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Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7650]

Election of application of sections 382 and 383 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation relating to the election to apply sections 382 and 383 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1976. Changes to the applicable law were made by the Tax Reform Act of 1976 and by the Revenue Act of 1978. This regulation affects all persons who may have relied on the 1976 Act changes to sections 382 and 383 (relating to limitations on carryovers resulting from corporate acquisitions), and who, pursuant to the Revenue Act of 1978, elect to have those changes apply, and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: October 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mark L. Yecies of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, (202-566-3464, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under sections 382 and 383 of the Internal Revenue Code of 1954. Section 806(e) of the Tax Reform Act of 1976 (90 Stat. 1599) amended section 382 of the Code, relating to limitations on carryovers of net operating losses resulting from corporate acquisitions. Section 806(f)(2) of the Act (90 Stat. 1605) provided a parallel amendment to section 383, relating to limitations on carryovers of unused investment credits, work incentive program credits, foreign taxes, and capital losses, resulting from those same acquisitions. Section

806(g)(2) (90 Stat. 1605) provided, generally, that the amendment to section 382(a) (and section 383 as it relates to section 382(a)) would take effect for taxable years beginning after June 30, 1978. Section 806(g)(3) (90 Stat. 1606) provided that the amendment to section 382(b) (and section 383 as it relates to section 382(b)) would apply to reorganizations occurring pursuant to plans adopted on or after January 1, 1978.

A number of technical problems regarding these 1976 Act amendments to sections 382 and 383 have been brought to the attention of Congress, which will require congressional consideration of additional revision of those provisions. Accordingly, section 368(a) of the Revenue Act of 1978 (92 Stat. 2857) postpones for 2 years the effective dates of the 1976 Act amendments. However, section 368(b) of the 1978 Act (92 Stat. 2857) allows persons who may have relied on the 1976 Act changes to elect to have those changes apply with respect to certain transactions or reorganizations. This regulation provides rules for the making of this election.

Description of Regulation

A new provision, § 1.382-2, is added to the regulations. Section 1.382-2(a) provides, generally, that an election may be made to have sections 382 and 383, as amended by the Tax Reform Act of 1976, apply with respect to certain transactions or reorganizations. Section 1.382-2(b) indicates which taxpayer is required to make this election. Section 1.382-2(c)(1) provides, generally, that the election shall be made by making a statement on the taxpayer's timely filed income tax return for the taxable year in which the transaction(s) or reorganization occurs. Section 1.382-2(c)(1)(i) provides specific requirements as to the manner of making this election. However, § 1.382-2(c)(1)(ii) provides that, if the taxpayer's return was timely filed on or before November 26, 1979, and an election was made with that return, the election will be valid regardless of whether the election was made in the manner described in § 1.382-2(c)(1)(i). Section 1.382-2(d) provides that, if the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return for the taxable year in which the transaction(s) or reorganization occurs, an election made by the common parent under the rules of § 1.382-2(c) will be valid. Finally, § 1.382-2(e) provides, generally, that if an election is made, the 1976 Act amendments to sections 382 and 383 will apply with respect to all acquisitions

made by the acquiring person during the period in which the effective dates of those amendments would otherwise be postponed.

Drafting Information

The principal author of this regulation is Mark L. Yecies of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Waiver of Certain Procedural Requirements of Final Treasury Directive

Section 368(b)(2) of the Revenue Act of 1978 (92 Stat. 2857) requires the election described in section 368(b)(1) of the Act and in this regulation to be filed with a taxpayer's timely filed return for the first taxable year in which a covered transaction occurs. Accordingly, there is need for immediate guidance as to the making of this election. For this reason, it has been determined by the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that it is impractical to follow the procedures of paragraphs 8 through 14 of the final Treasury Directive relating to improving government regulations, appearing in the *Federal Register* for Wednesday, November 8, 1978 (43 FR 52120). Therefore, these requirements have not been followed.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. The following new section is added immediately after § 1.382(c)-1:

§ 1.382-2 Election of application of sections 382 and 383, as amended by the Tax Reform Act of 1976.

(a) *In general.* (1) An election may be made under this section to have sections 382(a) and 383 (as it relates to section 382(a)), as amended by the Tax Reform Act of 1976, apply with respect to transactions specified in section 382(a), as so amended, occurring—

(i) During the first taxable year beginning after June 30, 1978, of the loss corporation; and

(ii) Pursuant to a written binding contract or option entered into before September 27, 1978.

(2) An election may be made under this section to have sections 382(b) and 383 (as it relates to section 382(b)), as amended by the Tax Reform Act of 1976, apply with respect to any reorganization

specified in section 382(b), as so amended, occurring—

(i) Pursuant to a plan adopted on or after January 1, 1978, and before the end of the first taxable year beginning after June 30, 1978, of either the acquired or the acquiring corporation, whichever ends later; and

(ii) Pursuant to a written binding contract or option entered into before September 27, 1978.

(b) *Taxpayer making election.* (1) The election described in paragraph (a)(1) of this section shall be made by the loss corporation.

(2) In the case of a reorganization described in section 368(a)(1)(B), the election described in paragraph (a)(2) of this section shall be made by the loss corporation. In the case of all other reorganizations specified in section 382(b), as amended, the election shall be made by the acquiring corporation, as defined in § 1.381(a)-1(b)(2).

(3) For rules in the case where the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return, see paragraph (d) of this section.

