more than one-third of Pell Grant applications. Another commenter suggested that an institution should be allowed to choose between verifying either an approved random sample or 100 percent of the applications. One commenter suggested that no more than 20 percent of applications be selected for verification during the first two years after the system is in place.

Several commenters remarked that the procedures for selecting applicants for verification are reasonable, but that the Secretary should regularly review, in concert with the community, the edits to keep them to a reasonable level by excluding those which are not producing error.

One commenter suggested that 100 percent verification for Pell Grant applications should be required. The commenter suggested that if 100 percent verification is deemed to be undesirable, the Secretary should select for verification all Pell Grant recipients whose applications list tax filing status as "estimated" and all self-supporting Pell Grant recipients whose incomes for the base year are under $6500.

Several commenters objected to an edit which would flag 50 percent of all Pell Grant applicants, arguing that the figure is excessive and unjustified.

Response: No change has been made. While the alternatives provided by the commenters for selecting applications for verification may have merit, the Secretary believes that the system proposed by the notice of proposed rulemaking best satisfies the Secretary's goals of eliminating applicant error while minimizing burden on institutions in reaching that goal. The selection of applicants to be verified based on the use of edits provides the most reliable means of selecting applications with errors. The percentage selected depends on the edits adopted. As the Secretary did for 1985–86, he will develop in cooperation with representatives of the financial aid community the mandatory edits for use in 1986–87 and repeat this process for each subsequent year.

Because the Secretary believes that the edits provide the most reliable means of selecting applications which may have errors, he is not adopting any of the alternatives that the commenters proposed. The edits select only a minimum number of applications which must be verified. An institution may select additional applicants under any system it determines to be effective.

Comment: Several commenters objected to what they perceived as the requirement that all applicants for GSL loans must use an approved need analysis system.

Response: No change has been made. Section 668.54 does not require all GSL applicants to use an approved need analysis system. In most cases, an applicant for a GSL will also be an applicant for Pell or campus-based program assistance. Therefore, as a result of applying for assistance under those programs, the applicant will submit to the institution an SAR or the institution will receive the output document generated by an approved need analysis system.

In the case of an applicant who applies only for a GSL, an institution has the option of verifying all those applicants who do not submit applications, that are subject to the edits, or it may require those students to submit a Federal application so that the students will receive an SAR and thus be subject to the edits.

Comment: Several comments were received with regard to the requirements of § 668.54(a)(2). Several commenters interpreted that provision as requiring institutions to verify all applications. Other commenters interpreted that section as requiring institutions to verify all GSL applications while other commenters interpreted the section as forcing all GSL applications to file an application with an approved need analysis system.

Response: No change has been made. Section 668.54(a)(2) does not require institutions to verify all applications. It also does not require institutions to verify the applications of all GSL applicants. Further, it does not force GSL applicants to file applications with approved need analysis systems.

Section 668.54(a)(2) requires institutions to verify all the applications that it receives that have not undergone the edit checks developed by the Secretary to catch errors in the application process. An application goes through the edit checks if the student receives an SAR as a result of his or her application, or if the applicant applies to an approved need analysis system that has entered into an edit agreement with the Secretary. In the overwhelming number of cases, an applicant who applies for title IV, HEA Program aid will be subject to the edit process.

Applicants who may not have their applications subject to the edit checks are applicants with an adjusted gross family income of under $30,000 who apply only for a GSL, applicants with an adjusted gross family income of over $30,000 who apply only for a GSL if an institution uses the "GSL Needs Test Tables" and those applicants who apply for campus-based assistance where the institution hand-calculates the applicant's expected family contribution. While § 668.54(a)(2) requires an institition to verify each of these applications, the institution may, at its option, avoid this requirement by requiring each of the above applicants to file an application that is subject to the edits. Since the Federal form is subject to the edits and an institution may require all applicants for title IV, HEA Program aid attending that

institution to file a Federal student aid form, § 668.54(a)(2) does not force all GSL applicants to file an application with an approved need analysis system.

Comment: One commenter pointed out that a person who applies to the Secretary or to a need analysis system to have his or her expected family contribution determined does not, by that application, apply to an institution for title IV, HEA Program aid. Therefore, an institution would not necessarily know whether an applicant meets the requirements of § 668.54(a)(2)(ii).

Response: A change has been made. The Secretary agrees with the commenter and has amended § 668.(a)(2)(ii). Section (a)(2)(ii) is intended to assure that an application that is not processed through the edits is verified. Therefore, the Secretary has amended this provision to require an applicant for campus-based or GSL assistance to verify his or her application information if the institution does not receive an SAR or the output document generated by the applicant submitting an application to an approved need analysis system using the edits.

Comment: Several commenters asked for clarification of the effect of the verification requirements on a financial aid administrator who computes applicants' expected family contributions (EFC) by a hand calculation or by programmed desk-top calculators or computers. Several commenters suggested that edits be widely disseminated to agencies and institutions to enable an institution to build the edits into its own application system.

Response: No change has been made. An institution must verify the application information of all applicants whose application information has not been processed through the edits. The Secretary is distributing the edits only to agencies with approved need analysis systems that enter into an agreement with him and that have the capability to implement the edits. If an institution uses a programmed desk-top calculator or computer with a program from an approved need analysis system that incorporates the edits, the institution need only verify those applicants that the system selects.

Comment: Several commenters urged that changes in selection edits and categories of excluded applicants be made as early as possible. One commenter suggested that no changes be made after September 1 of the year preceding the application year.

Response: No change has been made. The Secretary will implement the development of the edits in conjunction with representatives of the financial aid community as early as possible for each award year. In addition, no revisions to these regulations will be made without complying with the legal requirements for notice and an opportunity for public comment.

Comment: Several commenters opposed the inclusion of edits in the Pell Grant processing system in addition to the common edits. The commenters suggested that all applicants should be subject to the same edits.

Response: No change has been made. The Secretary will continue to include edits in the Pell Grant processing system that are in addition to the common edits, such as the Social Security tape match, because no other system currently has the same capability.

Comment: One commenter suggested that the Secretary require 100 percent verification of applicants in conjunction with a requirement that the applicants and their parents submit a copy of their Federal income tax return with the application form. The commenter suggested that the application processor should then be made responsible for verification of auditable information on the tax return.

Response: No change has been made. The Secretary is considering the option of requiring applicants to submit their tax return with their application to the application processor and is currently assessing the technical difficulties preventing implementation of this procedure.

Comment: Several commenters objected to the selection of a random sample of applicants to be verified. The commenters urged that attention be focused on those applications most in need of attention, not on random ones. Random samples, they added, should be limited to quality control studies or audits. One commenter expressed concern that random sampling might penalize early filers.

Response: No change has been made. The random sample is a small proportion of those applicants selected and is necessary to analyze the effectiveness of the edits. It is taken throughout the award year and, thus, does not penalize early filers.

Comment: Several commenters objected to requiring verification of all applications processed through an agency or organization which does not use the edits. The commenters suggested that it would be fairer to require verification of all applicants or to require verification of a certain percentage of applications not processed through the edits. Some commenters complained that large institutions especially would be deluged with work if the 100 percent verfication requirement in § 668.54(a)(2) of the NPRM is implemented. Several commenters suggested that it would be more cost-effective to verify a random sample of GSL applications, rather than 100 percent. They questioned whether studies are available indicating that errors in the GSL Program are more common than in any other.

Several commenters suggested limiting selection of applications for verification to only those applications submitted through a processor.

Several commenters stated that financial aid officers are already overburdened and further requirements to verify GSL applications would slow the process even more but would not produce significant savings for the government. One commenter suggested that the Secretary should instead require guarantee agencies to establish audit systems to verify information provided by borrowers.

One commenter suggested revising § 668.54(a)(2) of the NPRM to require institutions to verify information only if (1) the institution has conflicting information or believes the information to be incorrect, and (2) the applicant receives a campus-based award or a GSL and does not apply for a Pell Grant, submit an AFSA, or have need calculated through an approved system of need analysis using the edits.

Response: No change has been made. An application that has not been processed through the edits may contain error and, therefore, must be verified. An institution has the option, however, of requiring any applicant to submit an "Application for Federal Student Aid" (ED Form 255) to generate an SAR and, thus, to determine whether the applicant's information must be verified even though the institution does not use the SAR to determine the applicant's campus-based award or GSL recommended loan amount.

Comment: Several commenters asked if proposed § 668.54(a)(2) means that an aid package must be determined *before* requiring the application information to be verified or does it mean that if a student appears to be otherwise eligible the application information must be verified.

Response: No change has been made. The determination of an aid package is irrelevant to whether an institution must verify the application of an aid applicant under § 668.54(a)(2). Under that section, an institution must verify an applicant for campus-based assistance once it selects that applicant to receive an award under any of the campus-based programs or once the applicant requests

the institution to certify his or her GSL loan application if the application information has not been processed through the edits.

Comment: A few commenters suggested that the requirement in § 668.54(a)(3) that an institution verify any application information that it believes is inaccurate is unnecessary and burdensome. They suggested that the Secretary should limit verification to those items listed in § 668.56 of the NPRM.

Response: No change has been made. If an institution believes the information provided is inaccurate, it cannot be burdensome or unnecessary to require the applicant to verify that information.

Comment: One commenter questioned whether the Secretary will continue the current Pell Grant policy of requiring an institution to verify subsequent applications submitted by an applicant for an award year if that applicant had a previous application selected for verification for that year. Several other commenters were concerned about the burden imposed upon the parents of applicants who must verify more than one application during an award year. Other commenters were concerned that if an applicant filed more than one application and included information on the second application that was different from the information included on the first application this different information would cause different edits to pick the application for verification.

Response: A change has been made. It is the Secretary's intention to continue the current Pell Grant policy of requiring an institution to verify subsequent applications submitted by an applicant for an award year if that applicant had a previous application selected for verification for that year. However, the applicant would only have to verify, by supporting documentation, information that was not previously verified. This will curtail the burden on applicants and their families.

With regard to an applicant who submits applications containing different information, the Secretary believes it is appropriate to require that applicant to verify the new information since the inclusion of that information may be an indication that the applicant made an error in completing that application.

Comment: One commenter objected to the exclusion in proposed § 668.54(b) of incarcerated applicants, immigrant applicants, and applicants whose parents are neither residents nor citizens of the U.S.

Response: No change has been made. The Secretary has determined that these individuals represent a limited number of applicants and that the difficulties they would face in obtaining documentation to verify their application information are such that they should not be required to provide documentation unless the institution has conflicting documentation or has reason to believe the information is inaccurate.

Comment: One commenter noted that the Secretary has not excluded two categories of applicants from verification: (1) An applicant whose data was verified at one institution but who later transferred to another institution; and (2) an applicant for whom estimated data is used. The commenter recommended these categories of students be excluded.

Response: A change has been made. The Secretary agrees that it is not necessary to verify the application of a transfer student for an award year if the institution the student transferred from has already verified that student's application for that award year. The Secretary has amended § 668.54(b) accordingly.

The Secretary does not agree that there should be a blanket exemption for applicants using projected data. The regulations do not require the verification of projected income since the income that must be verified is income earned in the calendar year preceding the first year of the award year. However, the Secretary believes that applicants should verify, at least once, information that they are required to update under § 668.55.

Comment: One commenter questioned whether the applications of deceased applicants must be verified. Another commenter questioned the provision that requires an institution to verify the application of a deceased applicant if it has reason to believe that that information contained in the application is inaccurate or if it has conflicting documentation with regard to that application.

Response: A change has been made. The Secretary has amended § 668.54(b) by clarifying that the exclusion for an applicant who dies during the award year for which he or she applied for aid applies regardless of whether the institution believes the information included in the application is inaccurate and regardless of whether the institution has documentation that conflicts with the information included in the application.

Comment: One commenter recommended that the exclusions in § 668.54(b) include dependent applicants whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

Response: A change has been made. The Secretary agrees that in these circumstances a dependent applicant cannot be expected to verify his or her application. Therefore, he has amended to § 668.54(b) to exclude these applicants from the verification requirements of this subpart.

Comment: One commenter noted that the Secretary considered an independent student's parents "unable" to provide documentation if they were outside the United States and inaccessible. The commenter questioned whether an applicant's parents who are citizens of and currently residing in a country other than the United States must also be inaccessible for the applicant to be excluded from verification under § 668.54(b)(4) of the NPRM.

Response: A change has been made. The Secretary believes that the applicant's parents should be relieved of the responsibility for verifying application information only if the parents are outside the United States and cannot be contacted by normal means of communication. The Secretary no longer believes that the provision in the NPRM referencing the parents' citizenship or residence is relevant. The Secretary has amended § 668.54(b) accordingly.

Comment: One commenter noted that the exclusion in proposed § 668.54(b)(7) of applicants who do not receive title IV aid is confusing because in most cases an institution must verify a selected applicant's data in order to determine if the applicant is eligible for assistance.

Response: A change has been made. The Secretary has clarified this provision to exclude applicants who do not receive assistance for reasons other than the accuracy of their application information.

Comment: To avoid placing an applicant in an untenable position, one commenter recommended that the Secretary under § 668.54(b) exclude the applicant from providing documentation from the applicant's spouse if the spouse is deceased or otherwise unable to provide that documentation.

Response: A change has been made. The Secretary agrees with the commenter and has amended the regulations accordingly. Therefore, an applicant is not required to provide the documentation for his or her spouse's income if the spouse is deceased, physically or mentally incapacitated, or residing in a country other than the United States and cannot be contacted by normal means of communication, or cannot be located because his or her address is unknown.

Section 668.55 Responsibilities of applicants for updating information.

Comment: A few commenters supported the updating requirements of this section. A number of commenters, however, objected to the concept of updating unless, for example, a financial aid administrator learned in the normal course of events that an applicant's circumstances had changed. The commenters believed that updating will not produce more accurate information because of the short period of time between the date an applicant files an application and the date he or she submits an SAR to the institution and because the updated information may still be a projection. The commenters believed that updating is difficult to enforce, is burdensome, is not cost effective, may increase program inequity and will not eliminate error. Several commenters noted that the updating concept is contrary to the historical "snapshot" view of capturing a family's circumstances at a given point of time. Some commenters recommended that a benchmark, e.g., 120 days, be established before which updating would not be required, and recommended that the updating provisions apply only when there is conflicting documentation.

One commenter proposed that no update of the information be required unless the institution had conflicting documentation. Some commenters believed that applicants will update only when it is to their benefit.

A few commenters noted that household size and number attending postsecondary educational institutions are based on projected data and believed that the Secretary should recognize that inherent in projections is a certain degree of error. One commenter recommended that instead of requiring institutions to update household size and number attending postsecondary institutions, the committees responsible for need analysis address the problems of estimated data.

Response: No change has been made. The Secretary believes that the amount of assistance received by an applicant should be based on the best available information. Therefore, the Secretary is requiring that applicants selected for verification update their projections relating to household size, number attending postsecondary institutions, and dependency status. The Secretary believes that updating this information, rather than merely verifying these projections as of the date of application, provides more accurate information in determining an applicant's need for assistance.

Comment: One commenter asked if updating applies to Special Condition filers and to data being processed through a system for correction.

Response: No change has been made. These applicants must update household size, number attending postsecondary institutions, and dependency status under the same circumstances as other applicants.

Comment: Several commenters were concerned that § 668.55(a) would require multiple updating and verification of an applicant's household size and number of household members attending postsecondary institutions if the applicant filed more than one application in an award year. Other commenters were concerned that an institution would have to recalculate aid packages awarded on the basis of one application if as a result of updating a second application, the applicant's family size or number in postsecondary institutions changed.

Response: Changes have been made. As a general rule, if an applicant files more than one application for an award year, the institution shall require the applicant to update the information on each application. However, § 668.55(a) was amended to provide that the applicant need not update and the institution need not verify information that remains unchanged from a previously verified application submitted for that award year.

Section 668.55 was further amended to provide that an institution need not adjust financial aid already awarded for an award year on the basis of a verified application if the applicant submits another application for that award year and the updated information on the second application is different from the information contained on the previous application. The institution must, of course, award any new assistance on the basis of the updated application.

Comment: A number of commenters objected to the requirement in § 668.55(b)(1) that Pell Grant applicants not selected for verification update household size, number attending postsecondary institutions, and independent student status. A few commenters objected to the inconsistency among the programs.

Other commenters objected to this provision on the basis of the short time between submitting an application and submitting an SAR which made the resignature requirement redundant and expensive. Some commenters believe that additional signatures are necessary only as a result of filing error or verification.

Response: No change has been made. The character of the Pell Grant Program requires that all Pell Grants be calculated on the same basis. Therefore, the requirement that an applicant selected for verification shall update his or her application information means that a Pell Grant applicant not selected for verification must also update that information.

The Secretary believes that the date a nonselected applicant first submits his or her SAR to the institution is the most appropriate time for this information to be updated since this date allows an applicant to change his or her information without placing an undue burden on the applicant or the institution.

