

Title 24—Housing and Urban Development  
 CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-432]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE  
 Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the fourth column of the table is followed by a designation which indicates whether the date signifies (1) the effective date of the authorization of the sale of flood insurance in the area under the emergency or under the regular flood insurance program; (2) the effective date on which the community became ineligible for the sale of flood insurance because of its failure to submit land use and control measures as required pursuant to § 1909.24(a); or (3) the effective date of a community's formal reinstatement in the program pursuant to § 1909.24(b). The entry reads as follows:

§ 1914.4 Status of participating communities.

| State        | County           | Location                  | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|--------------|------------------|---------------------------|---|------------------------|----------------------|----------------------|
| Alabama      | Lowndes          | Benton, town of           | Dec. 11, 1974. Suspension withdrawn.                                |                        |                      |                      |
| California   | Los Angeles      | San Fernando, city of     | Dec. 23, 1974 Emergency   |                        |                      |                      |
| Illinois     | Moultrie         | Lovington, village of     | do  | June 7, 1974           |                      |                      |
| Iowa         | Mills            | Pacific Junction, town of | do  | June 28, 1974          |                      |                      |
| Louisiana    | Lafourche Parish | Golden Meadow, town of    | Dec. 11, 1974. Suspension withdrawn.                                |                        |                      |                      |
| Minnesota    | Pennington       | St. Iliaire, city of      | Dec. 23, 1974 Emergency   | Sept. 20, 1974         |                      |                      |
| Nebraska     | Hamilton         | Amora, city of            | do  | May 3, 1974            |                      |                      |
| Do           | Saline           | DeWitt, village of        | do  | Dec. 7, 1973           |                      |                      |
| Do           | Otoe             | Talmage, village of       | do  | Sept. 13, 1974         |                      |                      |
| New York     | Tompkins         | Ulysses, town of          | do  | June 14, 1974          |                      |                      |
| Ohio         | Warren           | Lebanon, city of          | do  | May 10, 1974           |                      |                      |
| Oregon       | Lane             | Crosswell, city of        | do  | Dec. 28, 1973          |                      |                      |
| Pennsylvania | Beaver           | West Mayfield, borough of | do  |                        |                      |                      |
| South Dakota | Davison          | Mitchell, city of         | do  | Mar. 22, 1974          |                      |                      |
| Wisconsin    | Sauk             | Plain, village of         | do  |                        |                      |                      |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: December 16, 1974.

J. ROBERT HUNTER,  
 Acting Federal Insurance Administrator.

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[Docket No. FI-433]

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§ 1914.4 Status of participating communities.

| State        | County     | Location                 | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|--------------|------------|--------------------------|---|------------------------|----------------------|----------------------|
| Georgia      | Evans      | Claxton, city of         | Dec. 19, 1974. Emergency  | June 28, 1974          |                      |                      |
| Iowa         | Chickasaw  | Nashua, city of          | do  | May 25, 1974           |                      |                      |
| Michigan     | Ontonagon  | Carp Lake, township of   | do  |                        |                      |                      |
| Mississippi  | Holmes     | Tchula, town of          | do  | Jan. 23, 1974          |                      |                      |
| Missouri     | St. Louis  | Shrewsbury, city of      | do  | Mar. 29, 1974          |                      |                      |
| New Jersey   | Camden     | Gloucester, city of      | do  | June 28, 1974          |                      |                      |
| New York     | Oneida     | Camden, village of       | do  |                        |                      |                      |
| Oklahoma     | Oklahoma   | Nichols Hills, city of   | do  | Dec. 20, 1974          |                      |                      |
| Pennsylvania | McKean     | Norwich, township of     | do  |                        |                      |                      |
| Do           | Warren     | Youngsville, borough of  | do  | Apr. 12, 1974          |                      |                      |
| Texas        | Montgomery | Whispering Oaks, town of | do  |                        |                      |                      |
| Do           | Navarro    | Corseana, city of        | do  | Dec. 27, 1974          |                      |                      |
| Utah         | Salt Lake  | Murray, city of          | do  | Mar. 29, 1974          |                      |                      |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Public Law 91-152, Dec. 24, 1969), 42 U.S.C. 4001-4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.