(c) *Time and manner of making* (1)(i) Except as provided in paragraph (c)(2) of this section, the taxpayer shall make the election described in paragraph (a) of this section by making a written statement on its income tax return for the taxable year in which the transaction(s) or reorganization occurs. For the election to be valid, this return must be filed no later than the time prescribed by law (including extensions) for filing the return (hereafter "timely filed"). If the taxpayer takes a net operating loss deduction on this return, the statement shall be made on the schedule showing the computation of this deduction. Otherwise, the statement shall be made on a separate sheet of paper physically attached to the return. The statement shall briefly describe the transaction(s) or reorganization involved, and indicate that the taxpayer elects to have section 382 (a) or (b) and section 383, as amended by the Tax Reform Act of 1976, apply with respect to such transaction(s) or reorganization.

(ii) If the taxpayer's return for the taxable year in which the transaction(s) or reorganization occurs is timely filed on or before November 26, 1979, and the election described in paragraph (a) of this section is made with that return, the election will be valid regardless of whether the election is made in the manner provided in paragraph (c)(1)(i) of this section.

(2) If the taxpayer's return for the taxable year in which the transaction(s) or reorganization occurs was due before

February 6, 1979, and the taxpayer made the election described in paragraph (a) of this section before February 6, 1979, the election is valid regardless of whether the election was made with the taxpayer's timely-filed return for that year.

(d) *Consolidated returns.* If the loss corporation becomes a member of an affiliated group of corporations which files a consolidated return for the taxable year in which the transaction(s) or reorganization occurs, the election described in paragraph (a) of this section may be made by the common parent. If this paragraph (d) applies, the election shall be made as provided in paragraph (c) of this section, treating the common parent as the taxpayer and the consolidated return for the taxable year in which the transaction(s) or reorganization occurs as the relevant income tax return.

(e) *Effect of election.* (1) Generally, a person who acquires more than one loss corporation during the period in which the effective dates of the amendments to sections 382 and 383, made by the Tax Reform Act of 1976, would be postponed by section 368(a) of the Revenue Act of 1978 may not choose to have the 1976 Act amendments apply with respect to some but not all of these acquisitions. Accordingly, if an election is made under paragraph (a) of this section, sections 382 and 383, as amended, shall apply with respect to all such acquisitions made by that person during this period.

(2) For purposes of this paragraph, an acquisition means either of the following:

(i) An increase in ownership of the total fair market value of the outstanding stock of the loss corporation of 50 percentage points or more, during the period described in section 382(a), as amended, attributable to transactions described in that section. For purposes of this subdivision, "stock" means all shares except nonvoting stock which is limited and preferred as to dividends. In addition, as under section 382(a), a person's increase in stock ownership in the loss corporation shall be taken into account under this subdivision only to the extent the increase is reflected in that person's stock ownership on the last day of the corporation's taxable year.

(ii) A reorganization specified in section 382(b), as amended, in which the person, directly or indirectly, is the acquiring corporation.

Par. 2. Section 1.383-1 is amended by adding the following new sentence as the last sentence:

§ 1.383-1 Special limitations on carryovers of unused investment credits, work incentive program credits, foreign taxes, and capital losses.

* * * For the election to apply sections 382 and 383, as amended by the Tax Reform Act of 1976, see § 1.382-2.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue it with notice and public procedure 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.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: October 10, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79-33072 Filed 10-25-79; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 7651]

Tax Treatment of Cemetery Perpetual Care Funds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of certain distributions made by cemetery perpetual care funds for the care and maintenance of gravesites. Changes to the applicable tax law were made by the Act of October 17, 1976. The regulations would provide the public with the guidance needed to comply with that legislation and would affect cemetery perpetual care funds making distributions to taxable cemeteries for the care and maintenance of gravesites.

DATE: The amendments are effective for amounts distributed during taxable years ending after December 31, 1963.

FOR FURTHER INFORMATION CONTACT: Robert B. Coplan of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1978, the Federal Register published proposed amendments to the Income Tax

Regulations (26 CFR Part 1) under section 642(i) (formerly section 642(j), redesignated by section 113(a)(2)(B) of the Revenue Act of 1978 as section 642(i)) of the Internal Revenue Code of 1954 (432 FR 33936). The amendments were proposed to conform the regulations to Public Law 94-258 (90 Stat. 2483). A public hearing was held on November 29, 1978. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

In General

The final regulations are issued pursuant to section 642(i) of the Code, which provides that a portion of amounts distributed by certain cemetery perpetual care fund trusts for the care and maintenance of gravesites shall be treated as a deductible distribution under sections 651 and 661. Section 642(i) applies to a cemetery perpetual care fund only if the fund is taxable as a trust and was created pursuant to local law by a taxable cemetery corporation. The deduction is limited to an amount equal to \$5 multiplied by the aggregate number of gravesites sold by the cemetery before the beginning of the taxable year of the trust.

Changes Made in Response to Comments

Comments were received from the public suggesting that various changes be made to the proposed regulations. The most significant changes made in the final regulation in response to these comments are as follows:

1. Section 1.642(i)-1(a) has been clarified to indicate that the allowance of the deduction for distributions by care funds during taxable years after December 31, 1963 shall not have the effect of extending the statutory period of limitations provided in section 6511 of the Code. Therefore, refunds will not be made for distributions made during taxable years with respect to which the section 6511 period of limitations has expired.

2. A sentence has been added to § 1.642(i)-1(a) to provide that a care fund will be treated as having been created by a taxable cemetery corporation if the distributee cemetery is taxable, even though in the year the fund was established the distributee cemetery or a predecessor cemetery corporation which created the fund, was tax-exempt.

3. The rule for determining when a gravesite has been sold has been moved from § 1.642(i)-2(c) to § 1.642(i)-1(b), the paragraph containing the limitation to which it applies. The rule has been

broadened somewhat to allow so-called "welfare burials" to be considered as sold gravesites for purposes of the limitation. Although these gravesites are not actually "sold," a deposit is made for them in a perpetual care fund trust by the cemetery to provide for care and maintenance.