Given the nature of the campus-based and GSL programs, an applicant for campus-based or GSL assistance, who is not selected for verification, is not required to update his or her household size or number attending postsecondary educational institutions. However, institutions continue to have the discretion to require these applicants to update this information throughout the award year.

Comment: One commenter noted that the number of family members in postsecondary education could change after the term in which the item was verified. The commenter proposed that the regulations specify that the number in postsecondary education is only valid for the semester or term being verified and is not assumed to be accurate for future terms of enrollment.

Response: No change has been made. As noted above, for the Pell Grant Program an applicant must update his or her SAR once. The Secretary is not requiring an applicant to update his or her information after that first update. For the campus-based and GSL programs the institution has an option to require applicants to update this information throughout the award year.

Comment: A number of commenters objected to the requirement in § 668.55(b)(2) that Pell Grant applicants not selected for verification sign the certification statement on the SAR to update household size and number attending postsecondary institutions. One commenter recommended that the institution be permitted to collect a certification statement elsewhere in order to accommodate institutions using electronic transmission of data. One commenter requested assurance that if the certification is false that the student, not the institution, will be held liable.

Two commenters recommended that instead of updating, the student be required to sign a statement recognizing his or her responsibility for updating prior to submission. One commenter recommended that a random sample could be conducted by the institution after the beginning of the school year when this information becomes factual.

A number of commenters recommended that, at the very least, the certification instructions be strengthened. One commenter recommended the use of bold face print.

Response: A change has been made. In response to a commenter's suggestion, the Secretary will permit a Pell Grant applicant who is not selected for verification to certify that the information contained on his or her SAR is accurate as of the day he or she first submits the SAR to the institution on a separate form developed by the institution as an alternative to certifying the information on the SAR itself.

The Secretary notes that if the applicant falsely certifies this information, the student is liable for any funds improperly disbursed. However, an institution may also be liable if it disbursed funds to an applicant for whom it had documents with information that conflicted with the information contained on the applicant's application.

The Secretary believes that the suggestions regarding the signing of statements and the taking of random samples will not produce updated information as effectively as the procedures set forth in § 668.55(b).

Comment: One commenter asked if § 668.55(b)(2) of the NPRM means that the student signs and dates the statement on the SAR at the time of submission, including any changes, or does "updated" imply that the applicant has already submitted the SAR for changes and that this SAR is the revised SAR.

Response: No change has been made. Under § 668.55(b)(1), the applicant is required to update the information so that it is accurate as of the date the applicant submits his or her first SAR. Therefore, the applicant may not submit his or her first SAR to the institution until the applicant updates any change so that the information is accurate when the applicant submits his or her SAR.

Comment: One commenter asked if only "Pell-eligibles" who are not selected for verification are required to sign the certification statement.

Response: No change has been made. Only "Pell-eligibles" are required to sign the certification statement.

Comment: One commenter questioned the intent of the Secretary regarding updating of dependency status for applicants selected for verification. The commenter noted that although the Secretary indicated in the preamble to the proposed regulation that a selected applicant shall update this information at the time of verification, the regulations appear to require updating only household size and number attending postsecondary educational institutions at the time of verification.

Response: A change has been made. The Secretary clarified the regulation in § 668.55(d) to state explicity that an applicant shall update his or her dependency status as of the date of verification.

Comment: Several commenters objected to the requirement in proposed § 668.55(c), § 668.55(d) in the final regulations, that an applicant reapply if his or her dependency status changes. One commenter believed that dependency status does not change very often. A few commenters recommended that an institution be permitted to recalculate a Pell Grant if an applicant must file a new application. One commenter asked if an institution may recalculate a campus-based award based on a new application submitted directly to the institution.

Response: No change has been made. The Secretary is requiring an applicant to reapply fix is or her dependency status changes because most of the information on the original application is no longer valid. An institution may recalculate a campus-based award using a new application submitted directly to the institution, but the applicant must submit a correction application for a Pell Grant since the previous SAR is no longer a valid SAR. Note that if the applicant submits a new application for campus-based aid directly to the institution, the institution may verify the applicable information under § 668.54(a)(2) unless the same information is included on the correction application submitted to the Pell processing system and the new SAR is not selected for verification.

Comment: A few commenters requested clarification as to whether proposed § 668.55(d)(1) changes the current policy of prohibiting updating dependency status for a change in marital status. One commenter questioned whether the Secretary intends to change the current policy which prohibits a change in application information due to a change in marital status. One commenter questioned whether updating due to a change in marital status is a student's option. A few commenters supported a requirement to update for a change in marital status.

Response: A change has been made. The Secretary did not intend to change the current policy and has revised § 668.55 to clarify that an applicant is not permitted to update his or her application information to reflect any change that is the result of a change in marital status.

Comment: One commenter questioned whether § 668.55(d)(2) meant that an applicant was not permitted to update his or her dependency status on a GSL loan application. Several commenters objected to exempting previously certified GSL loan applications from the updating of dependency status. One commenter noted that this requirement would be rendered inappropriate by the pending legislative proposal to disburse these loans in multiple disbursements. One commenter suggested that institutions should encourage students to revise their dependency status if updating would make the students eligible for higher loan amounts. One commenter questioned whether the Secretary intends to change the current policy which prohibits a change in application information due to a change in marital status.

Response: A change has been made. To prevent additional administrative complexity in the GSL Program, the Secretary is retaining the requirement that an applicant may not change his or her dependency status as a result of a change in marital status. For the same reason, the Secretary has revised § 668.55(d) to clarify that an applicant is not permitted to update his or her application information on a previously certified GSL loan application.

Section 668.56 Items to be verified.

Comment: Some commenters recommended that the items to be verified should be applied consistently to all programs for ease of administration and students' understanding.

Response: No change has been made. The Secretary is requiring that institutions verify the prescribed items if they are used to calculate an applicant's EFC. It would not be appropriate to require an institution to verify an item that is not used in determining an applicant's award or GSL recommended loan amount.

Comment: One commenter stated that the proposed regulations did not explain adequately the verification requirements for a student who files a "Special Condition" application under the Pell Grant Program.

Response: No change has been made. The regulations require that the institution verify those items used to

determine the applicant's EFC. In the case of an applicant who files a Special Condition application, the appropriate items are household size, number attending postsecondary educational institutions, and independent student status. Since the Special Condition application requests income information for the first year of an award year and § 668.56 requests verification of base year income information, the Special Condition filer is not required to verify income information.

Comment: Some commenters objected to the items to be verified required by this section. One commenter recommended that only adjusted gross income, household size, and taxes paid be required items and recommended that quality control studies look at number in college, independent student status, and untaxed income. One commenter recommended that the use of the tax return is sufficient as evidenced by the quality control studies showing that seven out of eight of the highest error items are verifiable against the tax return. One commenter stated that applicants should verify only those items that are the basis for the applicant's selection by the edits instead of being required to verify all of the specified items.

Response: No change has been made. The six required items are all major factors in determining an applicant's EFC, and all of them are items that the quality control studies of the Pell Grant Program have shown to have high error rates. Three of these items (household size, number attending postsecondary educational institutions, and independent student status) cannot be verified using only the tax return. In addition, if the edits indicate that one of these items may be in error, an applicant should also verify the other applicable items to assure that his or her application information is correct regarding these key items.

Comment: A few commenters suggested additions to the list of items to be verified. One commenter indicated support of the requirements of this section if the names of the household members and the names of those members in college were added to the list of items to be verified. Two commenters recommended that if an applicant is divorced or separated, that the applicant document that he or she is legally divorced or separated in order for the applicant to be eligible for title IV funds. One of the commenters recommended the applicant's divorce or separation status be an additional item to be verified with the legal divorce or separation agreement as documentation.

Response: No change has been made. With respect to the names of the household members, § 668.57 does require an applicant to document the names of the household members and the names of the household members attending postsecondary educational institutions as part of verifying the household size and number in postsecondary institutions. With respect to divorced or separated applicants, institutions have the option of determining whether this item should be verified. The Secretary does not believe it is necessary to require institutions to verify an applicant's marital status since the quality control studies of the Pell Grant Program indicate that this item was not among those with a high error rate.

Comment: One commenter recommended that the Secretary eliminate the verification of a dependent student's base year adjusted gross income (AGI), taxes paid, and untaxed income if that information is used to determine an applicant's Pell Grant because the information is not used to calculate a campus-based award under the Uniform Methodology.

Response: A change has been made. The Secretary has eliminated this requirement because verification of this information does not significantly affect Pell Grant awards.

Comment: One commenter recommended that an applicant need verify household size or number attending postsecondary educational institutions only if the applicant enters a number greater than one for number in postsecondary institutions, greater than two for dependent student's household size, or greater than one for an independent student's household size.

Response: A change has been made. The Secretary agrees with the commenter and has revised § 668.56 accordingly.

Comment: One commenter questioned whether an institution must verify the number of household members attending postsecondary educational institutions of an independent student whose award is calculated using a need analysis system other than the Student Aid Index of family contribution (FC) on the SAR. The commenter noted that the chart included in the preamble that describes the required verification items for an independent student indicates that these students need not verify this item.

Response: No change has been made. The chart should indicate that for every major need analysis system except the GSL Needs Test Tables and GSL applicants with an adjusted gross family income of $30,000 or less, an independent student shall verify the number attending postsecondary educational institutions.

Comment: A number of commenters objected to the verification of untaxed income because it is burdensome and creates major delay. One commenter noted that on the basis of experience in 1985–86 under the Pell Grant Program, verifying untaxed income produces no change in award for most students who have low or no incomes. One commenter suggested that this requirement is seriously jeopardizing the objectives of the title IV programs by creating unnecessary barriers to many low income and needy students, and if these barriers are not removed, the economic and social costs could be far greater in the future than the amounts that these regulations intend to save. Several commenters opposed verification of zero untaxed income when the applicant reports zero. Some commenters recommended that untaxed income be verified only when conflicting documentation exists.

Several commenters recommended that the Secretary verify only the untaxed income and benefits on the tax return. One commenter strongly recommended that child support be reported and verified separately. One commenter supported the verification of social security benefits. One commenter suggested that the collection of the worksheet for untaxed income on the Financial Aid Form of the College Scholarship Service is sufficient and should require no further verification.

A few commenters mistakenly included veterans educational benefits under the category of other untaxed income; these commenters noted the difficulty in verifying this item because the Veterans Administration provides only the monthly amount of benefits, but not the total number of months the benefits will be received within the award year.

Response: A change has been made. The Secretary concurs in the commenters' concern regarding burden and is revising the requirements to alleviate that burden. The Secretary is requiring that institutions verify only Social Security benefits, child support, and those items that an institution can verify using a U.S. income tax return.

An applicant who submits a SAR is required to verify social security benefits only if required by a comment on the applicant's SAR. If an applicant does not submit a SAR, social security benefits must be verified only if the institution has information showing that benefits were received or believes benefits were received.

Child support must be verified only if the institution has information showing that child support was received or has reason to believe child support was received (e.g., the applicant is an independent student who is unmarried, separated, or divorced, and the household size is greater than one).

As the Secretary noted in the preamble of the NPRM, the Secretary, under this subpart, is not requiring institutions to verify veterans educational benefits.

Comment: One commenter questioned whether § 668.56(a)(6)(ii) of the NPRM indicates that social security is a required item for verification only if a comment appears on the applicant's SAR. The commenter noted that in proposed § 668.57(d)(2)(ii) that the Secretary specifies the documentation for applicants without an SAR.

Response: A change has been made. The Secretary did not intend to limit this item to only those applicants with an SAR. Therefore, the item has been changed to also require the verification of social security benefits of all applicants without an SAR if the institution has information showing, or has reason to believe, that such benefits were received. If an applicant has an SAR, the applicant need verify social security benefits only if the SAR has a comment requiring the verification of social security benefits because the comment indicates that the information on the application does not match the information in the Social Security Administration's records.

Comment: Although a few commenters supported what they interpreted to be the 100 percent verification requirements for GSL the Program in § 668.56(b), a number of commenters objected to such a requirement. The commenters' objections are based on a belief the requirements are costly, are burdensome, and may require multiple verifications depending upon when the applicant applies for a GSL. A few commenters recommended that an institution be permitted to verify only a sample of GSL applications but be required to notify each applicant of the concept of verification. Two commenters objected to verifying all GSL applicants whose adjusted gross family incomes are $30,000 and below when some of the applications of those applicants have already passed through edit checks at a processor without being selected.

Response: A change has been made. The Secretary only intended to specify the information that a GSL applicant would be required to verify if selected and did not intend to imply that all GSL loan applicants must verify the information. The Secretary, therefore, has clarified the regulations to indicate that the requirements of § 668.56(b) apply to those GSL applicants selected under § 668.54(a) (1) and (2).

Comment: A few commenters recommended that GSL verification requirements be limited to the use of the tax return items only.

Response: No change has been made. Household size, number attending post secondary educational institutions, and independent student status are too important in determining an applicant's recommended loan amount to delete them from the requirements when relevant.

Comment: One commenter recommended that all GSL applicants verify only adjusted gross family income and dependency status.

Response: No change has been made. To require GSL applicants' to verify only their adjusted gross family income and dependency status is insufficient if an applicant's recommended loan amount is determined using the GSL Needs Test Tables or an approved need analysis system.

Section 668.57 Acceptable documentation.

Comment: Two commenters noted that an individual who intentionally misreports information on the application would have the same opportunity to falsify data on a copy of the tax return or other forms. They, therefore, suggested that only official data from the Internal Revenue Service or Security Administration should be acceptable documentation.

Response: No change has been made. These regulations are intended to reduce applicant error, and the Secretary does not believe that it is necessary, as a general rule, to require applicants to submit documentation directly from the Internal Revenue Service or Social Security Administration to reduce the error rate. Furthermore, such a requirement would increase the burden on institutions and applicants and create additional delays in determining an applicant's award.

Comment: Three commenters recommended that more flexibility be given to aid adminstrators in collecting documentation to verify student and parent information. One commenter stated that this would allow aid administrators to concentrate on students who deliberately misrepresent information, without placing undue burden on the majority of students. Another commenter said that the types of acceptable documentation listed in the regulation should serve as a guideline rather than a prescriptive requirement for schools.

Response: No change has been made. The Secretary is requiring certain minimal requirements for documentation. He has sought to limit the number of items to only the most important ones and to provide institutions with as much flexibility as possible in documenting an applicant's information.

Comment: Two commenters felt that the different documentation requirements for different aid programs would cause increased errors in verification and recommended that the requirements be made uniform for all Title IV programs.

Response: No change has been made. The Secretary is not requiring institutions to use different documentation requirements for the same items for different aid programs. Only in the case of independent student status may an institution use different documentation requirements and the institution is not required to exercise that option.

Comment: Several commenters suggested that the processing systems be programmed to identify verification requirements based on the applicant's age and marital status and to print the requested documentation and statements as a part of the output documents sent to the applicant and the institution. One commenter cited the Institutional Verification Form (IVF), developed by the American College Testing Service, as an example of how such a service could be provided to the student and aid administrator. Other commenters felt the Student Aid Report should be expanded to include a general notification of verification requirements, in checklist fashion, and additional pages for student certifications.

Response: No change has been made. The Multiple Data Entry servicers and other approved need analysis systems may provide such additional assistance as they deem appropriate. The Secretary, however, does not believe that he should mandate that these servicers provide this assistance. The applicant's eligibility letter in Part 1 of the SAR will provide directions to the applicant to the extend possible, and, as noted below, the Secretary will provide a verification worksheet with the SAR of applicants selected by the edits at the Pell central processor.

Comment: Several commenters expressed concern over the volume of supplemental worksheets or forms that would be necessary to verify the required items. Many commenters suggested that in the interest of

efficiency and uniform procedure the Secretary develop and distribute standard forms to carry out verification. Several of these commenters referred to the validation form that was used in several years of Pell Grant (then Basic Grant) Program validation as an example. One commenter felt that separate form should be developed for non-tax filer status, self-supporting status, untaxed income, household size, and number in postsecondary institutions. However, most of the commenters described a single booklet that woud be mailed to the student by the Pell processor or need analysis service, and would contain a verification checklist, untaxed income worksheet, and certification statements for student signature. One commenter felt that training sessions for institutions should be provided by the Secretary in conjunction with the verification form.

Response: No change has been made. The Secretary is developing a verification worksheet for applicants to complete that will be included in the SAR of those applicants selected by the edits at the Pell Grant central processor for verification. The SAR will direct the applicant to the sections of the verification worksheet that he or she needs to complete. The Secretary will be providing institutions with copies of the worksheet that the institutions may reprint to use for verification of other applicants selected for verification. The Secretary expects to provide training to the institutions on the integrated verification requirements as early as possible in 1986.

Comment: One commenter questioned whether the Secretary intended to depart from the current requirement in the Pell Grant Program that the applicant's spouse sign the required verification documents.

Response: A change has been made. The Secretary believes that the applicant's spouse should sign the verification documents where appropriate since the spouse's signature is required on the application form. The Secretary did not intend to depart from the current Pell Grant Program requirements and, therefore, has amended the regulations to require the spouse's signature where appropriate.