Issued: December 16, 1974.

J. ROBERT HUNTER,  
 Acting Federal Insurance Administrator.

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## RULES AND REGULATIONS

## Title 25—Indians

## CHAPTER I—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

## SUBCHAPTER H—ECONOMIC ENTERPRISES

## PART 80—INDIAN BUSINESS DEVELOPMENT PROGRAM

## Revision of Part

DECEMBER 23, 1974.

This notice is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

Beginning on page 31984 of the September 3, 1974, FEDERAL REGISTER (39 FR 31984), there was published a notice of proposed rulemaking to revise Part 80, Subchapter H, Chapter I, of Title 25 of the Code of Federal Regulations. This revision is made pursuant to the authority contained in Section 404 of the Act of April 12, 1974 (88 Stat. 77).

The purpose of this revision of Part 80 is to prescribe the regulations and procedures under which non-reimbursable grants will be used to stimulate and increase Indian entrepreneurship and employment through acquisition, establishment and expansion of profitmaking Indian-owned economic enterprises which will contribute to the economy of Indian reservations.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed revision. During this period, comments and suggestions were submitted by interested persons. All comments and suggestions received were analyzed and considered in revising the proposed regulations. Several of the comments and suggestions pertained to expanding the grant program which would require legislative action to change the Indian Financing Act of 1974.

The following major revisions were made to the proposed regulations as a result of the comments received:

1. To provide space for additional sections, if subsequently needed, §§ 80.5, 80.6, 80.13, 80.14 and 80.19 have been reserved. This made it necessary to renumber the sections.

2. Several changes were made to the definitions in § 80.1. Unterminated California rancherias were added to the definition of "reservation" in paragraph (j). Agriculture was added to the definition of "economic enterprise" in paragraph (k). "Grantee" was defined in a new paragraph (p). "Cooperative association" was defined in a new paragraph (q). "Corporation" was defined in a new paragraph (r). "Partnership" was defined in a new paragraph (s).

3. Section 80.3, *Eligible applicants*. This section was expanded and refined to clarify the meaning of Indian ownership and control of an economic enter-

prise. Added provision to permit organization under tribal law.

4. Section 80.7, *Location of enterprise*. Added requirement that economic enterprises which are or will be operated on a reservation must comply with all requirements of applicable rules, resolutions or ordinances adopted by the governing body of the tribes, if applicable.

5. Section 80.12, *Content of application*. A new paragraph (g) was added to this section requiring the preparation of a plan of operation acceptable to the lender and the Commissioner.

6. Section 80.17, *Limits of authority*. The title of this section was changed to "Grant limitations and requirements." Paragraph (a) was changed to clarify the requirement for a grant applicant to contact lenders in the area when information in the application indicates applicant may be able to obtain a loan for the total amount of financing required, without a grant. Paragraph (f) was revised to permit use of grant funds for refinancing or debt consolidation where approval is justified and required due to the financial position of an applicant and is clearly to the advantage of an applicant. A new paragraph (h) was added, establishing the conditions under which an application for a second grant will not be approved.

7. Section 80.18, *Written notice*. This is a new section which requires written notice to grant applicant whose application is disapproved of right to appeal under 25 CFR 2.

8. Section 80.20, *Disbursement of grant funds*. A provision was added to prohibit the disbursement of grant funds to a grantee until the lender making the loan has notified the Commissioner that a loan has been approved for the applicant for the amount of loan financing needed.

9. Section 80.21, *Return of unused funds*. This section has been added to require grantees to return grant funds if the enterprise is not initiated within the time stated in the grant agreement.

10. Section 80.22, *Reports*. This section was expanded to require reports from grantees for a longer period and semi-annually for the first two years after receipt of grant.

Other minor revisions were made for the purpose of clarification and understanding.

It is necessary that this program be initiated as soon as possible in order to prevent eligible Indians and Indian organizations from losing the business opportunities for which they immediately need the grants authorized by these regulations. Therefore, good cause is found for dispensing with the 30-day deferred effective date of these regulations under the exception provided in subsection (d) (3) of 5 U.S.C. 553 (1970). Accordingly, these regulations will become effective upon date of publication in the FEDERAL REGISTER.