4. Paragraphs (b), (c) (1), and (c) (2) of § 1.642(i)-1 of the regulations have been clarified to reflect the fact that most care funds do not have an obligation to provide care and maintenance, but are only obligated to make distributions to the cemetery for the purpose of providing care and maintenance of gravesites.

5. Section 1.642(i)-1(b) has been revised to provide that the number of gravesites sold includes gravesites sold by a cemetery before a care fund trust law was in effect, provided that the cemetery cares for and maintains such gravesites. Section 1.642(i)-1(c)(1) has been revised to indicate that the obligation for care and maintenance of such gravesites may be established by the cemetery's practice of caring for and maintaining gravesites, such as welfare burial plots or gravesites sold before the enactment of a care fund trust law.

6. The proposed regulations provided in § 1.642(i)-1(c)(2)(i) that a fund's deduction in any taxable year would be limited to the amount of expenditures paid or incurred by the distributee cemetery corporation in the taxable year with or within which the fund's taxable year ends. Several comments sought revision of this rule because cemeteries and care funds often have different taxable years and because year-end distributions by a fund may not be spent until the following spring and summer by the distributee cemetery, when most care and maintenance expenditures are generally made. Consequently, the regulations have been revised to provide that a fund may claim a deduction under section 642(i) for distributions which are expended by the cemetery before the end of the fund's taxable year following the taxable year in which it makes the distributions. In order to avoid the necessity of amending the trust's return to account for cemetery expenditures made within 9½ months after the year of distribution, a 6-month extension of time for filing the trust's return is provided. The regulation provides that delayed expenditures of fund distributions by the cemetery will be considered reasonable grounds for granting the extension under section 6081(a). If portions of a distribution are not expended until the end of the year following the year of distribution, then

the trust's return must be amended to claim the deduction.

7. A large number of comments recommended that the limitation contained in § 1.642(i)-1(c)(2)(ii) of the proposed regulations be deleted. This limitation has been deleted, because the additional cost and burden of accounting for care and maintenance costs on a section-by-section basis would far outweigh the possible abuse sought to be curbed by the additional limitation.

8. A new paragraph (d) is added to § 1.642(i)-1 to provide that a trustee of a care fund will not be held personally liable for penalties resulting from his reliance on statements made and certified by a responsible cemetery officer with respect to the number of interments sold or the amount of expenditures made by the cemetery for the care and maintenance of gravesites.

9. The definition of "care and maintenance" in § 1.642(i)-2(d) of the proposed regulations is replaced by a provision which incorporates the definition of care and maintenance provided in the perpetual care fund law of the state in which a cemetery is located. If no suitable state law definition exists, then the definition provided in the regulations will apply. This change is being made to avoid the confusion that would result from the existence of different definitions for state law and federal tax law. In no event, however, is any portion of an officer's salary which is not attributable to services rendered in connection with care and maintenance to be considered as a cost of care and maintenance for purposes of computing the allowable deduction under section 642(i).

Definition of Cemetery Corporation

Several comments suggested that the definition of the term "cemetery corporation" in § 1.642(i)-2(a) be revised to include persons or entities which are not operated in corporate form. This suggestion was not adopted in the final regulations. The language of section 642(i) limits its application to perpetual care funds created by a "taxable cemetery corporation." The suggested revision would have extended the application of the section 642(i) deduction to a care fund created by a taxable cemetery even if operated in a form other than one which section 7701(a)(3) treats as a corporation. Since the term "corporation" is a defined term in section 7701(a)(3), we do not feel that we have the necessary authority to substantially expand the statutory definition as recommended by the commentators.

The effectiveness of these regulations after issuance will be evaluated on the basis of comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

The principal author of these regulations is Robert B. Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Sections 1.642 (i) and 1.642 (i)-1 are deleted and the following new sections are inserted in lieu thereof:

§ 1.642 (i)-1 Certain distributions by cemetery perpetual care funds.

(a) *In general.* Section 642 (i) provides that amounts distributed during taxable years ending after December 31, 1963, by a cemetery perpetual care fund trust for the care and maintenance of gravesites shall be treated as distributions solely for purposes of sections 651 and 661. The deduction for such a distribution is allowable only if the fund is taxable as a trust. In addition, the fund must have been created pursuant to local law by a taxable cemetery corporation (as defined in § 1.642 (i)-2 (a)) expressly for the care and maintenance of cemetery property. A care fund will be treated as having been created by a taxable cemetery corporation ("cemetery") if the distributee cemetery is taxable, even though the care fund was created by the distributee cemetery in a year that it was tax-exempt or by a predecessor of such distributee cemetery which was tax-exempt in the year the fund was established. The deduction is the amount of the distributions during the fund's taxable year to the cemetery corporation for such care and maintenance that would be otherwise allowable under section 651 or 661, but in no event is to exceed the limitations described in paragraphs (b) and (c) of this section. The provisions of this paragraph shall not have the effect of extending the period of limitations under section 6511.

(b) *Limitation on amount of deduction.* The deduction in any taxable year may not exceed the product of \$5 multiplied by the aggregate number of gravesites sold by the cemetery corporation before

the beginning of the taxable year of the trust. In general, the aggregate number of gravesites sold shall be the aggregate number of interment rights sold by the cemetery corporation (including gravesites sold by the cemetery before a care fund trust law was enacted). In addition, the number of gravesites sold shall include gravesites used to make welfare burials. Welfare burials and pre-trust fund law gravesites shall be included only to the extent that the cemetery cares for and maintain such gravesites. For purposes of this section, a gravesite is sold as of the date on which the purchaser acquires interment rights enforceable under local law. The aggregate number of gravesites includes only those gravesites with respect to which the fund or taxable cemetery corporation has an obligation for care and maintenance.