Comment: Several commenters indicated that administrative burden would be reduced if an institution could accept a tax preparer's signature or stamp in lieu of the filer's signature on the tax return.

Response: A change has been made. The Secretary concurs with the commenters and has revised the regulations accordingly.

Comment: One commenter questioned whether the signature of only one of the applicant's parents should be acceptable on the parental tax return.

Response: No change has been made. The regulations require the signature of only one parent.

Comment: Four commenters expressed the opinion that the certifications required as a part of the verification of household size, number attending postsecondary educational institutions, and independent student status were duplicative of the certification statement on the application that all data is correct.

Response: No change has been made. The Secretary is seeking to reduce applicant error and believes that requiring an applicant to recertify the accuracy of his or her information provides the applicant with the opportunity to correct that information. Furthermore, because a selected applicant updates his or her household size, number in postsecondary educational institutions, and dependency status at the time of verification, the Secretary believes that requiring a statement recertifying this information is the least burdensome method of updating and verifying it. In addition, a statement signed by the applicant's parent to verify independent student status is the best available documentation other than the tax return for determining exemptions claimed.

Comment: Two commenters objected to the Secretary's decision that a tape match between applicant and Internal Revenue Service (IRS) records is not currently feasible. The commenters felt that an automated matching program would be less cumbersome and more accurate than verification performed at the institution.

Response: No change has been made. As was noted in the preamble of the NPRM, the Secretary is exploring this issue with the Treasury Department. To date, it is not possible, due to technical difficulties, to accomplish what the commenters suggest.

Comment: One commenter felt that no further documentation should be required from an applicant who provided a statement that no tax return was filed or would be filed, on the grounds that most applicants who do not file a tax return have financial need. The commenter felt that if a statement of income was required of an applicant, it should not be limited to income earned from work, but should include benefits from public assistance agencies.

Response: No change has been made. Although such an applicant probably qualifies for financial aid, the institution still needs to determine whether the other application information is accurate to assure that the applicant's EFC is correct. The Secretary is prescribing only minimum verification requirements in these regulations, and an institution, at its option, may develop a statement covering both income earned from work and untaxed income and benefits.

Comment: Several commenters proposed that application processors collect tax returns from applicants and match and correct information on the application based on the tax return. As an alternative, many commenters proposed that a tape match with Internal Revenue Service be conducted before the Student Aid Report is generated.

Response: No change has been made. The Secretary has previously explored these possibilities and determined that the technical difficulties make these options unavailable at this time.

Comment: A commenter suggested that tape matches could be conducted with other Federal agencies to verify veterans educational benefits and Aid to Families with Dependent Children (AFDC). The commenter also suggested that procedures be established for schools to verify non-tax filing status with the Internal Revenue Service.

Response: No change has been made. The Secretary is currently studying the feasibility of tape matches with other agencies providing income and benefits to applicants. Previously, the Secretary has had a tape match for veterans educational benefits. However, such a match is not effective since veterans educational benefits are reported as projected income for the award year. In addition, the Veterans Administration does not have information in its files at the time applications are processed for new veterans requesting assistance and does not have enrollment data for an award year until the fall of that year or later. The Secretary has been unable to implement a tape match for AFDC, which is not a required item, because there is no central file of recipients available to ED. In the case of non-tax filers, IRS does not maintain a central roster of these persons, and each regional service center can only certify that a person has not filed a tax return at that center.

Comment: Two other commenters felt that it would be simpler to require only the Federal tax returns for all applicants rather than providing that a comparable State tax return may be submitted in lieu of the Federal return.

Response: A change has been made. The Secretary agrees and has amended the regulations accordingly.

Comment: One commenter suggested that institutions should be required to collect tax returns from all applicants.

Response: No change has been made. The Secretary is setting minimum verification requirements in these regulations. An institution always has the option of requiring all applicants to submit copies of the tax returns.

Comment: One commenter felt that the IRS transcript of tax account information should not be accepted as an alternative to a tax return because the transcript does not include information such as capital gains, interest and dividend income, and the untaxed portion of unemployment compensation.

Response: No change has been made. The Secretary recognizes that the IRS transcript does not always provide all the information found on the tax return. However, the IRS transcript often is available when the applicant is unable to obtain a copy of a tax return. The Secretary, therefore, has provided that an institution may accept the transcript in lieu of the tax return to meet the minumum documentation requirements. At its discretion, the institution may require the applicant to submit the tax return.

Comment: One commenter suggested that the Secretary provide additional, alternate forms of documentation to verify AGI and U.S. income tax paid if an applicant is unable to obtain the tax return. As an example, the commenter suggested that IRS Form W–2, Wage and Tax Statement, would be an acceptable alternate document under certain conditions.

Response: A change has been made. The Secretary has revised the requirements of § 668.57(a) to provide that an applicant may verify these items by using alternate forms of documentation under certain circumstances. If the relevant person filed an income tax return with a central government outside the United States or the Commonwealth of Puerto Rico, the applicant must submit a copy of that return. If the relevant person has not filed and will not file a U.S. tax return, the applicant must submit a statement signed by the relevant person listing the sources and amounts of income earned from work. If the relevant person has been granted a filing extension by the IRS, the applicant must submit a copy of each IRS Form W–2 of the relevant person or a statement signed by the relevant person certifying that person's adjusted gross income if the relevant person is self-employed. The applicant must provide the institution with a copy of the extension granted to the person by IRS and a copy of the completed U.S. income tax return when filed. If the relevent person has requested the IRS to provide a copy of the tax return or listing of tax account information and IRS is unable to locate the return or provide the listing, the applicant must submit each IRS Form W–2 of the relevant individual or a statement signed by the relevant person certifying his or her adjusted gross income if he or she is self-employed. If an individual is unable to obtain an IRS Form W–2 in a timely manner, an institution may obtain a signed statement from the individual certifying his or her amount and source of income and the reason the IRS Form W–2 is not available.

Comment: Several commenters expressed concern over the length of time needed to obtain copies of tax returns from the Internal Revenue Service.

Response: No change has been made. The Secretary has provided advance notice on the application forms that the applicants may be required to provide copies of their or their parent's income tax return.

Comment: One commenter noted that the tax returns used to conduct verification would not collect information on the "growing and significant share of personal income" that is not reported on tax returns. Another commenter expressed a similar concern that excessive reliance on tax return information would detract from a financial aid administrator's efforts to measure the true financial strength of an applicant's family.

Response: No change has been made. Use of the information from the tax return to establish an applicant's EFC has long been recognized as the most reliable and verifiable indicator of most applicant's ability to contribute to their cost of education.

Comment: One commenter felt that it was inconsistent for the Secretary to exempt foreign institutions in the GSL Program from verification procedures, but require U.S. institutions to collect and review foreign tax returns. The commenter recommended that institutions be required to collect only a statement that the applicant or the applicant's parents filed a tax return other than a U.S. tax return.

Response: No change has been made. The Secretary does not believe that the requirements are inconsistent since the circumstances under which domestic and foreign institutions operate are not the same.

Comment: One of the commenters noted that the criteria for household size on the financial aid application are not identical to the criteria for claiming exemptions on the Federal income tax return and recommended that the source of data used for verification correspond to the household size item. One commenter suggested that in the case of a discrepancy between household size and the number of exemptions, the institution should have the option to accept the lower figure.

Response: A change has been made. The Secretary recognizes that the number of exemptions claimed on the tax return and the appropriate household size on a student aid application may differ. The Secretary, therefore, has revised the documentation requirements for household size to require that the institution collect a signed statement listing the names of the household members and their relationship without reference to the number of exemptions on the tax return.

Comment: Several commenters noted that the documentation for household size and number in postsecondary education is collected by several need analysis documents (the application forms of the College Scholarship Service and the Graduate and Professional School Financial Aid Service (GAPSFAS) being the most frequently cited.) The commenters felt that the regulations should make it clear that the information collected on these forms would satisfy the documentation requirement for these items. However, two of the commenters noted that in most cases the institution would have no way of knowing if the information was still accurate as of the date of verification.

Response: No change has been made. The Secretary, as noted in the preamble to the NPRM, has provided that for number of family members attending postsecondary educational institutions, the institution need not obtain a separate signed statement to verify this item if the information required to verify this item is listed on the application and the information is still accurate at the time of verification. With the revision of the requirements for verifying household size, the Secretary will accept a listing on the application of the information required to verify this item if the information is still accurate. However, the institution must document that it has determined that the information is still accurate. For example, it may use a copy of the application signed at the time of verification.

Comment: Three commenters objected to the requirement that an institution verify the number of household members attending postsecondary educational institutions by collecting statements from the institutions. They

felt that this requirement would create excessive admininstrative burden and pose a hardship to applicants and their families. One of the commenters felt that it should be sufficient for the applicant to provide a signed statement listing the names and the enrollment status of family members, and the names and addresses of the institutions they are attending. Another commenter proposed that the Secretary accept other kinds of documentation that would be readily available to the family, such as a copy of a letter of admission, offer of financial aid, or receipt for payment of tuition.

Response: No change has been made. The requirement in § 668.57(c)(2)(ii) is limited in scope and applies only if an institution believes that the number of family members attending postsecondary educational institutions is inaccurate. Furthermore, the Secretary believes that this documentation provides a useful tool for an instituion if it decides that the circumstances warrant collecting further documentation. If an institution invoked this requirement, the Secretary would consider a copy of an offer of admission, an offer of financial aid if it clearly indicated that the student has been accepted for admission, or a receipt of payment of tuition as fulfilling this requirement.

Comment: Two commenters asked for more specific language describing when an institution might have cause to believe that the reported number in postsecondary institutions is inaccurate. One of the commenters suggested that the distinction be based on whether the institution had conflicting information for this item.

Response: No change has been made. The Secretary is not restricting the basis upon which an institution may determine that an applicant misreported number attending postsecondary institutions. For example, an institution may determine that the signed statement is insufficient if it determines that an applicant has misreported other information on the application.

Comment: Many commenters felt that the different requirements for documenting independent student status in § 668.57(c) of the NPRM were confusing and would lead to increased error by aid administrators. The commenters objected to the different documentation requirements based on an applicant's age, marital status, and type of aid for which he or she applied.

Response: No change has been made. The Secretary acknowledges that the regulations governing the documentation required for independent student status are complex. While a part of the complexity, *e.g.*, the difference between a married and unmarried independent student, is due to the statutory definition of the term "independent student," a significant portion is due to the Secretary's desire to ease the burden on institutions and to provide them with greater flexibility in documenting this status.

The statutory definition of a married independent student limits the year in which the factors of tax exemption, residence and monetary support may be taken into account to the first year of an award year. In order to provide consistency in the definition of a married and unmarried independent student, the Secretary would have to amend the definition of an unmarried independent student to eliminate the base year in determining that status. The Secretary believes that the base year for determining independent student status for unmarried students is an important factor in making that determination and is unwilling to eliminate that year solely to simplify the documentation requirement of this provision.

The remaining differences in the documentation requirements for independent student status relate to the situation where the institution does not have conflicting documents relating to the three factors used in determining that status. (The documentation requirements are the same if the institution has conflicting documentation regarding those factors.) The differences relate to the title IV, HEA programs for which the applicant has applied and the use of age in the Pell Grant Program requirements.

With regard to the difference in treatment between the Pell Grant Program on the one hand, and the campus-based and GSL programs on the other, the Secretary has provided institutions with flexibility to document this status. The Pell Grant Program requires uniform treatment of applicants to the extent possible. Therefore, the Secretary has established procedures that all institutions must follow in documenting the independent students status of Pell Grant applicants.

The GSL and campus-based programs allow greater flexibility at the institutional level, and the Secretary believes that institutions should be given greater flexibility in documenting the independent student status of an applicant under those programs. Thus, the Secretary permits institutions to follow the Pell Grant requirements or to impose stricter requirements for verifying this status. If, in the interest of simplicity or consistency, an institution believes that its best course is to treat all applicants alike, it can choose that option by applying the Pell Grant Program procedures to all its campus-based and GSL program applicants as well. However, the institution is free to choose or reject this approach. Thus, the complexity in the regulation relates to giving an institution this choice rather than the procedures it must adopt to verify an applicant's independent student status.

With regard to the use of age in the Pell Grant Program requirements, the Secretary has introduced a difference in treatment to ease the burden on institutions. Thus, an institution is not required to verify an applicant's status if the applicant is 23 years of age or older and there is no conflicting documentation.

Comment: One commenter recommended that the Secretary clarify the documentation required for independent student status if the institution has documentation that conflicts with the information provided by the applicant.

Response: A change has been made. The Secretary has amended § 668.57(d) to specify the documentation required when an institution has documentation that conflicts with the information provided by the applicant.

Comment: Some commenters recommended that when verifying an applicant's independent student status the parental tax return be required of all applicants regardless of age or marital status.

Response: No change has been made. A parental tax return covering base year information is not relevant to a determination of whether a married applicant qualifies as an independent student. If there is no conflicting documentation regarding the applicant's independent student status, the Secretary believes that most applicants 23 years of age or older are truly independent so that it would be overly burdensome on the applicant and the institution to require the applicant's parents to provide a copy of their income tax return.

With regard to unmarried applicants under 23, an institution must request the parental tax return of every unmarried applicant selected for verification who claims to be an independent student. However, the Secretary believes that there are situations where it is unreasonable to collect that document, such as if the parents are out of the country and cannot be contacted by normal means of communication.

Comment: One commenter noted that a parental signature on an application

form should suffice for verification of dependency status.

Response: A change has been made. The 1986–87 student aid application, unlike previous ones, provides a place for an applicant's parents to certify the information on the application form with respect to the applicant's independent student status. Therefore, for applicants under the Pell Grant Program, the Secretary has revised § 668.57(d)(4) to provide that if there is no conflicting documentation, the parental signature on the application will suffice as documentation of the applicant's independent student status for purposes of the required written statement. Since an unmarried applicant must also provide a copy of his or her parent's income tax return as well as a parental statement, the parental signature on the application does not alone satisfy the verification requirements for an unmarried applicant.

Comment: One commenter called for clarification of the documentation requirements for independent student status when the applicant's marital status at the time of verification is different than at the time of application.

Response: No change has been made. Under § 668.55(d)(2), an applicant may not update his or her dependency status if the change results from a change in marital status after the applicant submits his or her application. Therefore, the applicant must verify his or her dependency status as of the time of application and must provide the documents needed to verify that status.

Comment: Two commenters felt that the documentation of independent status would constitute an undue hardship for "nontraditional" students and proposed that an age limit be set at 23 or 26, beyond which no documentation would be required for an independent student. Another commenter recommended that the parental tax return and certifying statements not be required under any circumstances because of the prevalence of independent students from single head-of-household families who have no contact with the other parent.

Response: No change has been made. The regulations are already in accord with most of the recommendations of the commenters. With regard to the issue of age, the regulations do not require applicants 23 years of age or older to document their independent student status if there is no conflicting documentation with regard to meeting the requirements of that status. The Secretary believes that it would be irresponsible to ignore conflicting documentation concerning whether an applicant qualifies as an independent for applicants of any age.

With regard to the commenter's objection to obtaining parental tax returns and other statements, the applicant would not necessarily have to obtain the tax returns of both parents if the applicant's parents were divorced or separated. The applicant would only have to obtain the return and statement of the parent whose income would be reported if the applicant were a dependent student.

Comment: Many commenters questioned the choice of May 31 of the award year as the key date for determining if the student is 23 years of age or older for purposes of the documentation requirement. Two commenters proposed that this date be changed to June 30, the last day of the award year. Other commenters suggested that the January 1 date used for verification of Pell Grants in the 1985–86 award year be used for integrated verification in the 1986–87 award year, as well. Many commenters thought the regulations were using two different dates depending on program. One commenter felt that December 31 would be the most convenient date for checking which documentation requirement should be used for a student.

Response: No change has been made. The Secretary is changing the date from January 1 of the award year in § 690.77 of the Pell Grant Program regulations to May 31 of the second calendar year of the award year (e.g., May 31, 1987 for the 1986–87 award year) to coordinate this provision with the requirements of the Uniform Methodology. Elements of the Uniform Methodology are based on the independent student's age as of May 31 of the award year. The Uniform Methodology uses this date since it is the end of the academic year for many institutions and their students.

Comment: One commenter felt that the age criterion for documentation should be lowered from 23 years to 22 years to correspond to the average age of graduation from an undergraduate program.

Response: No change has been made. The rule is in accord with the commenter's suggestion since it requires almost all undergraduates to document their dependency status.

Comment: Several commenters asked that aid administrators be given more opportunity to use professional judgment, either in requiring documentation, or in waiving the requirement for documentation of dependency status. One commenter asked if an institution would be required to withhold an applicant's Pell Grant if it had conflicting documentation regarding an applicant's dependency status but the applicant's parents cannot provide the required documentation. One commenter stated that no further documentation of independent student status should be required when an aid administrator has determined under the regulations for the campus-based programs that the relationship between an applicant and parent makes it unreasonable to expect parental contribution. Another commenter stated that aid administrators should be allowed to use professional judgment in not requiring documentation from independent students whose parents are permanent residents of another country.