As revised, Part 80 of Subchapter H, Chapter I, Title 25 of the Code of Federal Regulations reads as follows:

|       |  |
|-------|--|
| Sec.  | Definitions.                                       |
| 80.1  | Purpose.   |
| 80.2  | Eligible applicants.                               |
| 80.3  | Eligible economic enterprises.                     |
| 80.4  | [Reserved]   |
| 80.5  | [Reserved]   |
| 80.6  | [Reserved]   |
| 80.7  | Location of enterprise.                            |
| 80.8  | Priority criteria.                                 |
| 80.9  | Environmental and flood disaster protection.       |
| 80.10 | Preservation of historical and archeological data. |
| 80.11 | Management and technical assistance.               |
| 80.12 | Content of application.                            |
| 80.13 | [Reserved]   |
| 80.14 | [Reserved]   |
| 80.15 | Application procedures.                            |
| 80.16 | Grant approval authority.                          |
| 80.17 | Grant limitations and requirements.                |
| 80.18 | Written notice.                                    |
| 80.19 | [Reserved]   |
| 80.20 | Disbursement of grant funds.                       |
| 80.21 | Return of unused funds.                            |
| 80.22 | Reports.   |

AUTHORITY: Sec. 404, 88 Stat. 77.

## § 80.1 Definitions.

As used in this Part 80:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Area Director" means the Bureau official in charge of an Area Office or his authorized representative.

(d) "Superintendent" means the Bureau official in charge of a Bureau Agency office or other local office reporting to an Area Director.

(e) "Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any Native as defined in paragraph (f) of this section.

(f) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(g) "Tribe" means any Indian tribe, band, group, pueblo or community and any Native village or Native group (including corporations organized by Kenai, Juneau, Sitka and Kodiak) as defined in paragraphs (h) and (i) of this section, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(h) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (85 Stat. 688), or which

meets the requirements of the Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(i) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality.

(j) "Reservation" means Indian reservations, unincorporated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

(k) "Economic enterprise" means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than fifty-one percent of the enterprise.

(l) "Organization" means the governing body of any Indian tribe, as defined in paragraph (g) of this section, or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77).

(m) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.

(n) "Personally operated enterprise" means a business activity personally owned and operated, and managed by an individual grantee on a full or part-time basis, with or without hired labor.

(o) "Profits" means the net income earned after deducting operating expenses from operating revenues.

(p) "Grantee(s)" means the recipient(s) of a nonreimbursable grant under this part.

(q) "Cooperative Association" means an association of individuals organized pursuant to state, federal or tribal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

(r) "Corporation" means an entity organized pursuant to state, federal or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

(s) "Partnership" means two or more persons engaged in the same business, sharing its profits and risks, organized pursuant to State, Federal, or Tribal law.

**§ 80.2 Purpose.**

The purpose of this Part 80 is to prescribe the regulations and procedures under which non-reimbursable grants may be made to eligible applicants to stimulate and increase Indian entrepreneurship and employment through establishment, acquisition or expansion of profit-making Indian-owned economic enterprises which will contribute to the economy of a reservation.

**§ 80.3 Eligible applicants.**

Applications for grants may be accepted only from individual Indians, Indian tribes, Indian partnerships, corporations or cooperative associations authorized to do business under State, Federal, or Tribal law. These applicants must have a form of organization acceptable to the Commissioner and unable to meet their total financing needs from their own resources and by loans from other sources such as banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, and Federal Land Banks. Associations, corporations or partnerships shall be at least fifty-one percent owned by eligible Indians or an eligible Indian tribe. This Indian ownership must actively participate in the management and operation of the economic enterprise by representation on the board of directors of a corporation or cooperative association proportionate to the Indian ownership which will enable the Indian owner(s) to control management decisions. The legal organization documents will provide for the number of Indians which are to be on the board of directors, how they along with other directors will be elected or appointed and qualifications required as a condition for becoming a member of the board of directors. The legal organization documents shall provide safeguards which will prevent Indian ownership and control from decreasing below fifty-one percent. Evidence of Indian ownership in a cooperative association or corporation will be evidenced by stock ownership, if stock is or has been issued, or by other evidence satisfactory to the Commissioner. Partnerships will be evidenced by written partnership agreements which show the percentage of Indian ownership, role and authority in making management decisions in controlling the operation of the economic enterprise.