(c) *Requirements for deductibility of distributions for care and maintenance.*

(1) *Obligation for care and maintenance.* A deduction is allowed only for distributions for the care and maintenance of gravesites with respect to which the fund or taxable cemetery corporation has an obligation for care and maintenance. Such obligation may be established by the trust instrument, by local law, or by the cemetery's practice of caring for and maintaining gravesites, such as welfare burial plots or gravesites sold before the enactment of a care fund trust law.

(2) *Distribution actually used for care and maintenance.* The amount of a deduction otherwise allowable for care fund distributions in any taxable year shall not exceed the portion of such distributions expended by the distributee cemetery corporation for the care and maintenance of gravesites before the end of the fund's taxable year following the taxable year in which it makes the distributions. A 6-month extension of time for filing the trust's return may be obtained upon request under section 6081. The failure of a cemetery to expend the care fund's distributions within a reasonable time before the due date for filing the return will be considered reasonable grounds for granting a 6-month extension of time for section 6081. For purposes of this paragraph, any amount expended by the care fund directly for the care and maintenance of gravesites shall be treated as an additional care fund distribution which is expended on the day of distribution by the cemetery corporation. The fund shall be allowed a deduction for such direct expenditure in the fund's taxable year during which the expenditure is made.

(3) *Example.* The application of paragraph (c)(2) of this section is illustrated by the following example:

A, a calendar-year perpetual care fund trust, meeting the requirements of section 642 (i), makes a \$10,000 distribution on December 1, 1978 to X, a taxable cemetery corporation operating on a May 31 fiscal year. From this \$10,000 distribution, the cemetery makes the following expenditures for the care and maintenance of gravesites: \$2,000 on December 20, 1978; \$4,000 on June 1, 1979; \$2,000 on October 1, 1979; and \$1,000 on April 1, 1980. In addition, as authorized by the trust instrument, A itself makes a direct \$1,000 payment to a contractor on September 1, 1979 for qualifying care and maintenance work performed. As a result of these transactions, A will be allowed an \$8,000 deduction for its 1978 taxable year attributable to the cemetery's expenditures, and a \$1,000 deduction for its 1979 taxable year attributable to the fund's direct payment. A will not be allowed a deduction for its 1978 taxable year for the cemetery's expenditure of either the \$1,000 expended on April 1, 1980 or the remaining unspent portion of the original \$10,000 distribution. The trustee may request a 6-month extension in order to allow the fund until October 15, 1979 to file its return for 1978.

(d) *Certified statement made by cemetery officials to fund trustees.* A trustee of a cemetery perpetual care fund shall not be held personally liable for civil or criminal penalties resulting from false statements on the trust's tax return to the extent that such false statements resulted from the trustee's reliance on a certified statement made by the cemetery specifying the number of interments sold by the cemetery or the amount of the cemetery's expenditures for care and maintenance. The statement must indicate the basis upon which the cemetery determined what portion of its expenditures were made for the care and maintenance of gravesites. The statement must be certified by an officer or employee of the cemetery who has the responsibility to make or account for expenditures for care and maintenance. A copy of this statement shall be retained by the trustee along with the trust's return and shall be made available for inspection upon request by the Secretary. This paragraph does not relieve the care fund trust of its liability to pay the proper amount of tax due and to maintain adequate records to substantiate each of its deductions, including the deduction provided in section 642(i) and this section.

§ 1.642(i)-2 Definitions.

(a) *Taxable cemetery corporation.* For purposes of section 642(i) and this section, the meaning of the term "taxable cemetery corporation" is limited to a corporation (within the

meaning of section 7701(a)(3)) engaged in the business of owning and operating a cemetery that either (1) is not exempt from Federal tax, or (2) is subject to tax under section 511 with respect to its cemetery activities.

(b) Pursuant to local law. A cemetery perpetual care fund is created pursuant to local law if:

(1) The governing law of the relevant jurisdiction (State, district, county, parish, etc.) requires or expressly permits the creation of such a fund, or

(2) The legally enforceable bylaws or contracts of a taxable cemetery corporation require a perpetual care fund.

(c) *Gravesite*. A gravesite is any type of interment right that has been sold by a cemetery, including, but not limited to, a burial lot, mausoleum, lawn crypt, niche, or scattering ground. For purposes of § 1.642 (i)-1, the term "gravesites" includes only those gravesites with respect to which the care fund or cemetery has an obligation for care and maintenance within the meaning of § 1.642 (i)-1(c)(1).

(d) *Care and maintenance*. For purposes of section 642(i) and this section, the term "care and maintenance of gravesite" shall be generally defined in accordance with the definition of such term under the local law pursuant to which the cemetery perpetual care fund is created. If the applicable local law contains no definition, care and maintenance of gravesites may include the upkeep, repair and preservation of those portions of cemetery property in which gravesites (as defined in paragraph (c) of this section) have been sold; including gardening, road maintenance, water line and drain repair and other activities reasonably necessary to the preservation of cemetery property. The costs for care and maintenance include, but are not limited to, expenditures for the maintenance, repair and replacement of machinery, tools, and equipment, compensation of employees performing such work, insurance premiums, reasonable payments for employees' pension and other benefit plans, and the costs of maintaining necessary records of lot ownership, transfers and burials. However, if some of the expenditures of the cemetery corporation, such as officers' salaries, are for both care and maintenance and for other purposes, the expenditures must be properly allocated between care and maintenance of gravesites and the other purposes. Only those expenditures that are properly allocable to those portions of cemetery property in which gravesites have been sold qualify as expenditures for care and maintenance of gravesites.