Response: A change has been made. The Secretary believes that the regulations provide an institution's financial aid officer numerous opportunities to exercise professional judgment regarding the documentation required for verifying a student's dependency status. For example, the financial aid officer must determine whether an applicant's parents are unwilling or unable to provide requested documentation and must determine whether an unmarried applicant had sufficient resources in the base year to support himself or herself.

With regard to whether a parent is unable to provide requested documents, the Secretary has added provisions in § 668.57(d)(3)(ii) similar to the ones added with regard to spouse information in § 668.54(b)(2). Included in that new provision is the requirement that if an applicant's parents are out of the country and cannot be contacted by normal means of communication, the institution shall treat the parents as being unable to respond to a request for documents.

The commenter who suggested that no documentation should be required where a financial aid officer determines, under the campus-based program regulations, that it is unreasonable to expect a parental contribution has misunderstood the provisions contained in those regulations. Under those regulations, a financial aid officer may treat a dependent student as an independent student if he or she determines that it is unreasonable to expect a parental contribution. However, the student does not satisfy the definition of an independent student.

Finally, if an institution has conflicting documentation regarding an applicant's dependency status and the applicant's parents do not provide the required documentation, the institution may not pay a Pell Grant to that student, disburse any campus-based aid, or

certify the applicant's GSL loan application. Section 668.58 has been amended to clarify this requirement.

Comment: Many commenters felt that the parent's unwillingness to provide documentation of dependency status should not be grounds for waiving the requirement, because applicants who had deliberately misreported their dependency status would be able to evade verification. Several other commenters were in agreement with the proposed rule that documentation not be required of an independent student's parents if they are unwilling to provide it.

Response: No change has been made. If there is no conflicting documentation and an applicant's parents are either unwilling or unable to provide the requested documentation, the applicant cannot be held accountable for his or her parents' actions or circumstances.

Comment: Some commenters were concerned that the interpretation of the parents' inability or unwillingness to submit documentation would be too subjective and recommended that more specific language be added to the final regulation. Several commenters objected to the use of the parent's mental or physical status as a criterion in requiring a tax return. Another commenter pointed out that aid administrators would be reluctant to make a judgment not to require a parental tax return from an independent student unless a clear and reasonable standard for such judgments was established.

Response: No change has been made. The regulations describe the circumstances under which the Secretary considers an applicant's parents unable or unwilling to provide the required documentation. The Secretary is providing that it is within the institution's discretion to determine whether these circumstances are applicable. The Secretary recognizes that these decisions may involve some subjectivity but is relying on the professional judgment of financial aid adminstrators to make these determinations.

Comment: One commenter asked that the regulations specify the tpyes of documentation that would support a decision that the parents' physical and mental state prevents them from providing required documentation or that a parent is deceased or out of the country.

Response: No change has been made. The Secretary is not specifying the documentation necessary to support an institution's decision in order to provide the institution discrection in determining whether an applicant's parents are, in fact, unable or unwilling to provide the requested documentation.

Comment: One commenter objected to the requirement that an institution must contact the applicant's parents and request a copy of the tax return if the applicant did not provide a copy for them in order to determine whether the applicant's parents were unwilling or unable to provide the requested documentation.

Response: No change has been made. In the case of an applicant whose parents are unable to provide the requested documentation, the institution usually would not be able to contact the parents but instead would need to document through the applicant that the parents are unable to provide the documentation. For example, if the applicant stated that the parents were deceased, the institution might document this circumstance by the applicant's signed statement, or it might require the applicant to provide a copy of the death certficate if it felt that requiring such documentation was advisable. In the case of an applicant whose parents are unwilling to provide the requested documentation, the institution would need to contact the parents to document that they were unwilling to provide the requested documentation. The Secretary believes that an institution may only determine that an applicant's parents are unwilling to provide the documentation by directly contacting them.

Comment: One commenter objected to the use of certification statements for items that can only be confirmed by the parents and the student. The commenter felt that "self-verification" of the residency and support questions for dependency status constituted an unnecessary burden to the institution.

Response: No change has been made. To document an applicant's indpendent student status, it is necessary to document the answers to the residency and support questions. The Secretary believes that requiring applicants and their parents to provide signed statements concerning the support and residency questions provides the least burdensome method of verifying this information and with the parental signature does not constitute self-verification.

Comment: Three commenters suggested that it would only be necessary to collect a parental tax return once during an applicant's course of study to verify the dependency status of that applicant unless the institution had conflicting information.

Response: No change has been made. It is necessary to collect the relevant parental tax return for each award year that an unmarried applicant's independent student status is verified. For example, if the institution collected the parental tax return for calendar 1984 of an applicant in the 1985-86 award year, the institution would still need to collect a 1985 parental tax return for the 1986-87 award year since the only information that the institution would have for calendar 1985 would be the applicant's projected data for that year.

Comment: Another commenter suggested that only the first page of the parental tax return be required of an independent student, because many parents are reluctant to release their income information.

Response: No change has been made. The Secretary would consider a signed copy of only the first page of the parental tax return sufficient documentation even if the applicant's parents blocked out all the information on the page except the information identifying the filer, the number of exemptions claimed, and the list of dependents.

Comment: Two commenters suggested that the test of an applicant's ability to support himself or herself be expanded to include "sufficient resources" as well as "sufficient income" to take into account those applicants who use their savings or receive support from persons other then their parents. Two other commenters wanted specific guidelines for determining "sufficient income" which would give aid administrators the latitude to take into consideration different costs of living.

Response: A change has been made. The Secretary agrees that the test of an applicant's ability to support himself or herself should be expanded to include "sufficient resources" and, therefore, has revised the regulations accordingly.

The Secretary is leaving this determination to the discretion of the financial aid administrators.

Comment: Many commenters objected to the requirement that applicants submit a worksheet or comparable listing to verify untaxed income and benefits. Several commenters noted that this documentation duplicates information already collected on financial aid applications for some of the private need analysis services, and, in some cases, information available on the Federal income tax return. Most of the commenters felt that this documentation requirement is burdensome, is offensive to students, and, because the documentation represents self-verification by the student of previously reported information, rarely changes the applicant's EFC. One commenter was in

favor of the requirement that a worksheet be required to verify untaxed income.

The commenters proposed several modifications to this requirement, including (1) collecting a signed statement or a signed Student Aid Report rather than the worksheet or (2) limiting collection of the worksheet to applicants who actually report untaxed income or to situations where there is conflicting information.

Response: A change has been made. As noted, in connection with § 668.54, the Secretary has revised the items to be verified under untaxed income and benefits to rely principally on the income tax return as the required document. The Secretary believes that relying principally on the tax return is the least burdensome method of verifying these items. The Secretary, therefore, has revised the regulations to delete the requirement that an applicant provide a signed copy of the worksheet for untaxed income and benefits from the student aid application. The tax return will satisfy the verification requirement, and if no tax return is filed or will be filed, the applicant must provide a signed statement concerning the sources and amounts of untaxed income and benefits received.

The Secretary is not eliminating the verification of untaxed income if the applicant reports a zero amount. An applicant may err by forgetting or failing to provide any information as well as entering an incorrect amount.

In addition, the Secretary believes that using the tax return as the principal verification document should reduce much of the burden associated with verifying a zero amount of untaxed income and benefits.

Comment: One commenter recommended that the regulations give guidelines specifying when the aid administrator might have occasion to doubt the information provided by the applicant for untaxed income and benefits, rather than leaving such judgments to the discretion of the aid administrator.

Response: No change has been made.

The Secretary is providing the institution with the discretion to determine whether any reason exists to question an applicant's information because the financial aid administrator is closer to the situation.

Comment: Several commenters felt that it would be more accurate and less burdensome to verify social security benefits through the current ongoing tape match conducted by the Federal processing center.

Response: No change has been made. The Secretary is continuing the tape match with the Social Security Administration for those applicants receiving a SAR. However, the tape match is not accurate enough to ascertain the correct amount that should have been reported on the application by some applicants. Therefore, to determine the correct amount of benefits that an applicant received, written confirmation of the amounts must be obtained from the Social Security Administration.

Section 668.58 Interim disbursements.

Comment: Several commenters objected to the provision in proposed § 668.58(a)(1)(ii)(B) limiting the time that an institution may employ a student under the College-Work-Study Program to sixty (60) days after enrollment while the student is verifying his or her information. These commenters considered the sixty (6) days to be an insufficient period of time to complete verification.

Response: No change has been made. The Secretary believes that sixty (60) days is sufficient time for most students to complete verification since the time period begins with the date the student enrolls, *i.e.*, completes registration and begins attending classes, and most students begin the verification process prior to enrollment.

Comment: Several commenters suggested that institutions should be required to verify GSL application information before disbursement, rather than before certification as required in § 668.58(a)(2). Other commenters suggested requiring only postdisbursement verification. Several commenters suggested that a better control mechanism would be a requirement that all GSL checks be sent to the schools. One commenter suggested requiring that there should be a multiple disbursement of GSL checks and verification should be required before release of the second disbursement. Several commenters suggested that there should be a multiple disbursement of all GSL checks to minimize problems associated with incorrect awards.

Response: No change has been made. Requiring that institutions complete verification prior to certifying GSL loan applications assures that applicants receive appropriate amounts of assistance under the GSL program. To allow certification of GSL loan applications before the completion of the verification process would increase the administrative burden on an institution by adding to the complexity of the GSL program. In addition, the GSL program would become unmanageable if checks must be returned to the lenders for those students who do not provide the required documentation or for whom verification changes the recommended loan amount of a previously certified GSL loan application. For those students, the lender would be required to cancel the loan in addition to refunding the origination fee and loan guarantee fee. The Secretary, therefore, would be billed for interest and special allowance benefits from the date of disbursement to the date of cancellation on a loan that should never have been disbursed. The Secretary currently does not have the statutory authority to require multiple disbursements of GSL checks.

Comment: One commenter suggested that proposed § 668.58(a)(2), § 668.58(b)(2)(iii) in the final regulations, be changed to prohibit the "disbursement" of a GSL loan check for a previously certified loan application until the verification process is completed.

Response: A change has been made. The Secretary agrees with the commenter and has amended § 668.58 accordingly. The proposed rule prohibited the "endorsement" of a GSL loan check for a previously certified loan application. The final rule prohibits the "processing" of a GSL loan check and, thus, encompasses both the endorsement and disbursement of a check.

Comment: Several commenters objected that the requirement in § 668.58(b) makes institutions liable for overpayments made in good faith and based on proper documentation. They recommended that an institution not be held liable for the first payment it makes to a student pending verification of information. Several commenters suggested that the student, not the institution, should be held liable for overpayments resulting from student error on the application form.

Several commentes stated that institutions will be effectively required to withhold assistance until verification is completed because institutions will be reluctant to risk incurring the possible liabilities. Exposure to those liabilities, commenters insisted, will not necessarily be minimal as the preamble to the NPRM contends.

Several commenters recommended that students who have received an overpayment in an interion disbursement in excess of $500 and refuse to repay it should be reported to the Secretary. One commenter suggested exempting the institution from liability if the disbursement is made without the institution having any conflicting documentation.

Response: No change has been made. The Secretary is not requiring institutions to make disbursements to an applicant before the applicant completes the verification process. In addition, institutions may exercise discretion in determining whether to provide interim disbursements to individual applicants.

Comment: One commenter was concerned that timing would be a problem in implementing proposed § 668.58(a)(2). The commenter cited the possibility that an institution might certify a GSL loan application based on an application from an approved need analysis system using the edits and subsequently receive a SAR selecting the applicant for verification.

Response: No change has been made. In the example cited, the institution would not be liable for certifying the GSL loan application since it was based on an application processed through the edits and the edits did not select the application for verification. If the institution received the SAR prior to the GSL check, it may not process the check until the applicant completes the verification process. If the institution has already processed the chech and determines that the recommended loan amount has decreased by $200 or more, the institution is required to notify the student and the lender of its determination within thirty (30) days of the institution's determination that the borrower is ineligible for the loan amount that the institution previously certified.

Comment: Several commenters observed that the time required to collect information needed for verification may be more than the thirty (30) days allowed in § 668.58(c) for GSL checks to be held. Some commenters suggested that forty-five (45), sixty (60), ninety (90), one hundred and twenty (120), or one hundred and eighty (180) days would be more appropriate. One commenter suggested that each institution be allowed to establish its own policy regarding timeframes for receipt of data, based upon prior experience.

One commenter recommended that the institution be allowed to determine on a student-by-student basis when the check is to be sent to the lender. One commenter suggested that there should be discretion for cases in which the delay is not within the student's control.

Several commenters recommended that the thirty-day period for GSL checks be extended when the delay is caused by a Federal or State agency.

Response: A change has been made. The Secretary agrees that thirty days may be an insufficient period of time and is increasing the number of days to forty-five (45). However, in general, institutions would not be holding GSL checks since they may not certify GSL loan applications for selected applicants until the applicants complete the verification process.

Section 668.59 Consequences of an inaccurate application.

Comment: One commenter suggested that the Secretary extend the concept of the Zero SAI Charts in § 668.56(a)(2) to an index for low cost institutions to use as another tolerance in the Pell Grant Program for awards which do not change due to the application of the requirement that an award may not be greater than a percentage of the cost of attendance.

Response: No change has been made. To use such an index, the institution must first recalculate the applicant's SAI. The regulations already provide that if the institution recalculates an applicant's SAI, the applicant must resubmit his or her SAR only if the award changes.

Comment: Several commenters stated that the use of a net tolerance in § 668.59(b) is cumbersome and burdensome and that the example of a net tolerance in the preamble incorrectly treated the married couple deduction.

Response: A change has been made. The Secretary concurs with the commenters and has revised the tolerances in § 668.59(b) to state the tolerances in absolute dollar amounts. Thus, to determine if changes in dollar amounts exceed the tolerances, an institution adds together all changes in dollar amounts, disregarding whether the items increased or decreased in value or their effect on the applicant's expected family contribution. For example, if verification shows that an applicant's AGI changed from $8,000 to $7,500 and the U.S. tax paid changes from $500 to $700, the institution adds the differences on each item, i.e., $500 and $200, to arrive at the absolute number of $700. The institution then uses the absolute value of $700 in determining whether the tolerances are applicable.

Comment: A number of commenters suggested that § 668.59(b) specify a single tolerance for determining when an institution must recalculate an applicant's EFC.

A number of commenters stated that the $100 tolerance for dollar items in the Pell Grant Program was too low and would lead to unnecessary delays in payments to applicants due to corrections. Some commenters stated that the tolerance in the Pell Grant Program required an accuracy in reporting that was not commensurate with the accuracy of the verification documents or the need analysis process. One commenter questioned how a tolerance of $100 in the Pell Grant Program could be appropriate when the payment schedule cells are currently in increments of $100. Several commenters suggested that the tolerance levels currently in place for the Pell Grant Program should be retained.

Several commenters stated that the tolerance for the campus-based and GSL programs was too low. Some commenters observed that a $600 tolerance for the campus-based and GSL Programs will result in few errors requiring correction.

Response: A change has been made. The Secretary continues to believe that the reasons stated in the preamble of the NPRM are valid for setting the tolerances to determine whether an institution must recalculate an applicant's EFC. In setting the Pell Grant Program tolerance, the Secretary must consider the effect of a change in the applicant's information in determining the applicant's Pell Grant. However, recognizing that the tolerances in the NPRM may place an undue burden on institutions and that the tolerances are being restated as absolute values, the Secretary has revised them to be $200 for the Pell Grant Program and $800 for the campus-based and GSL programs. The Secretary is not establishing a single tolerance because of differences in calculating a student's EFC under the Pell Grant Program on one hand and the campus-based and GSL programs on the other.

Comment: Some commenters questioned the Secretary's legal authority to set the tolerance level for the Pell Grant Program's SAI at $100 in § 668.59(b) of the NPRM.

Response: No change has been made. The Secretary believes that, in general, a change in dollar items of $200 or less on a SAR when combined with no additional change in nondollar items will not affect the applicant's EFC to the extent that it will change that applicant's Pell Grant award. Therefore, under the Pell Grant statute, the Secretary's actions are in keeping with the provisions of section 411(a) of the HEA.

Comment: One commenter suggested that an institution should not be required to recalculate an EFC if nonfinancial information is found to be erroneous.

Response: No change has been made. Any change in nonfinancial information such as independent student status, number in household, and number in postsecondary educational institutional

has a major impact on an applicant's EFC. The Secretary, therefore, is requiring that an institution shall recalculate an applicant's EFC if there is any change in this information.

Comment: Several commenters suggested that the Secretary apply the tolerances to changes in awards or changes in EFC.