**§ 80.4 Eligible economic enterprises.**

An economic enterprise as defined in § 80.1(k) is eligible to receive equity capital through non-reimbursable grants if it is or will be self-sustaining and profit-oriented and will create employment for Indians. In the case of Indian-owned cooperative associations, they must distribute or allocate profits for later distribution, to members who are patrons, unless prohibited from doing so by law.

**§ 80.5 [Reserved]**

**§ 80.6 [Reserved]**

**§ 80.7 Location of enterprise.**

To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation. Economic enterprises which are or will be operated on a reservation must comply with the requirements of applicable rules, resolutions or ordinances

adopted by the governing body of the tribe, if applicable.

**§ 80.3 Priority criteria.**

The following priority will be used in selecting economic enterprises for grant funding:

(a) *First priority.* First priority will be given to economic enterprises located on a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Create the highest ratio of income to a tribe or its members in relation to the total amount of dollars to be invested, including market value of materials or equipment contributed to the project.

(4) Generate the most non-Bureau financing.

(b) *Second priority.* Second priority will be given to projects located in the immediate vicinity of a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Generate the most non-Bureau financing.

**§ 80.9 Environmental and flood disaster protection.**

Grant funds will not be advanced until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), the National Environmental Policy Act (Pub. L. 91-190), 42 U.S.C. 4321 and Executive Order 11514.

**§ 80.10 Preservation of historical and archeological data.**

The Commissioner, before approving a grant where the grant funds and/or the loan funds will be used to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites, will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220 (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data.

**§ 80.11 Management and technical assistance.**

(a) Concurrent with the approval of a grant to finance an Indian economic enterprise, the Commissioner will insure that competent management and technical assistance is available to the grantee consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed. Assistance may be provided by available Bureau of

Indian Affairs staff, other government agencies including states, tribes, or other sources which the Commissioner considers competent to provide needed assistance. It is intended that contracting for management and technical assistance be used only when adequate assistance is not available without cost. Contracts entered into in order to provide grantees with competent management and technical assistance shall be in accordance with applicable sections of the Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter 153 (35 Stat. 71) as amended June 25, 1910, chapter 431, section 25, (36 Stat. 861).

(b) The lender providing the loan funds under § 80.17(b) to finance an economic enterprise will include with the grantee's application the need for equity capital, the lender's evaluation of the applicant's need for management and technical assistance, specific areas of need and whether the lender will provide such assistance to the applicant.

#### § 80.12 Content of application.

Applications shall be on a form prescribed by the Commissioner which shall at the minimum include:

(a) Total capital requirement, including operating capital required until such time as the cash generated from operations will be sufficient to make the enterprise self-sustaining.

(b) Amount of total financing required as well as what is obtainable from other sources, including the applicant's personal resources, and a statement of terms and conditions under which any borrowed portion is obtainable.

(c) Capital deficiency, which will be the basis for the amount of grant requested.

(d) Pro forma balance sheets and operating statements showing estimated expenses, income and net profit from operations for three years following receipt of the requested grant.

(e) Annual operating statements and balance sheets, audited if available, for the prior two years or applicable years for enterprises already in operation.

(f) Current financial statements, consisting of a balance sheet and operating statement.

(g) A plan of operation which shall be acceptable to the lender making the loan and the Commissioner.

#### § 80.13 [Reserved]

#### § 80.14 [Reserved]

#### § 80.15 Application procedures.

Applications are to be submitted to the Superintendent having administrative jurisdiction over the reservation on which an enterprise will be or is located. If the enterprise site is near two or more reservations, application is to be made to the Superintendent having administrative jurisdiction over the reservation nearest to the location of the enterprise which the enterprise will benefit economically.