Par. 2. Paragraph (b)(1) of § 1.6081-1 is revised by adding a new sentence at the end thereof to read as follows:

§ 1.6081-1 Extension of time for filing returns.

(b) Application for extension of time—
(1) *In general*. * * * In the case of a cemetery perpetual care fund trust, a distributee cemetery's failure to make timely expenditures of distributions which prevents accurate determination of the allowable deduction under section 642(i) will be considered reasonable grounds for a 6-month extension of time for filing the trust's return. See § 1.642 (i)-1(c)(2).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: October 10, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 79-33071 Filed 10-25-79; 8:45 am]

BILLING CODE 4830-01-M

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Public Health Service

[42 CFR Part 50]

Abortions

AGENCY: Public Health Service, HEW.
ACTION: Final regulation.

SUMMARY: This amends current regulations governing the Department's expenditures for abortions by programs and projects receiving Federal financial assistance administered by the Public Health Service. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for fiscal year 1980. A continuing resolution (Pub. L. 96-86) was signed on October 12, 1979, authorizing FY 80 Department of HEW expenditures through November 20, 1979. This continuing resolution further limits the situations in which Federal funds may be used for the performance of abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96-86.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Martin, Room 722-H, Hubert Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201 (202) 245-7581.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of Pub. L. 95-480, the HEW appropriations act for FY 79, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) In those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; and (3) For such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing section 210 of Pub. L. 95-480 for Public Health Service assisted programs and projects are set forth at 42 CFR 50.301 through 50.310.

Statutory Change

Section 118 of Pub. L. 96-86, the continuing resolution appropriating FY 80 HEW funding through November 20, 1979, is more restrictive than section 210 of Pub. L. 95-480. Federal funding for abortions is prohibited under section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) For such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Thus, section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this amendment is to conform the Department's regulations to section 118. Accordingly, § 50.305, the provision dealing with the exception for severe and long-lasting health damage and references thereto are hereby deleted. Aside from updating the statutory authority for the regulation, no other change is being made.

If we receive an appropriations act with provisions different from section 118, we will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96-86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to programs and projects as to which abortions may be funded with appropriations for FY 80 under that Act.

Dated: October 18, 1979.
Julius B. Richmond,
Assistant Secretary for Health.

Approved: October 19, 1979.
Patricia Roberts Harris,
Secretary.

Subpart C of 42 CFR Part 50 is revised as set forth below:

1. The authority statement is amended to read as follows:

Authority: Sec. 118, Pub. L. 96-86, October 12, 1979.

§ 50.305 [Reserved]

2. § 50.305 is vacated and reserved.

§§ 50.303, 50.306, 50.307, and 50.309 [Amended]

3. § 50.303, 50.306, 50.307, and 50.309 are amended by deleting reference to § 50.305.

[FR Doc. 79-33122 Filed 10-25-79; 8:45 am]
BILLING CODE 4110-85-M

Health Care Financing Administration

42 CFR Part 441

Medicaid; Abortions

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Regulation.

SUMMARY: This amends current regulations governing the Department's expenditures for abortions under the Medicaid program. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for fiscal year 1980. A continuing resolution (Pub. L. 96-86) was signed on October 12, 1979, authorizing FY 80 Department of HEW expenditures through November 20, 1979. This continuing resolution further limits the situations in which Federal funds may be used for the performance of abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96-86.

FOR FURTHER INFORMATION CONTACT: Barbara Stultz (202) 245-0345.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of Pub. L. 95-480, the HEW appropriations act for FY 79, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) In those instances where severe and long-lasting physical health damage to the mother

would result if the pregnancy were carried to term when so determined by two physicians; and (3) For such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing section 210 of Pub. L. 95-480 for the Medicaid program are set forth at 42 CFR 441.200 through 441.208.

Statutory Change: Section 118 of Pub. L. 96-86, the continuing resolution appropriating FY 80 HEW funding through November 20, 1979, is more restrictive than section 210 of Pub. L. 95-480. Federal funding for abortions is prohibited under section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) For such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Thus, section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this amendment is to conform the Department's regulations to section 118. Accordingly, § 441.204, the provision dealing with the severe and long-lasting health damage, and references thereto are hereby deleted. Aside from updating the statutory authority for the regulation, no other change is being made.

If an appropriations act for fiscal year 1980 is enacted with provisions different from section 118, the Department will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96-86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to States as to which abortions may be funded with appropriations for FY 80 under that Act. Accordingly, this is a final regulation amendment.

42 CFR Part 441 is revised as set forth below:

1. § 441.200 is amended by changing the statutory basis as follows:

§ 441.200 Basis and purpose.

This subpart implements sec. 118 of Pub. L. 96-86 by prohibiting the use of Federal funds for abortions except under certain circumstances stated in this subpart.

* * * * *

2. § 441.204 is vacated and reserved.

§ 441.204 [Reserved]

§ 441.205 [Amended].

3. § 441.205 is amended by deleting reference to § 441.204.

(Section 1102 of the Social Security Act (42 U.S.C. 1302).)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Dated: October 16, 1979.

Leonard D. Schaeffer,
Administrator Health Care Financing Administration.

Approved: October 19, 1979.

Patricia Roberts Harris,
Secretary.

[FR Doc. 79-33121 Filed 10-25-79; 8:45 am]
BILLING CODE 4110-35-M

Office of the Secretary

45 CFR Part 1

Location of HEW Regulations

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: HEW is adding this part to explain (1) where the various HEW regulations are located in the Code of Federal Regulations and (2) how the Office of the Secretary regulations are organized.

FOR FURTHER INFORMATION CONTACT: Susan Steward, Office of the General Counsel, Room 716E, 200 Independence Avenue, SW., Washington, D.C. 20201, (202-245-7545).