Several commenters suggested that for purposes of the campus-based and GSL programs, the decision to recalculate an applicant's EFC be left to the discretion of the institution, with the provision that a recalculation must occur if the revised information would result in a change in award of $200 or more.

One commenter suggested that the Secretary not require an applicant whose inaccurate application resulted in an underaward to resubmit a revised application.

Response: A change has been made. The purpose of the tolerances is to reduce the burden on institutions to recalculate an applicant's EFC and award. To state the tolerances in terms of changes in awards or EFC would place additional recalculation burdens on institutions.

An additional tolerance of a $200 change in award would result in unnecessary overawards. Therefore, the Secretary is not providing tolerances for changes in EFC or awards.

The Secretary has, however, revised the regulations to provide clarifications and to ease the burden on institutions with respect to adjusting an applicant's award due to changes in an EFC. For the Pell Grant Program, he has added § 668.59(b)(2)(ii) which provides that an institution may disburse an applicant's Pell Grant based upon the original SAR if the institution recalculates the applicant's SAI based on the verified information and determines that the applicant's award increases. If the applicant subsequently submits a corrected SAR, the institution must adjust the applicant's award to reflect the new SAI. For the campus-based and GSL programs, the Secretary has clarified proposed § 668.59(d)(2), § 668.59(c) of the final regulations, to provide that the institution shall adjust the applicant's financial aid package if the new EFC results in an overaward of campus-based aid or decreases the applicant's recommended loan amount.

Comment: Several commenters questioned whether an applicant must submit corrections to the need analysis system if changes in verified items exceeded the tolerances for campus-based or GSL programs. Commenters suggested that financial aid administrators should be granted authority to recalculate an applicant's EFC under those circumstances.

Response: No change has been made. The regulations do not require that an application for campus-based or GSL assistance be resubmitted with corrections to the need analysis system. The institution may recalculate the applicant's EFC.

Comment: Several commenters objected to the requirement in proposed § 668.59(f), § 668.59(e) in the final regulations, that an institution report to the borrower and lender a reduction in the recommended loan amount of a previously received GSL loan if as a result of verification the loan amount is reduced by $200 or more. One commenter questioned whether this reporting is necessary if adjustments to other aid will bring the applicant's total aid within his or her need.

Response: No change has been made. The Secretary believes that a borrower should receive only the amount of assistance for which he or she demonstrates need. The institution may adjust the applicant's other aid to bring his or her total aid within his or her need and, therefore, would no longer have an excess loan amount to report.

Comment: One commenter was concerned that § 668.59(e) would require an institution to cross-check each GSL recipient at each registration and require loan renegotiation if subsequent non-Title IV aid is received.

Response: No change has been made. This requirement would not apply to GSL applicants who received additional resources after their loan application was certified.

Comment: One commenter asked if the provisions of § 668.59(g) of the NPRM, § 668(f) of the final regulations, conflict with the provisions of § 668.14(g) of the NPRM published in the **Federal Register** on December 12, 1984.

Response: No change has been made. The provisions do not conflict with each other. The proposed provisions of § 668.14(g) are concerned with any applicants who may be falsifying information. Section 668.59(g) requires an institution to refer to the Secretary any situation where there is an unresolved dispute over the accuracy of information provided by the applicant if the applicant received funds on the basis of that information.

Section 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

Comment: Several commenters supported the provision in § 668.60(a)(1) in the NPRM that an institution establish what is a reasonable length of time for the applicant to provide documentation for the campus-based and GSL programs. Two commenters, however, felt the provision was inconsistent with § 668.60(a)(2) which allows an institution to waive its own time limit and § 668.60(a)(3) in the NPRM which restricts the time an institution may hold a GSL check for a prevously certified GSL. These sections have been renumbered as § 668.60(b)(1), § 668.60(b)(2), and § 668.60(b)(3) of the regulations.

Response: No change has been made. The Secretary believes that an institution should have the flexibility, whenever possible, to set the deadline for an applicant to submit documents for verification in the campus-based and GSL programs. The Secretary does not believe that § 668.60(b)(2) and (3) are inconsistent with § 668.60(b)(1). The Secretary has included § 668.60(b)(2) to provide additional flexibility to institutions and § 668.60(b)(3) to assure that an institution not hold a GSL check for an extended period of time.

Comment: One commenter recommended that the regulations be revised under § 668.60(a)(1)(i)(D) of the NPRM to read: (D) Endorse or disburse a GSL check to the applicant.

Response: A change has been made. The Secretary agrees that the language in the NPRM which prohibits only the "endorsement" of a GSL check is inadequate. He has revised the regulations to prohibit the "processing" of an applicant's GSL check which encompasses both endorsement and disbursement.

Comment: Regarding § 668.60(b) of the NPRM, § 668.60(c) in the final regulations, one commenter objected to a student receiving the lowest amount of a Pell Grant for which the student is eligible if the student submits a verified SAR after the deadline but before the time period established by the Secretary. The commenter believed the Secretary has no authority to deny students the funds for which they are eligible. One commenter recommended that the regulations permit an applicant the option of refiling with corrected data in those instances where his or her SAI woud be lower and the payment higher with the applicant having the right to accept less funds if he or she chooses not to refile.

Response: No change has been made. These provisions repeat those in § 690.77(f) of the Pell Grant Program regulations published on March 15, 1985 and similar provisions in previous regulations for the Pell Grant Program. As the Secretary noted in the comments and responses of the March 15 Pell

Grant Program regulations, these regulations provide that a student who has misreported information and been given an extension to correct that information not receive the additional benefit of a higher award.

Comment: The Sercretary received a number of comments concerning the provision of § 668.60(c) of the NPRM, § 668.60(d) of the final regulations, which precludes an applicant who did not provide documentation for a previous award year from receiving Title IV aid in the future unless the Secretary determines that the documentation is no longer needed. Some commenters believed this provision to be burdensome and that it will cause substantial delay in the aid process. Most commenters objected to precluding an applicant's receipt of aid in the future. The commenters believed that this approach is unreasonably punitive. Many of the commenters noted a variety of reasons why a student may not provide documentation, *e.g.*, "problems" of procuring documentation, uncooperative parents, and receipt of aid from other sources. A number of the commenters believed that an applicant should not be "automatically judged" as having provided false information. A few commenters noted that the concept of student eligibility requires that an applicant's eligibility be determined each award year. A number of commenters recommended that this provision be restricted to that award year. One commenter asked if the Secretary currently denies subsequent processing or payment of Pell Grant applications for those students who failed to complete verification during a given period. This commenter also asked how the information on Pell Grant verification is being transmitted from one institution to another for those students who transfer. A few commenters were unclear as to whether the requirement of this section applied to future years or within the same academic year. Some commenters asked how far into the future will these provisions apply; the suggestion was made to tie this provision to the existing record retention requirements. Some commenters asked how an institution will know there is no longer a need for documentation.

Response: A change has been made. If an applicant fails to provide the requested information, the Secretary will reserve the option to withhold any further Federal student assistance, including awards in future years. As in the current regulatory requirements for the Pell Grant Program (34 CFR 690.77(f)(4)), the Secretary has not limited this paragraph to receiving funds in the award year for which information was requested.

Comment: The Secretary received a number of comments concerning the proposal in the preamble to revise the requirements for the financial aid transcript in Subpart B of these regulations to include information regarding whether an applicant failed to provide documentation for verification of an application for a Pell Grant, campus-based aid, or a GSL loan if the applicant subsequently attends another institution and applies for Title IV aid.

Most commenters objected to revising the financial aid transcript to include information regarding whether an applicant failed to provide documentation for verification. Some commenters believed this revision to be too complex and burdensome for institutions. Many of the commenters' objections were based on a belief that there are a variety of reasons why an applicant did not provide documentation, *e.g.*, a student did not enroll, and that it is virtually impossible for an institution to determine if an applicant "failed" to provide documentation or if he or she refused to do so. A few commenters asserted that because the transcript already reflects refunds, there is no need to make this revision. One commenter recommended that the Secretary not allow interim disbursements; the commenter believed that then there would be no need for the transcript's revision. A few commenters requested clarification as to why the transcript should be revised if a student did not receive Title IV funds. Moreover, one commenter believed that this revision has no relevance to the second institutions because a new application will be required which will precipitate verification. One commenter recommended that instead of revising the financial aid transcript, the information should be collected on the student's financial aid application. Several recommended that if the transcript requirements are revised, the provision should be subject to the record retention requirements.

Some commenters supported revising the financial aid transcript to include information regarding whether an applicant failed to provide documentation for verification of an application for a Pell Grant, campus-based aid, or a GSL.

One commenter believed that this revision would discourage the intentional and persistent attempts by a few applicants to provide false information. Most support was contingent upon the condition that the transcript be changed only to reflect that documentation was not provided for those applicants who received title IV aid. These commenters believed that to withhold future aid because an applicant did not provide documentation is unreasonable for an applicant who did not benefit from title IV aid, that the transcript be revised only for applicants who transfer within the award year, that any revisions to the transcript be delayed until award year 1987–88 because institutions will be developing 1986–87 application materials before these regulations are published, or that this revision is valid only if applicants who were verified at the previous institution are excluded from verification at the subsequent institution. The commenters supported the collection of overpayments and noted that this was already possible via the transcript. The suggestion was made that the Secretary collect overpayments using the Pell Program as the precedent.

Response: A change has been made. The Secretary generally concurs with the commenters opposed to the proposal and, therefore, is not revising the financial aid transcript provision in Subpart B. The Secretary, however, is revising § 668.60(c) to require that an institution may not process campus-based aid or a GSL if directed by the Secretary. This change relieves the institution of the responsibility for knowing whether the applicant completed the verification process at another institution but does not restrict the institution from withholding campus-based aid or certifying a GSL loan application if directed by the Secretary.

Section 668.61 Recovery of funds.

Comment: One commenter questioned whether the requirements in § 668.61(a) apply to any overpayment or to those that are the result of the institution exercising its option to make an interim disbursement under proposed § 668.58(a)(1)(ii), § 668.58(a)(2)(ii) in the final regulations.

Response: A change has been made. The Secretary has clarified § 668.61 to clarify that these provisions apply only to those overpayments that are the result of disbursements under § 668.58(a)(2)(ii).

Comment: One commenter recommended that the Secretary clarify § 668.61(a)(2). The commenter assumed that the Secretary meant that an institution is required to reimburse a program account if it required an applicant to repay an overpayment but the applicant did not make the repayment. Another commenter questioned at what point in time an

institution is required to reimburse program accounts from its own funds.

Response: A change has been made. The Secretary has clarified this provision to state that if the applicant does not return the overpayment, the institution must make restitution of an overpayment from its own funds within sixty (60) days after the applicant's last day of enrollment but not later than the end of the award year in which the funds were disbursed, whichever comes first.

Comment: Several commenters suggested that it is unnecessarily punitive to require a school to repay an NDSL Program loan overpayment when the entire balance of the loan, including the overpayment, will eventually be collected from the applicant.

Response: No change has been made. Under § 668.58(a), if an institution exercises its option to provide an interim disbursement of NDSL funds to an applicant, the institution assumes liability for the funds disbursed. Therefore, if the institution is unable to eliminate the overpayment by adjusting the applicant's subsequent financial aid payment in the award year or by requiring the applicant to repay the overpayment, the institution shall restore to its NDSL fund from its own funds an amount equal to the overpayment, and the applicant's NDSL balance is reduced by the amount of the overpayment reimbursed to the NDSL fund by the institution.

Comment: Several commenters asked for clarification of circumstances which would necessitate recovery of GSL Program loan funds under § 668.61(b) when verification is required before the application may be certified.

Response: No change has been made. Verification is not always required before a loan may be certified. For example, an institution may certify a GSL based on the output document of an approved need analysis system using the edits which shows that the applicant is not selected. If the institution subsequently received a SAR selecting the applicant for verification based on edits used only in the Pell Grant processing system, the institution may determine after verification that the information used in certifying the GSL was inaccurate and the applicant received a larger GSL than he or she was eligible to receive.

Comment: One commenter objected to any requirement that the school notify both the State guarantee agency and the lender when an overaward is discovered during verification because the school would not know who the lender and guarantee agency are.

Response: A change has been made. Under § 682.612(b)(2) of the GSL Program regulations, an institution is required to keep a record of the lender for each loan received by its students. The Secretary, therefore, has revised § 668.61(b) to require that an institution inform only the student and the lender.

Comment: Several commenters asked if institutions will continue to be held "faultless" when a student receives aid after the GSL application is certified by the school.

Response: No change has been made. Under § 668.61(b), the Secretary is requiring only that the institution follow procedures for making the lender aware of the need to adjust the applicant's loan amount. This paragraph does not establish any institutional liability.

General Comments and Responses

Comment: A number of commenters criticized the quality control studies of the Office of Student Financial Assistance conducted in 1979, 1981, and 1983 that documented large numbers of applicants and their parents misreporting information regarding their family and financial status in the Pell Grant Program. Several commenters argued that the Secretary could not infer that error in the campus-based and GSL programs was the same or similar to error in the Pell Grant Program because of differences between these programs and the Pell Grant Program. Several commenters stated that the definitions of error in the quality control studies were misleading and not useful.

Response: No change has been made. The Pell Grant quality control studies identified significant applicant error in reporting information on the application form used to calculate a Pell Grant. The information in this application is often identical to the information used to determine the amount of assistance received by an applicant under the campus-based and GSL programs and often is reported on the same application form used to determine his or her assistance under the Pell Grant, campus-based, and GSL programs. The Secretary, therefore, believes that the findings of the Pell Grant quality control studies with respect to applicant error on the application form are relevant to the campus-based and GSL programs.

The definitions of error used in the quality control studies were designed to identify areas where the program requirements permit the reporting of information that result in correct awards as well as those areas where incorrect awards result from not following the program requirements. The identification of these types of error have led to the modification of program requirements. The principal example in these regulations is the requirement that applicants update their household size, number attending postsecondary educational institutions, and dependency status at the time of verification. Previously, applicants were not allowed to update this information from the time of application. In the quality control studies it was considered an error not to use the best available information (i.e., updated information) even though the program requirements restricted institutions to using only the information that was correct as of the date of application.

Comment: Several commenters predicted that the increase in administrative burden as a result of the NPRM would increase the potential for administrative error. Other commenters feared that the administrative burden imposed by the verification requirements would force schools to drop internal practices which have been effective in reducing error. A number of commenters cited the use of the worksheet for untaxed income and benefits from the student aid application as a major source of burden that does not yield any significant improvement in the accuracy of the application information.

Several commenters stated that their institutions already perform 100 percent verification and claim that the NPRM's requirements only complicate the process by adding meaningless paperwork and time-consuming detail to an already complex process.

Two commenters stated that these regulations impose burdens that should result in them being classified as major regulations under Executive Order 12291.

Response: Changes have been made. It has always been the Secretary's intention that these regulations not impose an unwarranted burden on institutions. The Secretary has, therefore, made a number of changes designed to eliminate any unwarranted burden on institutions. Examples of these changes include the following:

- Revising the requirements for updating information under § 668.55.
- Limiting the required items to be verified under untaxed income and benefits in § 668.56 to social security benefits, child support, and those items that can be verified using the tax return and, thus, eliminating the use of the student aid application worksheet for untaxed income and benefits as a verification document.
- Eliminating the requirement that a Pell Grant applicant who is a dependent

student must verify his or her base year income.

The Secretary has reviewed the regulations, including the changes he has made, and determined that they continue not to be classified as major under Executive Order 12291 because they do not meet the criteria for major regulations established in that Order.

Comment: Several commenters recommended that the Secretary delay the implementation of the verification requirements to provide additional time to disseminate information and to make adjustments at the institutions.

Response: No change has been made. The Secretary believes that these regulations must be implemented for the 1986–87 award year to reduce the error rates identified in quality control studies.

Comment: Several commenters requested that the Secretary increase the amount of the administrative cost allowance paid to institutions to offset the costs of verification in the Pell Grant and campus-based programs. Commenters also recommended that the Secretary make payments to cover the administrative costs of including the GSL Program in the integrated verification system.

Response: No change has been made. The amounts of administrative cost allowances are set by statute. In the case of GSL Program, the Secretary is not authorized to pay an administrative cost allowance.

Comment: A few commenters inferred that the underlying assumption of the verification requirements is that families or students are deliberately providing inaccurate information.

Response: No change has been made. The commenter's inference is incorrect. These regulations are intended to reduce applicant error. The Secretary is not imputing the motives for such error.

Comment: Several commenters recommended that the Secretary provide lengthy and detailed training sessions throughout the country to explain the verification requirements. Some commenters suggested the sessions should take place by January 1986 to be effective. Some commenters recommended that the Secretary publish a handbook to guide financial aid administrators.

Response: No change has been made. The Secretary expects to provide as much training as possible based on the available resources and will schedule the training as early as possible. Currently, the Secretary expects to begin training in March, 1986. The Secretary will be publishing a handbook on verification for 1986–87.