#### § 80.16 Grant approval authority.

Applications for grants require approval by the Commissioner.

#### § 80.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Commissioner the applicant is unable to obtain adequate financing from other sources such as banks, Farmers Home Administration, Production Credit Associations, Federal Land Banks and, is also unable to obtain a guaranteed or insured loan under Title II of the Indian Financing Act of 1974 (88 Stat. 77). Prior to making any grant, the Commissioner shall assure that, where practical, the applicant has reasonably made available for loan security and/or for input into the economic enterprise collateral or funds from his own resources. If the information in an application indicates that it may be possible for the applicant to obtain financing without a grant, the Commissioner will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

(b) A grant may be made only to an applicant who is able to obtain at least 60 percent of the necessary financing from other sources.

(c) No grant in excess of \$50,000 may be made to any applicant.

(d) Revolving loan funds as prescribed in Title I of the Indian Financing Act of 1974 and guaranteed or insured loans as prescribed in Title II of said Act may not be used as the sources of the loan portion of the total financing requirement if financing from other governmental or institutional lenders is available on reasonable terms and conditions. If a loan is not available from other sources, guaranteed or insured loans under the provisions of Title II of said Act may then be considered. If a guaranteed or insured loan is not available loans under the provisions of Title I of said Act may then be considered. Applicants for a loan from either source must meet the eligibility requirements for such loans.

(e) A grant will not be approved unless there is assurance the applicant can and will be provided with needed competent technical and management assistance commensurate with the nature of the enterprise to be funded and the knowledge and management skills of the applicant.

(f) Grant funds may not be used for refinancing or debt consolidation unless approval is justified and required due to the applicant's financial position and is clearly to the advantage of the grant applicant.

(g) Ordinarily, no more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to the same applicant for a new project or expansion of the original project. An addition grant will not be approved for an economic enterprise previously funded under the provisions

of Title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grants made shall not exceed \$50,000. Information to be submitted with the application will include at a minimum the following:

(1) Use made of the prior grant. Where practical, evidence of such use shall be furnished.

(2) Evidence of competent management.

(3) Maintenance of adequate accounting records.

(4) That the operation is profitable as evidenced by operating statements and balance sheets prepared from the accounting records.

(5) That expansion will increase the net profit and/or increase Indian employment.

(h) An application for a second grant will not be approved if the applicant:

(1) has not complied with the reporting requirements in connection with the first grant, or (2) has not followed the plan of operation, if any, developed for the management and operation of the economic enterprise, or (3) did not follow and use the management and technical assistance furnished, or (4) is in violation of one or more provisions of the loan agreement entered into between the applicant and the lender who furnished the loan portion of the financing in connection with the first grant.

(i) An applicant for an expansion grant must meet the same eligibility requirements as an original applicant.

#### § 80.18 Written notice.

The applicant for a grant which is disapproved will be notified by letter, stating the reasons for disapproval and the right of appeal pursuant to 25 CFR § 2.21, et seq. A copy of the letter will be sent to the prospective lender.

#### § 80.19 [Reserved]

#### § 80.20 Disbursement of grant funds.

Unless otherwise provided by an agreement between a lender and the grantee, the Commissioner may in his discretion advance grant funds directly to a grantee. He may require the funds to be deposited in a special account at the appropriate Agency headquarters office or deposited in a joint account in a bank and disbursed as needed by the grantee. The terms of a lender's loan agreement may require the lender's approval before disbursement of the funds. Grant funds will not be disbursed to a grantee until the Commissioner has been informed by the lender that a loan has been approved for the grantee in the amount of the loan financing needed.

#### § 80.21 Return of unused funds.

Grantees will be required to return unused grant funds to the Commissioner if the economic enterprise for which the grant was approved is not initiated, i.e., lease obtained, if needed, construction started, equipment purchased or other, within the time stated in the grant agreement. The Commissioner may, if warranted by circumstances beyond the control of the grantee, extend the time to

allow for initiation of the enterprise, provided there is assurance the enterprise will be initiated forthwith within the extended time period. The Commissioner will notify the lender in writing of a proposed action to require the return of grant funds or of a proposal to extend the time.