SUPPLEMENTAL INFORMATION: We are adding Part 1 because we receive a number of questions about where different regulations for programs administered by HEW are located. We also receive questions about the subject matter of the Office of the Secretary regulations in Part 1-99 of this title. We are adding Part 1 under Operation Common Sense, HEW's five-year plan to simplify and clarify its regulations.

Since Part 1 only contains information about the organization of existing regulations, it is unnecessary to publish proposed rules or to delay the effective date.

Accordingly, Title 45 is amended to add a Part 1 as set forth below.

Dated: October 17, 1979.

Patricia Roberts Harris,
Secretary of Health, Education, and Welfare.

Title 45 is amended to add a Part 1 as set forth below:

PART 1—HEW'S REGULATIONS

Sec.

1.1 Location of HEW's regulations.

1.2 Subject matter of Office of the Secretary regulations in Parts 1-99.

Authority: 5 U.S.C. 301.

§ 1.1 Location of HEW regulations.

Regulations for HEW's programs and activities are located in several different titles of the Code of Federal Regulations:

- Regulations having HEW-wide application or which the Office of the Secretary administers are located in Parts 1-99 of Title 45.
- Health regulations are located at parts 1-399 of Title 42.
- Health care financing regulations are located at parts 400-499 of Title 42. These include regulations for Medicare and Medicaid.
- Human development services regulations are located at Parts 200-299 and 1300-1399 of Title 45. These include regulations for Head Start, social services, social and nutrition services for older persons, rehabilitative services, developmental disabilities services, Native American programs, and various programs relating to families and children.
- Social Security regulations are located at 400-499 of Title 20.
- Food and Drug regulations are located at parts 1-1299 of Title 21.
- Education regulations are located at parts 100-199 and 1300-1599 of Title 45.
- Procurement (contract) regulations are located at Chapter 3 of Title 41.

Each volume of the Code contains an index of its parts.

§ 1.2 Subject matter of Office of the Secretary regulations in Parts 1-99.

This subject matter of the regulations in Parts 1-99 of this title includes:

- *Civil rights/nondiscrimination*: Parts 80, 81, 83, 84, 86, 90
- *Protection of human subjects*: Part 46
- *Day care requirements*: Part 71
- *Information, privacy, advisory, committees*: Parts 5, 5a, 5b, 11, 17, 99
- *Personnel*: Parts 50, 57, 73, 73a
- *Grants administration, property, hearing rights*: Parts 10, 12, 15, 16, 74, 75, 95
- *Claims*: Parts 30, 35
- *Inventions and patents*: Parts 6, 7, 8
- *Miscellaneous*: Parts 8, 4, 9, 19, 67

[FR Doc. 79-33125 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-12-M

Office of Human Development Services**45 CFR Parts 220, 222, and 228****Service Programs for Families and Children, Individuals and Families, and Aged, Blind, or Disabled Persons; Federal Financial Participation in State Claims for Abortions**

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), HEW.

ACTION: Final Regulation.

SUMMARY: This rule amends current regulations governing the Department's expenditures for abortions under the social services programs. This amendment is necessary in order to reflect changes made in the legislation authorizing funds for the Department of Health, Education, and Welfare for part of Fiscal Year 1980. A continuing resolution (Pub. L. 96-86) was signed on October 12, 1979, authorizing FY '80 Department of HEW expenditures through November 20, 1979. This continuing resolution, Pub. L. 96-86, further limits the circumstances in which federal funding is available for abortions.

EFFECTIVE DATE: This regulation is effective October 1, 1979, with respect to funds appropriated under Pub. L. 96-86.

FOR FURTHER INFORMATION CONTACT: Johnnie U. Brooks, area code 202, 245-9415.

SUPPLEMENTARY INFORMATION:**Background**

Section 210 of Pub. L. 95-480, the HEW Appropriations Act for FY 1979, prohibited the expenditure of Federal funds appropriated under that Act for abortions except: (1) Where the life of the mother would be endangered if the fetus were carried to term; (2) in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; and (3) for such medical procedures necessary for victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Regulations implementing Section 210 of Pub. L. 95-480 for the Medicaid program are set forth at 42 CFR 441.200 through 441.208. Regulations for the social services programs (Titles I, IV-A, X, XIV, XVI(AABD), and XX) incorporate the Medicaid regulations by cross reference. Regulations for the title XX program are found at 45 CFR 228.92. For the Territories, regulations for the social services program under title IV-A are at 45 CFR 220.21; and regulations for the adult services programs under titles I, X, XIV, and XVI(AABD) are at 45 CFR 222.59.

Statutory Change: Section 118 of Pub. L. 96-86, the continuing resolution appropriating FY 1980 HEW funding through November 20, 1979, is more restrictive than Section 210 of Pub. L. 95-480. Federal funding for abortions is prohibited under Section 118 except: (1) Where the life of the mother would be endangered if the fetus were carried to term; and (2) for such medical procedures necessary for the victims of rape or incest, when such a rape or incest has been reported

promptly to a law enforcement agency or public health service. Thus, Section 118 removed the exception for severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.

The purpose of this rule is to conform the Department's regulations to Section 118.

Accordingly, we are hereby deleting, in the regulations for the social services programs, the cross-reference to § 441.204, the provision dealing with the severe and long-lasting physical health damage. That provision has been deleted from 42 CFR 441 by an amendment published today. In addition, we are changing the citations of statutory authority in these regulations to reflect the fact that the regulations implement Section 118 of Pub. L. 96-86.

If an Appropriations Act for fiscal year 1980 is enacted with provisions different from Section 118, the Department will promptly change this regulation.