Comment: Several commenters were concerned that these regulations would discourage some applicants, especially low income students, from applying for financial aid, and they would drop out of school.

Response: No change has been made. The Secretary believes that these regulations do not impair the ability of the vast majority of students to complete the process of applying for financial assistance and, thus, should not be a factor in the students' decisions about their academic careers.

Comment: One commenter noted that the regulations do not explicitly provide that a financial aid administrator may use professional judgment and override the results of the verification process with regard to the campus-based and GSL programs. The commenter assumed that the financial aid administrator would continue to have this authority.

Response: No change has been made. The financial aid administrator does not have the authority to waive the requirements of these regulations.

Comment: A number of commenters questioned or disagreed with the Secretary's certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities. The commenters believed that the regulations will significantly increase the workload for student financial aid offices, requiring small institutions to employ additional staff or to upgrade data processing capabilities, and increasing printing, postage and other administrative costs. Some commenters pointed out that graduate and professional schools do not currently participate in the Pell Grant validation system. The regulations would impose new requirements on these institutions. Other commenters stressed processing delays that could disproportionately affect the neediest students.

Response: No change has been made. The small entities affected by these regulations are small institutions of higher education. In order to identify small institutions and to assess the impact of these regulations on those institutions, using actual current data, one must select an objective measure for determining institutional size. In lieu of a formal definition, it is useful to adopt the proposed definition of small institution of higher education published by the Secretary on January 16, 1981 (46 FR 3920), defining small institutions as those with a total student population of fewer than 550.

These regulations require all institutions participating in the Pell Grant, campus-based, and GSL programs to verify the application information of selected applicants. The Pell Grant Program already has similar requirements, and these regulations extend those requirements to the campus-based and GSL programs. Since the same or similar application information is used in all of these programs, and applicants usually apply for assistance under all of these programs, the results of verification in the Pell Grant Program would affect applications for assistance under the campus-based and GSL programs whether or not these regulations were issued. For this reason, the additional costs for small institutions are not expected to be significant.

With respect to graduate and professional schools, most of these schools are part of large institutions of higher education, and only a small number exist as separate institutions of higher education.

The Regulatory Flexibility Act is not applicable to students, just small entities.

For these reasons, the Secretary affirms his certification under the Regulatory Flexibility Act that the regulations will not have a significant economic impact on a substantial number of small entities.

Comment: In response to the request for comments on the information collection requirements in these regulations under the Paperwork Reduction Act of 1980, a number of commenters expressed their belief that these regulations will increase their information collection burden. One commenter suggested that the Secretary provide a validation worksheet to reduce the burden on institutions.

Response: Changes have been made. As noted above, it has always been the Secretary's intention that these regulations not impose an unwarranted burden on institutions, and the Secretary, therefore, has made changes in the regulations designed to reduce the burden on institutions. The most important of these changes was the elimination of the student aid application worksheet as a verification document for untaxed income and benefits. Another example of such a change is the elimination of the verification of a Pell Grant applicant's base year income if the applicant is a dependent student. The institution, therefore, is no longer required to collect the applicant's tax return in addition to the parents' return. In addition, the Secretary will be providing a verification worksheet to any applicant whose SAR is selected for verification and will provide copies of the worksheet to institutions.

Comment: In response to the request for comments under the "Assessment of Educational Impact" in the preamble of the NPRM, a few commenters stated that the information requested in these regulations was available from other agencies of the United States. All of these commenters noted that the income tax return information is available from the Internal Revenue Service, and one commenter noted that other sources of information to be verified should be obtainable from the Social Security Administration, Veterans Administration, Immigration and Naturalization Service, and Department of Health and Human Services.

Response: No change has been made. With respect to income tax return information, the Secretary is exploring this issue with the Treasury Department, but it is not possible to accomplish what the commenters suggest at this time due to technical difficulties. With respect to the other sources cited by one of the commenters, the Secretary is exploring implementation of tape matches with some of these agencies or already has them in place if technically feasible. Previously, the Department has had a tape match for veterans educational benefits. However, such a match is not effective since veterans educational benefits are reported as projected income for the award year. In addition, the Veteran Administration does not have information in its files at the time applications are processed for new veterans requesting assistance and does not have enrollment data for an award year until the fall of that year or later.

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Friday
March 14, 1986

Part III

Department of the Interior

National Park Service

36 CFR Parts 1 and 12
National Cemetery Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 12

National Cemetery Regulations

AGENCY: National Park Service, Interior.
ACTION: Final rule.

SUMMARY: This rulemaking revises and deletes portions of existing regulations governing the administration, operation and maintenance of the national cemeteries under the jurisdiction of the National Park Service. Adopted revisions refer to and adopt Veterans Administration policy and standards pertaining to national cemetery operations and National Park Service standards for the protection of cultural resources. These revisions are necessary to comply with changes in Federal statutory law and to update and standardize procedures for the operation of national cemeteries. The regulations emphasize the dual mission of the National Park Service to operate national cemeteries as shrines to veterans and as significant cultural resources. They also provide park superintendents and the general public a clear set of standards and procedures that apply to the management of national cemeteries.

EFFECTIVE DATE: April 14, 1986.

FOR FURTHER INFORMATION CONTACT: Edwin C. Bearss, Chief, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Telephone: 202–343–8163.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) administers fourteen national cemeteries formerly under the jurisdiction of the War Department. These cemeteries are:

1. Andersonville, GA
2. Andrew Johnson, TN
3. Antietam, MD
4. Battleground, Washington, DC
5. Chalmette, LA
6. Custer Battlefield, MT
7. Fort Donelson, TN
8. Fredericksburg, VA
9. Gettysburg, PA
10. Poplar Grove, VA
11. Shiloh, TN
12. Stones River, TN
13. Vicksburg, MS
14. Yorktown, VA

Of these cemeteries, only five remain active and open for additional interments. Others, although inactive, may still have valid reservations to be honored for future interments.

In 1973, the National Cemetery Service was established within the Veterans Administration (VA) by Pub. L. 93–43 (38 U.S.C. 1000 *et seq.*), effectively eliminating the Department of the Army from the administration of most national cemeteries. The NPS and VA subsequently entered into a verbal agreement whereby the VA would continue to provide assistance to the NPS previously provided by the War Department and the Department of the Army. The VA administers more than 100 national cemeteries and provides several important support services to the NPS such as bulk headstone purchases, verification of the character of a veteran's discharge and records maintenance.

In 1937, the Secretary of the Interior's Advisory Board on National Parks, Historic Sites, Buildings and Monuments commented on and redefined the objectives of the national cemeteries administered by the NPS as follows:

> National cemeteries are those areas which have been set aside as resting places for members of the fighting forces of the United States.
>
> The function of national cemeteries is to serve as suitable and dignified burial-grounds for the men and women who have been interred in them.

Until recently, NPS superintendents with responsibilities for management of national cemeteries had no servicewide policy or guidelines to provide for consistent administration and protection of these 14 areas. Each cemetery was operated generally in compliance with NPS regulations codified in 36 CFR Part 12 and patterned after Army regulations, but a great many local variations in management practices occurred. In 1985, the NPS adopted NPS–61, *Guidelines for National Cemeteries*. This guideline is based on applicable Federal statutory law and follows very closely the VA policy contained in VA M40–2, *Manual of Operations of National Cemeteries* (1984). Most national cemeteries within the National Park System are administered as integral parts of larger historical parks, and represent a continuum of use dating back to periods before the establishment of those historical parks. Where NPS–61 differs from VA policy, it does so primarily in areas reflecting the significance attached to national cemeteries as important cultural resources. NPS–61 provides consistent policy direction and guidelines for national cemeteries administered by the NPS that can be applied uniformly by park superintendents. The role of the VA remains one of providing the support services logically supplied by the lead agency involved in national cemetery operations.

Serious inconsistencies exist between the current NPS regulations codified in 36 CFR Part 12, the provisions of Federal statutory law and NPS and VA policies that apply to the management of national cemeteries. This rulemaking corrects these deficiencies by eliminating references to the Department of the Army, basing eligibility requirements and other interment criteria on the provisions of existing Federal statutory law, applying statutory penalty provisions to violations of certain regulations and by providing clear guidance to park superintendents and the general public concerning standards and procedures that apply to the operation of national cemeteries within the National Park System. The regulations also emphasize the fact that, while the NPS adopts and complies with VA operational standards for national cemeteries, the protection, maintenance and public use of these cemeteries will be conducted in accordance with applicable NPS legislation and standards for the preservation of cultural resources.

Section-by-Section Analysis

As currently codified in Title 36 of the Code of Federal Regulations, Part 12 consists of eight regulations divided in two categories, Visitor Use Regulations and Informational Guidelines, which have been in effect since 1971. Since NPS General Regulations pertaining to Resource Protection, Public Use and Recreation codified in 36 CFR Part 2 are quite extensive and apply within national cemeteries, there is little need for additional regulations in Part 12 pertaining to the same concerns. Therefore, the revisions to the regulations in Part 12 remain primarily procedural and informational in nature; the few that pertain to visitor use are a result of the unique atmosphere and purposes of national cemeteries that are not adequately addressed by the provisions of NPS General Regulations.

This rulemaking revises 36 CFR as follows:

1. The statutory penalty provision in Part 1 is revised to apply to the few public use provisions of Part 12.

In Part 12:

2. The existing section describing applicability and scope has been updated and clarified.

3. A new section has been added describing the purpose of national cemeteries.

4. A new section has been added to define certain standard terms used throughout Part 12.

5. The section pertaining to services and ceremonies has been revised to prohibit special events and demonstrations except for committal services and a limited number of official commemorative events.

6. The existing section pertaining to interments and disinterments has been divided into two separate sections, each of which has been revised and expanded.

7. The sections pertaining to headstones and markers, monuments and private memorials have been reorganized and simplified for purposes of clarification.

8. The sections pertaining to cemetery maintenance and the use and display of the flag have been deleted.

9. A section has been added to provide guidance on the use of floral and commemorative tributes.

10. A section has been added that prohibits recreational activities within a national cemetery.

11. A section has been added to address requirements of the Office of Management and Budget pertaining to information collection.

The following provides specific information pertaining to each of the revised or new sections:

Section 1.3 Penalties.

Two paragraphs of this section are revised to correct an inadvertent omission in the July, 1983, revision of NPS General Regulations (48 FR 30291), when the penalty provision in Part 12 was deleted without a corresponding revision making the penalty provision in Part 1 applicable to the regulations in Part 12. These penalty provisions are taken from Federal statutory law and apply to violations of all NPS regulations pertaining to public use and resources protection. The provision in paragraph (a) applies to Andersonville and Andrew Johnson National Cemeteries; the provision in paragraph (b) applies to all other national cemeteries administered by the NPS.

Section 12.1 Applicability and Scope.

This section makes clear that the regulations in Part 12 supplement the General and Special Regulations found elsewhere in 36 CFR and are generally procedural in nature.

Section 12.2 Purpose of National Cemeteries.

This new section emphasizes the purpose of the national cemeteries administered by the NPS. The language reflects direction provided by Federal statutory law and provides park superintendents general guidance under which to exercise the discretionary authority provided by NPS General Regulations in 36 CFR Parts 1 and 2. A superintendent may not authorize activities that are in derogation of the values and purposes for which the national cemetery was established except as may be specifically provided for by Congress.

Section 12.3 Definitions.

This new section defines sixteen terms used in these regulations and supplements the more extensive list of definitions found in § 1.4 which also apply to Part 12. Listing definitions in one section provides clarity and consistency and eliminates the need for defining terms within individual regulations.

Section 12.4 Special events and demonstrations.

This section revises the existing § 12.2 to prohibit the conducting of special events and demonstrations, as these terms are defined in § 12.3, except for official commemorative events on Memorial Day, Veterans Day, and other dates designated by the superintendent as having special historic and commemorative significance for the particular national cemetery. Examples of such days include Lincoln Fellowship Day at Gettysburg National Cemetery and the anniversary of the Battle of the Little Bighorn at Custer Battlefield National Cemetery. A superintendent's designation of the limited number of such commemorative days that apply to a national cemetery would take place in accordance with the public notice requirements and procedures found in § 1.7 of the General Regulations. Many activities and events that are appropriate and even facilitated or supported by the NPS in other park areas or in other portions of a park area containing a national cemetery are totally inappropriate in a national cemetery because of its protected atmosphere of peace calm, tranquility and reverence. The restriction prohibiting special events and demonstrations within national cemeteries reflects the substantial government interest that exists in maintaining this protected atmosphere where individuals can quietly contemplate and reflect upon the significance of the contributions made to the nation by those interred. The NPS believes that official commemorative events conducted on a very limited number of occasions constitute the maximum extent that this protected atmosphere should be disturbed. Ample opportunities exist for persons desiring to conduct special events and demonstrations to do so in areas adjacent to or near the national cemeteries that are the subject of this regulation. The restriction does not apply to committal services which are integral to the purpose of national cemeteries.

Section 12.5 Interments.

This section is a revision of § 12.3 and sets forth the eligibility criteria for interments specified by Federal statutory law (38 U.S.C. 1002). Minor revisions have been made to the general policy and procedures for an interment and requirements for burial permits. This section now makes clear that the NPS has adopted the VA policy of one-gravesite-per-family-unit, and that no new requests for gravesite reservations will be accepted. The NPS will continue to honor existing reservations made in writing. Certain provisions of the paragraph pertaining to burial sections represent departures from VA policy. Provisions requiring an interment plan, requiring that gravesite dimensions conform to certain specifications and restricting burial section expansion are necessary to maintain the historic character of these cemeteries as significant cultural resources.

Section 12.6 Disinterments and exhumations.

The provisions in existing § 12.3 pertaining to disinterments and exhumations have been placed in a separate section, revised and expanded. The existing policy that a burial is considered permanent, with a disinterment allowed only pursuant to specific conditions, is reemphasized. A permit requirement is instituted and provisions made for the NPS to recover agency costs incurred pursuant to a disinterment through establishment of a fee. The Special Use Permit, a form already in use and approved by the Office of Management and Budget, will be the permit used for this purpose. Responsibilities of the next-of-kin are set forth in detail. Failure to obtain a permit, violation of a permit condition and failure to pay the required fee are prohibited by this section. Court-ordered exhumations are generally exempt from the provisions of this section.

Section 12.7 Headstones and markers.

This section combines and revises the provisions of existing §§ 12.4 and 12.5 and provides specific guidance, conditions and application procedures for the installation of private headstones and markers. These provisions are necessary in order to maintain consistency in the appearance of a national cemetery, to maintain its

historic character and values and to facilitate cemetery maintenance operations.

Section 12.8 Memorial headstones and markers.

This section revises some of the provisions of existing § 12.6 and sets forth the eligibility criteria for memorialization in a national cemetery as provided by Federal statutory law (38 U.S.C. 1003). Application procedures are also specified.

Section 12.9 Commemorative monuments.

This section is also a revision of certain provisions of existing § 12.6 and details the application procedures to be followed and the approvals required before a monument may be installed. It also specifies that such monument, when approved by the Director, may be installed only under the conditions that there be no expense or liability incurred by the NPS and that title to the monument will vest in the NPS.

Section 12.10 Floral and commemorative tributes.

This new section restricts the types of items and materials that may be placed on a grave. Certain items are prohibited and others are allowed only in certain containers and at specific times designated by the superintendent pursuant to discretionary authority provided in § 1.5 of the General Regulations. These designations must be made in accordance with the public notice provisions of § 1.7 and be compiled in writing as required in paragraph (b) of that section. The restrictions contained in this section are necessary to maintain consistency in the types of floral containers and decorations used in a cemetery, to protect headstones, markers and monuments from unnecessary damage and in the interest of the safety of park visitors and that of cemetery employees involved in maintenance operations.

Section 12.11 Recreational activities.

This section prohibits engaging in a recreational activity, as defined in § 12.3, within a national cemetery. Although engaging in such activities is appropriate in many park areas, and may be within other portions of a park area containing a national cemetery, persons engaged in recreational activities within a national cemetery would conflict with the solemn commemorative character of the area by disrupting its protected atmosphere of peace and tranquility. This regulation again reflects the substantial government interest that exists in maintaining this atmosphere. These restrictions are not intended to inhibit walking, hiking, casual strolling or sitting by individuals while contemplating the significance of the national cemetery or the contributions of those persons interred there.

Section 12.12 Information collection.

This section addresses the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements (permits, applications, etc.) contained in §§ 12.6, 12.7, 12.8 and 12.9 have been submitted to the Office of Management and Budget and been approved.

Summary of Public Comments

The NPS published a proposed rule and requested public comments on this rulemaking on October 28, 1985 (50 FR 43581); no written public comments were received in response. One written comment was received from a NPS official questioning the need to prohibit jogging in national cemeteries. The NPS position remains as stated in the proposed rule and this document, that recreational activities are inappropriate in a national cemetery because of their disruptive influence on the atmosphere of peace and tranquility that the NPS is responsible to protect. The final rule is published unchanged.