§ 80.22 Reports.

(a) Grantees are required to furnish the Commissioner comparative balance sheets and profit and loss statements semi-annually for the first two years of operation following receipt of the grant, and annually thereafter for the succeeding three years. These may be copies of financial statements required by and furnished to the lender which provided the loan portion of the total financing required. If the lender does not require financial statements, the grantee must prepare and furnish copies of comparative balance sheets and profit and loss statements to the Commissioner.

(b) The Commissioner will establish accounting and reporting systems which will appropriately show the status of the Indian Business Development Program at all times.

RAYMOND V. BUTLER,  
Acting Deputy Commissioner  
of Indian Affairs.

[FR Doc.74-30254 Filed 12-26-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T. D. 7338]

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Temporary Regulations Relating to Elections With Respect to Retroactive Amendments

This document contains temporary income tax regulations (26 CFR Part 11) under section 412(c) (8) of the Internal Revenue Code, as added by section 1013 of the Employee Retirement Income Security Act of 1974, in order to provide rules for elections with respect to retroactive plan amendments pursuant to both section 412(c) (8) of the Code and section 302(c) (8) of such Act.

Section 412 of the Internal Revenue Code of 1954 provides minimum funding standards for certain pension plans. Subsection (c) (8) of section 412 provides that certain plan amendments adopted after the close of the plan year may be given retroactive effect.

Under section 412(c) (8), a plan amendment adopted after the close of a plan year will be deemed to have been made on the first day of the plan year at the election of the plan administrator as long as the amendment does not reduce the accrued benefit of any participant determined as of the beginning of such plan year.

For multiemployer plans, an amendment must be adopted no later than two years after the close of the plan year. In the case of all other plans, the amendment must be adopted no later than two and one-half months after the close of the plan year.

If an amendment reduces the accrued benefit of any participant determined as of the date of adoption of the amendment, approval of the Secretary of Labor must be requested before an election as to retroactive application can take effect. Approved by the Secretary of Labor is based on a finding of substantial business hardship in accordance with the factors outlined in section 412(d) (2) of the Code, and a determination that a waiver by the Secretary of the Treasury for substantial business hardship under section 412(d) (1) of the Code is unavailable or inadequate.

The temporary regulations provide, in general, that the election under section 412(c) (8) of the Code is to be made by attaching a statement of election to the annual information return required to be filed by the employer or plan administrator under section 6058 of the Code. The statement of election must state the date the plan year ended and the date the amendment was adopted. It must also contain a statement that the amendment does not reduce the accrued benefit of any employee as of the beginning of the plan year in question. In addition, it must contain either (1) a statement that the amendment does not reduce any accrued benefits as of the date of adoption, or (2) a copy of the notice filed with the Secretary of Labor and a statement as to whether approval has been granted, or the Secretary has failed to act within 90 days.

The report of the Conference Committee on the Employee Retirement Income Security Act of 1974 states that section 412(c) (8) was intended to allow amendments that retroactively reduce accrued benefits only in a situation where (1) there would otherwise be an accumulated funding deficiency for all or part of the plan year, (2) the funding deficiency could not be avoided through the implementation of any other reasonably available alternative (such as a waiver of the minimum funding requirements under section 412(d) or an extension of the amortization period under section 412(e)), and (3) the funding deficiency was not primarily attributable to the failure by employers to discharge contractual obligations to make contributions under the plan.

Special rules provide for the making of elections after the annual information return has been filed. The temporary regulations apply for purposes of section 412(c) (8) of the Code and section 302(c) (8) of the Employee Retirement Income Security Act of 1974 (88 Stat. 872).

*Amendments to the regulations.* In order to prescribe temporary regulations relating to elections with respect to retroactive plan amendments pursuant to section 412(c) (8) of the Internal Revenue Code of 1954, as added by section 1013 of the Employee Retirement Income

Security Act of 1974 (P.L. 93-406, 88 Stat. 917) and section 302(c) (8) of such Act (88 Stat. 872), the following temporary regulations are hereby adopted:

§ 11.412(c)-7 Election to treat certain retroactive plan amendments as made on the first day of the plan year.