We are waiving a notice of proposed rulemaking, because the limitations imposed by Pub. L. 96-86 became effective on October 1, 1979. It is therefore necessary to provide immediate direction to States as to which abortions may be funded with appropriations under that Act. Accordingly, this is a final regulation amendment.

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN: TITLE IV, PARTS A AND B OF SOCIAL SECURITY ACT

1. Part 220 is amended by revising the authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Sec. 118 of Pub. L. 96-86.

2. Part 220, § 220.21 is amended by revising paragraph (b) to read as follows:

§ 220.21 Family planning services.

* * * * *

(b) Federal financial participation in State claims for abortions is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208.

* * * * *

PART 222—SERVICE PROGRAMS FOR AGED, BLIND, OR DISABLED PERSONS: TITLES I, X, XIV, and XVI OF THE SOCIAL SECURITY ACT

3. Part 222 is amended by revising the

authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 11.02, 102-103, 1002-1003, 1402-1403, 1602-1603 of the Social Security Act, 42 U.S.C. 1302, 302-303, 1202-1203, 1352-1353, 1382-1383 (AABD); Sec. 118 of Pub. L. 96-86.

* * * * *

4. Part 22, § 222.59 is amended by revising subparagraph (b)(1) to read as follows:

§ 222.59 Services to individuals to meet special needs.

(b) Regarding the provision of family planning services:

(1) If a State authorizes abortions, Federal financial participation in State claims is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

5. Part 228 is amended by revising the authority statement following the table of contents to read as follows:

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); Sec. 118 of Pub. L. 96-86.

* * * * *

6. Part 228, § 228.92 is amended to read as follows:

§ 228.92 Federal financial participation in State Claims for Abortions.

Federal financial participation in State claims for abortions is governed by 42 CFR 441.200 through 441.203 and 441.205 through 441.208.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.642, Social Services for Low Income and Public Assistance Recipients.)

Dated: October 18, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

Approved: October 19, 1979.

Patricia Roberts Harris,

Secretary.

[FR Doc. 79-33123 Filed 10-25-79; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[Gen. Docket No. 78-230]

Providing for the Use of Emergency Position Indicating Radiobeacons (Class C) for Vessels Operating in Coastal Waters; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule (Errata).

SUMMARY: The Appendix to the Report and Order in this proceeding referenced an obsolete rule section. We are correcting this error.

EFFECTIVE DATE: November 12, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kemp J. Beaty, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of parts 2 and 83 of the rules to provide for the use of emergency position indicating radiobeacons (Class C) for vessels operating in coastal waters. Erratum. (See also 43 FR 60307, Dec. 27, 1978.)

Released: October 19, 1979.

1. In paragraph (B)(1) of the Appendix to the Report and Order in this proceeding (Released October 5, 1979, FCC 79-575; 44 FR 58712, Oct. 11, 1979), reference is made to an obsolete title and the instruction is incorrect. We are amending this paragraph as follows:

B. Part 83—*Stations on Shipboard in the Maritime Services.*

1. In § 83.24 paragraph (b) is amended and a new paragraph (c) is added to read as follows:

§ 83.24 Eligibility for station license.

(b) Authority to operate an EPIRB station with a Class A or Class B device will be granted for use aboard the frequency type of vessels:

(c) Authority to operate an EPIRB station, equipped with a Class C device, must be applied for as provided in Section 83.36(a). Class C EPIRB's are intended for use on vessels operating within 20 miles of shore.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-33003 Filed 10-25-79; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 44, No. 209

Friday, October 26, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 781

Disclosure of Foreign Investment in Agricultural Land

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend Part 781 of the regulations concerning Disclosure of Foreign Investment in Agricultural Land by amending § 781.4 of such regulations and adding a new § 781.5 thereto. The changes to be made will set out the guidelines for determining the amount of the penalty to be imposed for various types of violation of the reporting obligations specified in § 781.3 of such regulations, and the procedures for actually challenging allegations of violation or the amount of the penalty to be imposed. After thorough consideration of the procedures specified in the existing § 781.4, it was decided, both in view of the volume of violations resulting from late filed reports and the cumbersome nature of the process established for determining and disposing of all types of violation, that the procedures proposed herein would provide for the fairest and most expeditious disposition of allegations of violations. Furthermore, since the existing § 781.4 does not explicitly provide those notified of violation an opportunity either to deny the accuracy of the allegations or to question the amount of the penalty to be imposed, the proposed revision is thought to be preferable in that it clearly permits both types of challenges.

DATE: In order to assure consideration, written comments must be received by December 26, 1979.

ADDRESS: Comments should be addressed to: Confidential Assistant to the Administrator, Office of the Administrator, ASCS, U.S. Department

of Agriculture, Room 218 Administration Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Walter C. Ferguson, Confidential Assistant to the Administrator, Office of the Administrator, ASCS, U.S. Department of Agriculture, Room 218 Administration Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-8165.

Proposed Rule

Accordingly, it is proposed to amend Part 781 of 7 CFR by revising § 781.4 and adding a new § 781.5 as follows:

§ 781.4 Assessment of penalties.

(a) Violation of the reporting obligation will consist of:

- (1) Failure to submit any report in accordance with § 781.3 or
- (2) Knowing submission of a report which:
 - (i) Does not contain all the information required to be in such report, or
 - (ii) Contains misleading or false information.