The NPS also received several telephone inquiries from persons wishing to confirm the fact that the NPS would continue to be responsible for bearing the cost of the interment of an eligible person. The NPS continues to bear those costs.

Drafting Information

The primary authors of these regulations are David McCormack, Andrew Johnson National Historic Site; Andy Ringgold, Branch of Ranger Activities, Washington, D.C.; and John Tucker, Andersonville National Historic Site. Several other employees with expertise in the management of national cemeteries contributed significantly to the their development.

Paperwork Reduction Act

The information collection requirements contained in §§ 12.6, 12.7, 12.8 and 12.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document 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 economic effects of this rulemaking are negligible. The regulations do not impose significant additional costs to the expenses involved in a national cemetery burial and the number of persons affected is minimal.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area of causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships of land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this final rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 12

Cemeteries, Military personnel, National parks, Veterans.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART I—GENERAL PROVISIONS

1. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460l–6a(e), 462(k).

2. By revising § 1.3 (a) and (b) to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in Parts 1 through 5, 7, 12 and 13 of this chapter, within a park area not covered in paragraphs (b) or (c) of this section, shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

(b) A person who knowingly and willfully violates any provision of the regulations contained in Parts 1 through 5, 7 and 12 of this chapter, within any national military park, battlefield site, national monument, or miscellaneous memorial transferred to the jurisdiction of the Secretary of the Interior from that of the Secretary of War by Executive Order No. 6166, June 10, 1933, and enumerated in Executive Order No. 6228, July 28, 1933, shall be punished upon conviction thereof by a fine of not more than $100, or by imprisonment for not more than 3 months, or by both.

Note.—These park areas are enumerated in a note under 5 U.S.C. 901.

* * * * *

3. By revising Part 12 to read as follows:

PART 12—NATIONAL CEMETERY REGULATIONS

Sec.

Authority: 16 U.S.C. 1, 3, 9a, and 462(k); E.O. 6166, 6228 and 8428.

§ 12.1 Applicability and scope.

The regulations in this part apply to the national cemeteries administered by the National Park Service. These regulations supplement regulations found in Parts 1–5 and 7 of this chapter and provide procedural guidance for the administration, operation and maintenance of these cemeteries.

§ 12.2 Purpose of National Cemeteries.

National cemeteries are established as national shrines in tribute to the gallant dead who have served in the Armed Forces of the United States. Such areas are protected, managed and administered as suitable and dignified burial grounds and as significant cultural resources. As such, the authorization of activities that take place in national cemeteries is limited to those that are consistent with applicable legislation and that are compatible with maintaining the solemn commemorative and historic character of these areas.

§ 12.3 Definitions.

The following definitions apply only to the regulations in this part:

"Burial section" means a plot of land within a national cemetery specifically designated to receive casketed or cremated human remains.

"Close relative" means a surviving spouse, parent, adult brother or sister, or adult child.

"Commemorative monument" means a monument, tablet, structure, or other commemorative installation of permanent materials to honor more than one veteran.

"Demonstration" means a demonstration, picketing, speechmaking, marching, holding a vigil or religious service or any other like form of conduct that involves the communication or expression of views or grievances, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

"Eligible person" means an individual authorized by Federal statute and VA Policy to be interred or memorialized in a national cemetery.

"Government headstone" means a standard upright stone, provided by the Veterans Administration, of the same design currently in use in a national cemetery to identify the interred remains.

"Gravesite reservation" means a written agreement executed between a person and the National Park Service to secure a gravesite prior to the death of an eligible person.

"Headstone" means a permanent stone placed vertically on a grave to identify the interred remains.

"Historic enclosure" means a permanent fence, wall, hedge, or other structure that surrounds the burial sections and defines the unique historic boundary of a national cemetery.

"Marker" means a permanent device placed horizontally on a grave to identify the interred remains.

"Memorial headstone" means a private or government headstone placed in a memorial section of a national cemetery with the words "In Memory Of" inscribed to honor a deceased eligible person whose remains could not be interred in the national cemetery.

"NPS Policy" means the National Park Service's *Guidelines for National Cemeteries, NPS–61.*

"Private headstone" means an upright stone provided by a person at no expense to the government and in lieu of a government headstone.

"Recreational activity" means any form of athletics, sport or other leisure pursuit or event, whether organized or spontaneous, that is engaged in by one or more persons for the primary purpose of exercise, relaxation or enjoyment, including but not limited to the following: jogging, racing, skating, skateboarding, ball playing, kite flying, model airplane flying, throwing objects through the air, sunbathing, bicycling and picknicking. This term does not include walking, hiking or casual strolling.

"Special event" means a sports event, pageant, celebration, historical reenactment, entertainment, exhibition, parade, fair, festival or similar activity that is not a demonstration, whether engaged in by one or more persons, that has the intent, effect or likelihood to attract a crowd or onlookers. This term does not include casual park use by persons that does not have an intent or likelihood to attract a crowd or onlookers.

"VA Policy" means the current editions of the Veterans Administration's Manuals that pertain to the administration of the National Cemetery System.

§ 12.4 Special events and demonstrations.

Conducting a special event or demonstration, whether spontaneous or organized, is prohibited except for official commemorative events conducted for Memorial Day, Veterans Day and other dates designated by the superintendent as having special historic and commemorative significance to a particular national cemetery. Committal services are excluded from this restriction.

§ 12.5 Interments.

(a) *Who may be interred.* A person's eligibility for burial in a national cemetery is determined in accordance with the provisions of Federal statutory law. Interments are conducted in accordance with NPS policy and VA Policy.

(b) *Burial permit.* (1) A burial permit is required in accordance with the laws and regulations of the State and local municipality within whose boundaries the cemetery is located.

(2) The remains of a member of the Armed Forces who dies on active duty may be interred prior to receipt of a burial permit.

(3) The superintendent shall process a burial permit in accordance with VA Policy.

(c) *Gravesite assignment.* (1) Gravesite assignment and allotment are made according to VA Policy which specifies that only one gravesite is authorized for the burial of an eligible member of the Armed Forces and eligible immediate family members. Exceptions to this practice may be approved only by the Director.

(2) The superintendent is responsible for the actual assignment of a gravesite.

(3) The superintendent may not accept a new gravesite reservation. A gravesite reservation granted in writing prior to the adoption of the one-gravesite-per-family-unit restriction shall be honored as long as the person remains eligible.

(d) *Burial sections.* (1) The superintendent of each national cemetery shall develop an interment plan for burial sections in keeping with the historic character of the national cemetery, to be approved by the Regional Director.

(2) The superintendent shall specify gravesite dimensions that conform to the historic design of the national cemetery.

(3) Expansion of a burial section is prohibited without the approval of the Regional Director.

(4) An interment is authorized only with a burial section; the superintendent may not authorize an interment within a memorial section.

(5) Cremated remains may be scattered in a national cemetery in conformance with the provisions of § 2.62 of this chapter and applicable State laws.

(6) Expansion of a national cemetery outside the confines of its historic enclosure is prohibited.

§ 12.6 Disinterments and exhumations.

(a) Interment of an eligible person's remains is considered permanent. Disinterment and removal of remains are allowed only for the most compelling of reasons and may be accomplished only under the supervision of the superintendent.

(b) Except for a directed exhumation conducted pursuant to paragraph (f) of this section, a disinterment is allowed only pursuant to the terms and conditions of a permit issued by the superintendent.

(c) A disinterment shall be accomplished at no cost to the National Park Service. The superintendent shall establish a fee designed to recover the costs associated with supervising and administering a disinterment, including the costs of opening and closing the grave and redressing any disturbed graves or headstones.

(d) The next-of-kin is responsible for making all arrangements and incurring all financial obligations related to a disinterment. These arrangements and obligations include, but are not limited to the following:

(1) Compliance with State and local health laws and regulations;

(2) Engaging a funeral director;

(3) Recasketing the remains;

(4) Rehabilitation of the gravesite according to conditions established by the superintendent;

(5) Providing the superintendent a notorized affidavit by each living close relative of the deceased and by the person who directed the initial interment, if living, and even though the legal relationship of such person to the decedent may have changed, granting permission for the disinterment; and

(6) Providing the superintendent a sworn statement, by a person having first hand knowledge thereof, that those who supplied such affidavits comprise all the living close relatives of the decedent, including the person who directed the initial interment.

(e) The following are prohibited:

(1) Failure to obtain a permit required pursuant to this section;

(2) Violation of a condition established by the superintendent or of a term or condition of a permit issued in accordance with this section; or

(3) Failure to pay a fee prescribed by the superintendent in accordance with this section.

(f) The directed exhumation of an eligible person's remains shall be accomplished upon receipt by the superintendent of an order issued by a State or Federal court of competent jurisdiction. The superintendent shall retain court orders and other pertinent documents in the national cemetery files as a permanent record of the action.

(g) To the extent practicable, a directed exhumation shall be accomplished without expense to the National Park Service and without direct participation by national cemetery employees.

(h) The superintendent shall coordinate a directed exhumation with the ordering court, assure compliance with all State and local laws and supervise disinterment activities on site.

(i) If reinterment of exhumed remains is to be elsewhere, the superintendent may reassign the gravesite for use in connection with another interment.

§ 12.7 Headstones and markers.

(a) Government headstones and markers authorized to be furnished at government expense are provided in accordance with NPS Policy and VA Policy.

(b) The erection of a marker or monument at private expense to mark a grave in lieu of a government headstone or marker is allowed only in certain national cemetery sections in which private headstones and markers were authorized as of January 1, 1947, and only with the prior approval of the Director. The name of the person(s) responsible for the purchase and erection of the private headstone or marker may not appear on the headstone or marker or be identified elsewhere in the cemetery as the donor(s) of the private headstone or marker.

(c) A person who requests authorization to erect a private headstone or marker shall provide the following information:

(1) A list of the names of each person to be inscribed upon the private headstone or marker;

(2) The written approval of the next-of-kin and the person who directed the burial of each person whose name is to be inscribed; and

(3) A scale plan depicting the details of design, materials, finish, carving, lettering and arrangement of the inscription and the foundation of the proposed private headstone or marker.

(d) The Director's approval of a request is conditioned upon the applicant's granting to the National Park Service the substantive right to remove and dispose of the private headstone or marker if, after it is installed, the applicant fails to maintain the private headstone or marker in a condition specified by the Director.

(e) When a private headstone or marker has been erected at a veteran's grave in a national cemetery, and the next-of-kin desires to inscribe thereon the name and appropriate data pertaining to an eligible family member of the deceased whose remains will not be interred, such inscription may be accomplished with the prior approval of the superintendent. Appropriate commemorative data may be inscribed when space permits. The words "In Memoriam" or "In Memory Of" are mandatory elements of such an inscription.

(f) Except as may be authorized by the Director or by Federal statutory law for making a group burial, the erection of a mausoleum, an overground vault or a headstone or marker determined by the superintendent not to be in keeping with the historic character of the national cemetery is prohibited. An underground vault may be placed at the time of interment at no expense to the National Park Service.

§ 12.8 Memorial headstones and markers.

(a) *Who may be memorialized.* (1) A person's eligibility for memorialization in a national cemetery is determined in accordance with the provisions of Federal statutory law.

(2) The superintendent may authorize the installation of a memorial headstone or marker of an eligible person provided that no more than one individual

memorial headstone or marker is authorized for each eligible person. The erection of an individual memorial marker to a person is not allowed in the same national cemetery in which the decedent's name is inscribed on a group burial headstone or marker.

(b) *Application.* (1) The person eligible to submit an application requesting a memorial headstone or marker is the next-of-kin of the decedent to be memorialized. An application received from a close relative will be honored if it is submitted on behalf of the next-of-kin or if the next-of-kin is deceased.

(2) An applicant for a memorial headstone or marker shall submit such a request to the superintendent.

§ 12.9 Commemorative monuments.

(a) *Application.* (1) A person requesting authorization to erect a commemorative monument shall submit such a request to the Director. The Director's approval should be obtained prior to fabrication of the commemorative marker since approval for installation is conditioned upon compliance with other specifications found in this section and all applicable provisions of this Part.

(2) An applicant for authorization to erect a commemorative monument shall include the following information in the application:

(i) A list of the persons to be memorialized and the other data desired to be inscribed on the commemorative movement; and

(ii) A scale plan depicting the details of the design, materials, finish, carving, lettering and the arrangement of the inscription proposed for the commemorative monument.

(b) *Specifications.* (1) The Director may only authorize a commemorative monument that conforms to the type, size, materials, design, and specifications prescribed for the historic design of the individual cemetery section in which it is proposed for installation.

(2) The Director may not approve a commemorative monument that bears an inscription that includes the name of the person(s) responsible for its purchase or installation.

(c) *Expense.* A commemorative monument approved by the Director may be installed only under the conditions that there be no expense or liability incurred by the National Park Service in connection with its purchase, fabrication, transportation, delivery and erection.

(d) Title to a commemorative monument vests in the National Park Service upon its acceptance by an official representative of the Director.

§ 12.10 Floral and commemorative tributes.

The placement on a grave of fresh cut or artifical flowers in or on a metal or other non-breakable rod or container designated by the superintendent is allowed at times designated by the superintendent. The placement of a statue, vigil light, or other commemorative object on a grave, or the securing or attaching of any object to a headstone, marker or commemorative monument is prohibited.

§ 12.11 Recreational activities.

Engaging in a recreational activity is prohibited.

§ 12.12 Information collection.

The information collection requirements contained in §§ 12.6, 12.7, 12.8 and 12.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. The information is being collected to obtain information necessary to issue permits and will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

P. Daniel Smith,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–5574 Filed 3–13–86; 8:45 am]

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federal register

Friday
March 14, 1986

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1260

Beef promotion and research; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

Beef Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Beef Promotion and Research Act of 1985 (Act), approved December 23, 1985 (7 U.S.C. 2901–2918), authorizes the establishment of a national, industry -funded and -operated beef promotion and research program. In response to an invitation to submit proposals published in the February 14, 1986, issue of the **Federal Register**, the Agricultural Marketing Service has received an industry proposal for a beef promotion and research order. That industry proposal on which comments are being requested is set forth below. All comments will be considered before issuing a final rule establishing a beef promotion and research order.

Additionally, notice is hereby given that a public meeting will be held during the comment period to facilitate a better understanding of the intent and application of the proposed order. The record of the meeting will also be considered in the development of a final rule. All interested persons are invited to attend.

DATES:

Date of public meeting: The meeting will convene at 9:00 a.m., eastern standard time, on Thursday, April 17, 1986.

Date for comments: Comments must be received by April 28, 1986.

ADDRESS: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, P.O. Box 23762, Washington, DC 20026–3762. Comments will be available for public inspection during regular business hours at the above office in Room 2610 South Bldg., 14th and Independence Avenue SW.; Washington, DC 20250.

Place of meeting: Jefferson Auditorium, 14th and Independence Avenue SW., South Bldg., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp (202–447–2650).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals—published February 14, 1986 (51 FR 5543). Proposed Rule—Certification and Nomination Procedures for Cattlemen's Beef Promotion and Research Board published February 21, 1986 (51 FR 6258).

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation number 1512–1 and is hereby classified as a nonmajor rule. Accordingly, a regulatory impact analysis is not required. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is published to effectuate the declared policy of the Act, that it is in the public interest to establish an orderly procedure for financing and carrying out a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

Comments and Public Meeting

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Livestock and Seed Division's Marketing Programs and Procurement Branch and must make reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours. Comments must be received by April 28, 1986.

Additionally, notice is given that a public meeting will be held beginning at 9:00 a.m., eastern standard time, on Thursday, April 17, 1986, at the Jefferson Auditorium, 14th and Independence Avenue SW., South Bldg., Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning the proposed rule should do so through exhibits, written statements, or oral presentation. All those making oral presentations are encouraged to submit their presentations in writing. One original and three copies of written statements must be provided for the record. Persons attending the meeting will be allowed to ask questions directed at participants giving oral presentation. It is anticipated that the proponents of this proposal will attend the meeting to explain its various provisions and to answer questions.

Any interested person shall be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed Beef Promotion and Research Order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and, insofar as practicable, exclude views and data which are immaterial, irrelevant or unduly repetitious. Such action will be intended to limit the amount of corroborative or cumulative material presented and prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the Hearing Clerk's office. However, the transcript will be available for public inspection during normal business hours. Anyone wishing to purchase a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms, reporting, and recordkeeping included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval. Background:

The Beef Promotion and Research Act (Title XVI Subtitle A, of the Food Security Act of 1985) approved December 23, 1985, authorizes the Secretary of Agriculture to establish a national beef promotion and research program. The program will be funded by a $1 per head assessment on all cattle marketed in the United States, and an equivalent assessment on imported cattle, beef, and beef products.

The Act provides for submission of proposals for a beef promotion and research order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a Cattlemen's Beef Promotion and Research Board. The Board would be comprised of cattle producers and importers nominated by State producers and farm organizations and importer organizations, respectively, for appointment by the Secretary to the Board.