(a) *General rule.* Under section 412(c) (8), a plan administrator may elect to have any amendment which is adopted after the close of the plan year to which it applies deemed to have been made on the first day of such plan year if the amendment—

(1) Is adopted no later than 2 and one-half months after the close of such plan year (or, in the case of a multi-employer plan, no later than 2 years after the close of such plan year),

(2) Does not reduce the accrued benefit of any participant determined as of the beginning of such plan year, and

(3) Does not reduce the accrued benefit of any participant determined as of the time of adoption of the amendment, or, if it does so reduce such accrued benefit, it is shown that the plan administrator filed a notice with the Secretary of Labor notifying him of the amendment, and—

(i) The Secretary of Labor approved the amendment, or

(ii) The Secretary of Labor failed to disapprove the amendment within 90 days after the date on which the notice was filed.

(b) *Time and manner of making election.* (1) The election under section 412(c) (8) shall be made by the plan administrator by a statement of election described in subparagraph (3) of this paragraph, attached to the annual return relating to minimum funding standards required to be filed under section 6058 with respect to the plan year to which the election relates.

(2) In the event that an amendment to which paragraph (a) of this section applies is adopted after the filing of the annual return required under section 6058, the plan administrator may make the election under section 412(c) (8) by attaching a statement of election, described in paragraph (b) (3) of this section, to a copy of such annual return, and filing such copy no later than the time allowed for the filing of such returns under section 6058. (In the case of multiemployer plans, such copy may be filed within a 24 month period beginning with the date prescribed for the filing of such returns.)

(3) The statement of election filed by or on behalf of the plan administrator shall—

(i) State the date of the close of the first plan year to which the amendment applies and the date on which the amendment was adopted;

(ii) Contain a statement that the amendment does not reduce the accrued benefit of any participant determined as of the beginning of the plan year preceding the plan year in which the amendment is adopted; and

(iii) Contain either—

(A) A statement that the amendment does not reduce the accrued benefit of any participant determined as of the time of adoption of such amendment, or

(B) A copy of the notice filed with the Secretary of Labor under section 412(c) (8) and a statement that either the Secretary of Labor has approved the amendment or he has failed to act within 90 days after notification of the amendment.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7806 Internal Revenue Code of 1954 68A Stat. 917 (26 U.S.C. 7805))

Approved: December 20, 1974.

[SEAL] DONALD C. ALEXANDER,  
Commissioner of Internal Revenue.

FREDERICK W. HICKMAN,  
Assistant Secretary of the Treasury.

[FR Doc. 74-30277 Filed 12-26-74; 8:45 am]

#### Title 29—Labor

### CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

#### PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

##### Hawaii Plan; Approval of Occupational Health Plan

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations provides procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and Part 1902 of this chapter. On January 4, 1974, a notice was published in the FEDERAL REGISTER (39 FR 1010) of the approval of the Hawaii plan and of the adoption of Subpart Y of Part 1952 containing the decision of approval. On April 16, 1974, the State of Hawaii submitted a supplement to the plan involving developmental changes (see Subpart B of 29 CFR Part 1953). On October 21, 1974, a notice was published in the FEDERAL REGISTER (39 FR 37440) concerning the submission of this supplement to the Assistant Secretary of Labor for Occupational Safety and Health and the fact that the question of its approval was before him.

The supplement contained the occupational health plan for Hawaii. The plan provides that responsibility for the Hawaii occupational health program will be lodged in the Branch of Occupational Health of the Department of Labor and Industrial Relations, Division of Occupational Safety and Health. The Branch is to be fully staffed with a complement of ten persons within the three year developmental period. The

supplement also provides for the participation of State laboratory services in the proficiency testing program operated by the National Institute for Occupational Safety and Health and also includes the Hawaii Occupational Health Laboratory Standard Procedures Manual. Joint funding of the occupational health program by the State and Federal governments under section 23(g) of the Act (29 U.S.C. 672(g)) is provided.

In addition, the developmental schedule for the implementation of the Hawaii occupational health program has been revised by the supplement. Full implementation of the occupational health program is now scheduled for January 1975, rather than December 1974.

Interested persons were afforded at least 30 days from the publication of the proposed supplement in the FEDERAL REGISTER to submit written comments or request an informal hearing concerning the supplements.

2. *Issues.* No comments or requests for a hearing were received during the period provided for public comments. However, in the course of the review of the supplement by the Assistant Secretary, the adequacy of the Hawaii procedures for the safeguarding of samples submitted for analysis was questioned, particularly in regard to their acceptance as evidence in any legal proceedings which might arise. By letter dated November 19, 1974, the State has provided assurances that a supplement will be added to its Occupational Health Laboratory Standard Procedures Manual which would provide adequate safeguards for samples submitted for analysis.

3. *Decision.* After consideration of the Hawaii plan supplement and the assurances of November 19, 1974, incorporated in it, it is hereby approved under Subpart B of 29 CFR Part 1953. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In accordance with this decision, Subpart Y of 29 CFR Part 1952 is amended as set forth below, effective December 20, 1974.

1. Section 1952.133 is corrected to be numbered § 1952.313; paragraphs 1 through 5 of renumbered § 1952.313 are redesignated as paragraphs (a) through (e) respectively, and redesignated paragraph (d) is amended to read as follows:

##### § 1952.313 Developmental schedule.

(d) Complete implementation of occupational health program in January 1975.

2. Section 1952.314 of Subpart Y (appearing at 39 FR 44203; Dec. 23, 1974) is amended by inserting "(a)" before the first paragraph and by adding a new paragraph, (b), to read as follows:

##### § 1952.314 Completed developmental steps.

(b) In accordance with § 1952.313(d), as amended, the Hawaii Occupational

Health Plan was submitted to the Assistant Secretary on April 16, 1974, and approved on December 20, 1974, incorporating assurances from the State, by letter dated November 19, 1974.

(Secs. 8(g) (2), 18, Pub. L. 84 Stat. 1600, 1608 (29 U.S.C. 657(g) (2), 667))

Signed at Washington, D.C. this 20th day of December 1974.

JOHN STENDER,  
Assistant Secretary of Labor.

[FR Doc. 74-30227 Filed 12-26-74; 8:45 am]

#### Title 33—Navigation and Navigable Waters

### CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

#### PART 204—DANGER ZONE REGULATIONS

##### Gulf of Mexico, Florida and Strait of Juan De Fuca, Washington

1. a. On September 13, 1974, the Department of the Army, acting through the Chief of Engineers, published in the FEDERAL REGISTER (39 FR 33003) proposed regulations to amend the present regulations in 33 CFR 204.120 which governs the use of navigation of danger zones in the Gulf of Mexico, southeast of St. Andrew Bay, east entrance, Florida.

b. The public comment period for this regulation expired on October 15, 1974. No comments were received.

c. The Department of the Army, acting through the Corps of Engineers is publishing herewith the final regulations as set forth below.

2. a. On October 9, 1974, the Department of the Army, acting through the Chief of Engineers, published in the FEDERAL REGISTER (39 FR 36347 and 36348) regulations to govern the use and navigation of a restricted area in the Strait of Juan de Fuca in the vicinity of Smith Island, Washington.

b. The comment period for this regulation expired on November 8, 1974. No comments were received.

c. The Department of the Army, acting through the Corps of Engineers is publishing herewith the final regulations as set forth below.

By authority of the Secretary of the Army.

FRED R. ZIMMERMAN,  
Chief,  
Plans Office, TAGO.

Accordingly, §§ 204.120(a) (1) and 204.220 are revised to read as follows:

§ 204.120 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, Small Arms Firing Range, Tyndall Air Force Base, Fla.

(a) *The Danger Zones*—(1) *Area No. 1.* The waters of the Gulf of Mexico, southeast of St. Andrew Bay East Entrance within a rectangular area beginning at a point on shore at latitude 30°04'32", longitude 85°37'07"; thence to latitude 30°03'03", longitude 85°38'42"; thence to latitude 30°02'14", longitude 85°37'15"; thence to a point on shore at latitude 30°04'13", longitude