The Agricultural Marketing Service issued an invitation to submit proposals for an initial order in the February 14, 1986, issue of the **Federal Register**. The Agency also issued for comment a proposed rule; "Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board;" in the February 21, 1986, issue of the **Federal Register**. The proposed rule was published so that State organizations, associations, and others who may select nominees for the Cattlemen's Beef Promotion and Research Board may begin planning for a nomination process as soon as possible. Since the nomination procedures may take considerable time to complete, early establishment of such procedures should prevent unnecessary delay in selecting nominees and appointing a Board.

In response to the invitation to submit proposals, one proposed order was received from the National Cattlemen's Association. As provided in the Act, the Agricultural Marketing Service is publishing this proposed order for comment. The Agricultural Marketing Service will consider all comments received before issuing a final rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

1. The Authority citation for 7 CFR Part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2918.

2. It is hereby proposed by the National Cattlemen's Association that Title 7 of the Code of Federal Regulations be amended by adding the following sections:

Part 1260—Beef Promotion and Research Order

Definitions

Section 1260.101 Department.

"Department" means the United States Department of Agriculture.

Section 1260.102 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

Section 1260.103 Board.

"Board" means the Cattlemen's Beef Promotion and Research Board established pursuant to § 1260.141.

Section 1260.104 Committee.

"Committee" means the Beef Promotion Operating Committee established pursuant to § 1260.161.

Section 1260.105 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

Section 1260.106 Collecting person.

"Collecting person" means any person responsible for collecting assessments pursuant to § 1260.172, including but not limited to, producers that market beef or beef products derived from cattle of their own production either directly to consumers, or through retail or wholesale markets, any packer, stockyard owner, market agency, order buyer, or dealer, who pays a producer for cattle purchased from such producer, brand inspectors responsible for collecting assessments pursuant to State beef promotion programs, and importers. When used in this subpart—

(a) The term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle or calves are received, held, or kept for sale or shipment in commerce.

(b) The term "packer" means any person engaged in the business (1) of buying livestock in commerce for purposes of slaughter, or (2) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (3) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

(c) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard.

(d) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard service;

(e) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his or her own account or as the employee or agent of the vendor or purchaser; and

(f) The term "order buyer" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

Section 1260.107 State.

"State" means each of the 50 States.

Section 1260.108 United States.

"United States" means the 50 States and the District of Columbia.

Section 1260.109 Unit.

"Unit" means each State, group of States or class designation which is represented on the Board pursuant to § 1260.141.

Section 1260.110 Referendum.

"Referendum" means the referendum to be conducted by the Secretary pursuant to the Act whereby producers and importers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers and importers voting.

Section 1260.111 Fiscal Year.

"Fiscal Year" means the calendar year or such other annual period as the Board may determine.

Section 1260.112 Federation.

"Federation" means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State Beef Councils.

Section 1260.113 Established National Non-profit Industry Governed Organizations.

"Established National Non-profit Industry Governed Organizations" means any organizations which:

(a) Are non-profit organizations pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code, 26 U.S.C. 501(c) (3), (5) and (6);

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis whose Board is composed of a majority of producers; and

(c) Was active and ongoing before the enactment of the Act.

Section 1260.114 Eligible organization.

"Eligible organization" means any organization which has been certified by the Secretary pursuant to §§ 1260.500 through 1260.631 of this Part.

Section 1260.115 Qualified State Beef Council.

"Qualified State Beef Council" means a beef promotion entity that is authorized by State statute or that is organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; that is recognized by the Board as the beef promotion entity in such State.

Section 1260.116 Producer.

"Producer" means any person who owns or acquires ownership of cattle; except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee, including persons that acquire ownership of cattle to facilitate the transfer of ownership from the seller to a third party, and the person's only compensation for such transfer is a commission, handling fee or other service fee. The Board may, with the approval of the Secretary, make rules or regulations identifying certain transactions which the Board determines are transactions in the ordinary course of business designed to facilitate the transfer of ownership for a commission or a fee.

Section 1260.117 Importer.

"Importer" means any person who imports cattle, beef, or beef products from outside the United States.

Section 1260.118 Cattle.

"Cattle" means live domesticated bovine animals regardless of age.

Section 1260.119 Beef.

"Beef" means flesh of cattle.

Section 1260.120 Beef Products.

"Beef Products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom.

Section 1260.121 Imported Beef or Beef Products.

(a) "Imported Beef or Beef Products" means products which are imported into the United States which the Secretary determines contains a substantial amount of beef or beef products including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States:

Live Cattle	*Assessment*
100.0130	$1.00/hd
100.0140	$1.00/hd
100.0150	$1.00/hd
100.0180	$1.00/hd
100.4000	$1.00/hd
100.4300	$1.00/hd
100.4500	$1.00/hd
100.5000	$1.00/hd
100.5300	$1.00/hd
100.5500	$1.00/hd

Beef and Veal	*Assessment*
106.1020	$.21 cent/lb
106.1040	$.21 cent/lb
106.1060	$.29 cent/lb
106.1080	$.77 cent/lb
107.2000	$.27 cent/lb
107.2520	$.27 cent/lb
107.4000	$.38 cent/lb
107.4500	$.38 cent/lb
107.4820	$.38 cent/lb
107.4840	$.38 cent/lb
107.5220	$.40 cent/lb
107.5240	$.40 cent/lb
107.5500	$.29 cent/lb
107.6100	$.29 cent/lb
107.6200	$.29 cent/lb
107.6300	$.29 cent/lb

(b) The Secretary shall have the authority to add, modify, change or delete Tariff Schedule numbers identifying beef or beef products in the event that Tariff Schedule numbers included in the Tariff Schedule of the United States are added, modified, changed or deleted.

(c) The Secretary may, through promulgation of rules or regulations, increase or decrease the level of assessment for imported beef and beef products based upon live animal equivalencies.

Section 1260.122 Promotion.

"Promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

Section 1260.123 Research.

"Research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

Section 1260.124 Consumer information.

"Consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

Section 1260.125 Industry information.

"Industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

Section 1260.126 Plans and Projects.

"Plans and Projects" means promotion, research, consumer information and industry information plans, studies or projects pursuant to §§ 1260.149, 1260.150, 1260.167, 1260.168 and 1260.191.

Section 1260.127 Marketing.

"Marketing" means the sale or other disposition in commerce of cattle, beef or beef products.

Section 1260.128 Act.

"Act" means Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99–198 and any amendments thereto.

Section 1260.129 Customs Service.

"Customs Service" means the United States Customs Service of the United States Department of the Treasury established pursuant to 19 U.S.C. 2071.

Cattlemen's Beef Promotion and Research Board

Section 1260.141 Establishment and Membership.

(a) There is hereby established a Cattlemen's Beef Promotion and Research Board of one hundred and twelve (112) members. For purposes of nominating producers to the initial Board, the United States shall be divided into 41 geographical units and one unit representing importers and the number of Board members from each unit shall be as follows:

Unit	January 1, 1986	
	Cattle and calves (1,000 head)	Directors
1. Alabama	1,780	2
2. Arizona	1,050	1
3. Arkansas	1,750	2
4. California	5,000	5
5. Colorado	2,850	3
6. Florida	2,120	2
7. Georgia	1,700	2
8. Idaho	1,750	2
9. Illinois	2,470	2
10. Indiana	1,570	2
11. Iowa	4,950	5
12. Kansas	5,800	6
13. Kentucky	2,480	2
14. Louisiana	1,240	1
15. Michigan	1,410	1
16. Minnesota	3,400	3
17. Mississippi	1,430	1
18. Missouri	4,800	5
19. Montana	2,450	2
20. Nebraska	5,800	6
21. Nevada	610	1
22. New Mexico	1,390	1
23. New York	1,970	2
24. North Carolina	1,100	1
25. North Dakota	2,000	2
26. Ohio	1,840	2
27. Oklahoma	5,200	5
28. Oregon	1,575	2
29. Pennsylvania	1,960	2
30. South Carolina	635	1
31. South Dakota	3,600	4
32. Tennessee	2,500	3
33. Texas	13,600	14

Unit	January 1, 1986	
	Cattle and calves (1,000 head)	Directors
34. Utah	790	1
35. Virginia	1,840	2
36. West Virginia	520	1
37. Wisconsin	4,280	4
38. Wyoming	1,325	1
39. Northwest		2
Washington	1,460	
Alaska	9	
Hawaii	209	
Total	1,678	
40. Northeast		1
Massachusetts	100	
Maine	135	
Vermont	350	
New Hampshire	69	
Total	654	
41. Mid-Atlantic		1
Maryland	370	
Delaware	27	
Rhode Island	7	
Connecticut	100	
New Jersey	97	
D.C.	0	
Total	601	
42. Importers	4,230	4

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to § 1260.143. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef and beef products and, if warranted, shall recommend reapportionment of units and/or the modification of the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members for each unit who shall serve on the Board:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products in to live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202, industry data and data published by the Department.

Section 1260.142 Term of Office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve, proportionately, for terms of one, two and three years. To the extent possible, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive three year terms in such capacity.

Section 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary shall solicit nominations for representation of that unit from individual producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by (1) organizations which represent importers of cattle, beef, or beef products, as determined by the Secretary, or (2) individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that such person submitting the nomination is an importer of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in § 1260.143 (a) or (b). In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate one qualified person for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary one nomination for each appointment to be made to represent that unit.

Section 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or any organization that has a contractual relationship with the Board.

Section 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143(a), the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Board of Directors of the Federation shall not be eligible for appointment to serve on the Board for a concurrent term.

Section 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers of the unit represented by the vacancy. If no eligible organization(s) represents producers in such unit, then the Secretary shall determine the manner in

which nominations for the vacancy are submitted.

Section 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

Section 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

Section 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

Section 1260.150 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an executive committee of no more than 11 or no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The Vice-Chairperson of the Board shall serve as Chairperson of the Executive Committee and the Chairperson and the Treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the executive committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel and facilities of established national non-profit industry-governed organizations to and to contract for the services of such organizations as it may deem necessary and define the duties and determine the manner of compensation for such services of each;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements including the Committee's anticipated expenses, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i) To establish an interest bearing escrow account with a bank which is a member of the Federal Reserve System and to deposit into such account an amount equal to the product obtained by multiplying—(1) the total amount of funds received by the Board during the period prior to the referendum; by (2) the greater of—

(ii) The average percentage of assessment refunds paid to producers under State beef promotion, research and consumer information programs financed through producer assessments, as determined by the Board for the year of 1985; or

(iii) 15 percent;

(j) To pay refunds to producers requesting refunds in a manner consistent with the following conditions:

(1) If continuation of this subpart is approved pursuant to the referendum, the Board shall continue to place the amounts required under (i) above in the escrow account until all requests for refunds are paid; or

(2) If the continuation of the order is not approved pursuant to the referendum and the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid.

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.161 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and

expand domestic and foreign markets and uses for beef and beef products.

Beef Promotion Operating Committee

Section 1260.161 Establishment and Membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the Chairperson, Vice-Chairperson and Treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, Vice-Chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a Qualified State Beef Council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are producers and are members or ex officio members of the Board of Directors of a Qualified State Beef Council on the Federation Board of Directors. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

Section 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

Section 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) above.

Section 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

Section 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, incurred by them in the performance of their duties under this subpart.

Section 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Chairperson of the Federation shall be Vice-Chairperson of the Committee.

(c) The Treasurer of the Board shall be Treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

Section 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the committee and pay the necessary and reasonable expenses and fees of the members of such committees;

Section 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national non-profit industry-governed organizations to utilize existing industry facilities, personnel and resources;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary, to enter into contracts or agreements with Established National Non-profit Industry Governed Organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.191 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or projects;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and

its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

Expenses

Section 1260.171 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal period. Such expenses shall be paid from assessments collected pursuant to §1260.172. Expenses for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to §1260.172 (a) and (b).

(b) The Board shall reimbuse the Secretary, from assessments collected pursuant to §1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) The Board shall establish an interest bearing escrow account with a bank that is a member of the Federal Reserve System and shall deposit in such account an amount equal to the percentage determined by the Board to be held in reserve for the payment of refunds pursuant to §1260.173.

Section 1260.172 Assessments.

(a) Each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar per head of cattle purchased and such collecting person shall remit the assessment to the Board or a Qualified State Beef Council pursuant to §1260.172(g).

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a Qualified State Beef Council or the Board an assessment on such cattle at the rate of one dollar per head of cattle or the equivalent thereof.

(c) The United States shall pay an assessment to the Board on all such cattle and beef or beef products in an amount determined by the Secretary, to be the equivalent of one dollar per head of cattle imported.

(d) In determining the assessment due from each producer pursuant to §1260.172 (a) and (b), a producer who is contributing to a Qualified State Beef Council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(e) In order for a producer described in § 1260.172 (a) and (b) to receive the credit authorized in § 1260.172(d), the Qualified State Beef Council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Beef Council.

(f) The collection of assessments pursuant to § 1260.172 (a), (b) and (c) shall begin with respect to cattle purchased or beef and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(g) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) and (b) shall remit the assessment to the Qualified State Beef Council in the State from which the cattle originated prior to sale, or if there is no Qualified State Beef Council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize Qualified State Beef Councils to propose modifications to the foregoing "state of origin" rule to ensure effective coordination of assessment collections between Qualified State Beef Councils. Qualified State Beef Councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, "rule of origin" means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the fifteenth day of the month following the month in which the cattle was purchased or marketed. The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products to the United States.

(h) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more than fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in § 1260.172 (a) and (b) above for use by a Qualified State Beef Council to fund activities similar to those described in § 1260.191, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then *any producer* subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(i) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the "Qualified State Beef Council" or "Cattlemen's Beef Promotion and Research Board." Remittances and reports specified in § 1260.201 shall be mailed to the location designated by the Board.

§ 1260.173 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this subpart shall have the right to demand and receive from the Board a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations

prescribed by the Board and approved by the Secretary.

Section 1260.174 Procedure for obtaining refund.

Each producer or importer who pays an assessment pursuant to the Act and this subpart during the period prior to the referendum may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(a) *Application form.* A producer or importer shall obtain a Board-approved refund application form from a Qualified State Beef Council or the Board. Such form may be obtained by written request to a Qualified State Beef Council or the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) *Submission of refund application to Board.* Any producer or importer requesting a refund shall mail an application on the prescribed form to a Qualified State Beef Council or the Board within 60 days from the date the assessments were due by such producer or importer. The refund application shall show (1) the producer's or importer's name and address; (2) collecting person's name and address; (3) number of head of cattle, or its equivalent on which a refund is requested; (4) total amount of refund requested; (5) date or inclusive dates on which assessments were paid; (6) certification that the producer or importer did not collect the assessment from another producer or importer; and (7) the producer's or importer's signature or properly witnessed mark.

(c) *Proof of payment of assessment.* The Account of Sale given to the producer or importer by the collecting person or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's or the importer's refund application.

(d) *Payment of refunds.* Board shall pay refund requests or a prorata share thereof within 90 days of the date the results of the referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1260.150(j).

Section 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were 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. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considerd to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Qualified State Beef Council or Board, whichever is earlier.

Section 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172(g). Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.

Section 1260.181 Qualified State Beef Councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(d) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State Beef Council to be certified by the Board as a Qualified State Beef Council, the Council must:

(1) Conduct activities as defined in § 1260.191 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such Council will collect assessments paid on cattle originating from the State or unit within which the Council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the Council, minus authorized credits issued to producers pursuant to § 1260.172(d), by the last day of the month in which the assessment was remitted to the Qualified State Beef Council;

(5) Councils which are authorized or required to pay refunds to producers must certify to the Board that any requests from producers for refunds from the Council for contributions to such Council by the producer will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to the Council pursuant to § 1260.172(d);

(6) Certify to the Board that the Council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such Council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use Council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

Section 1260.191 Promotion, Research, Consumer Information and Industry Information.

The Committee shall receive and evaluate or, on its own initiative develop, and submit to the Secretary for approval any plans for projects authorized in §§ 1260.149, 1260.150, 1260.167, 1260.168, and this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this

section shall be periodically reviewed or evaluated by the Committee to insure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. In addition, no such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

Reports, Books and Records

Section 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers or exporting such cattle, beef or beef products, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall be required to report to the Board periodically such information as may be required by the regulations prescribed by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance if less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

Section 1260.202 Books and Records.

Each person who is subject to this subpart, and other persons subject to § 1260.201, shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

Section 1260.203 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed to them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit: (a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and (b) the publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

Section 1260.212 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or,

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

Section 1260.213 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a Qualified State Beef Council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, of such member of employee,

except for acts of dishonesty or willful misconduct.

Section 1260.214 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with (a) above.

Section 1260.215 Amendment.

Amendments to the subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to §§ 1260.250 through 1260.258 of this part, or by any interested person affected by the provisions of the Act, including the Secretary.

Section 1260.216 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Done at Washington, DC, March 11, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

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