(b) Any foreign person who violates the reporting obligation as described in paragraph (a) of this section shall be subject to the following penalties:

- (1) Late filed reports: One-tenth of one percent of the fair market value, as determined by Agricultural Stabilization and Conservation Service, of the interest in the subject agricultural land for each week or portion thereof that such violation continues, but the total penalty imposed shall not exceed 25 percent of the fair market value of the interest in the subject land.
- (2) Submission of an incomplete report or a report containing misleading or false information, or failure to submit a report required to be submitted pursuant to § 781.3: Twenty-five percent of the fair market value, as determined by Agricultural Stabilization and Conservation Service, of the interest in the subject agricultural land.
- (3) Penalties prescribed above are subject to downward adjustment based on factors including:
 - (i) Total time the violation existed.
 - (ii) Method of discovery of the violation.
 - (iii) Extenuating circumstances concerning the violation.
 - (iv) Nature of the information misstated or not reported.
- (c) The fair market value for the land shall be such value on the date the

penalty is assessed. The value reported by the foreign person, as verified and/or adjusted by the county Agricultural Stabilization and Conservation Committee for the county where the land is located, may be considered as indicative of the fair market value.

§ 781.5 Penalty review procedure.

(a) Whenever it appears that a foreign person has violated the reporting obligation as described in paragraph (a) of § 781.4, a written notice of apparent liability will be sent to his/her last known address by the Agricultural Stabilization and Conservation Service. This notice will set forth the facts which indicate apparent liability; will identify the type of violation listed in paragraph (a) of § 781.4 which is involved; will state the amount of the penalty to be imposed; will include a statement of the fair market value of the foreign person's interest in the subject land; and will summarize the courses of action available to the foreign person.

(b) The foreign person involved shall respond to a notice of apparent liability within 60 days after the notice is mailed. If the foreign person fails to respond to the notice of apparent liability, the proposed penalty shall become final. Any of the following actions by the foreign person shall constitute a response meeting the requirements of this paragraph:

(1) Payment of the proposed penalty in the amount specified in the notice of apparent liability and filing of a report in compliance with § 781.3. The amount should be paid by check or money order drawn to the Commodity Credit Corporation and should be mailed to the Treasurer of Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(2) Submission of a written statement denying liability for the penalty in whole or in part. Allegations made in any such statement must be supported by detailed factual data. The statement should be mailed to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

(3) Submission of a written request for a Hearing with the Administrator or with the Administrator's designee. The

request should be submitted to the Administrator, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Submission of such a request does not preclude submission of the statement described in paragraph (b)(3) of this section; either or both may be submitted.

(c)(1) If a hearing is requested, it will be held in Washington, D.C. at a place determined by the Administrator of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture or the Administrator's designee. The Administrator or his/her designee will preside at the Hearing. The appellant shall bear all personal costs connected with such a Hearing.

(2) The Hearing will be scheduled for any mutually convenient time within 30 days after the request is filed with the Administrator, or at a time designated by the Administrator or the Administrator's designee.

(3) At the Hearing, the foreign person may appear personally or be represented by a person of his/her choice, and will be afforded an opportunity to state his/her position and question ASCS about the factual basis for the notice of apparent liability and the amount of the penalty to be imposed.

(4) A summary of the Hearing will be prepared by the presiding official and transmitted to the Administrator.

(5) The failure of the foreign person to appear at the time and place appointed for the Hearing shall constitute a waiver of his/her right of such a Hearing.

(d) After the submission of a written statement and/or after the Hearing, as prescribed in paragraph (b) and (c) of this section, the Administrator will make a determination based on all relevant information available.

(e) Notice of the Administrator's determination, stating whether a report must be filed or amended in compliance with § 781.3, the amount of the penalty (if any), and the date by which it must be paid, will thereupon be mailed to the foreign person involved by the Administrator or the Administrator's designee. The foreign person shall file or amend the report as required by the Administrator. The penalty in the amount stated should be paid by check or money order drawn to the Commodity Credit Corporation, and should be mailed to Treasurer of Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. The Department is not responsible for the loss of currency sent through the mails.

(f) If the foreign person contests the notice of apparent liability by

submitting a written statement as provided in paragraph (b)(2) of this section and/or by requesting a Hearing as provided in paragraph (b)(3) of this section, the foreign person may elect either to pay the proposed penalty or decline to pay the proposed penalty pending resolution of the matter by the Administrator. If the foreign person elects to pay the proposed penalty, no further fines will accrue following the date of the notice of apparent liability pending the decision of the Administrator as described in paragraph (d) of this section. If the Administrator determines that the foreign person is not liable for the proposed penalty or is liable for less than the amount paid, the payment will be wholly or partially refunded. If the foreign person declines to pay the proposed penalty and the Administrator ultimately determines that he/she is liable, the penalty finally imposed shall include fines accrued up until the day of the notice in paragraph (e) of this section.

(g) If a foreign person fails to respond to the notice of apparent liability as required by paragraph (b) of this section, or if he/she fails to pay the penalty imposed by the Administrator under paragraph (d) of this section, the case will, without further notice, be referred by the Department to the Department of Justice for prosecution in the appropriate District Court to recover the amount of the penalty.

(h) Any amounts approved by the U.S. Department of Agriculture for disbursement to a foreign person under the programs administered by the Department may be setoff against penalties assessed hereunder against such person, in accordance with the provisions of 7 CFR Part 13.

(Pub. L. 95-460, 92 Stat. 1265; 7 U.S.C. 3502)

Signed at Washington, D.C. on October 17, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-33092 Filed 10-25-79; 8:45 am]

BILLING CODE 3410-05-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Procurement Purposes; Proposed Change; Extension of Comment Period

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period.

SUMMARY: The time for comment on the proposal (44 FR 50046 August 27, 1979)

to amend the wording of 13 CFR Part 121.3(8)(c)(2)(i) expired September 11, 1979. This proposal would allow small offers, including nonmanufacturers, to furnish any domestically manufactured product on Federal procurements valued at less than \$10,000.

A number of individuals and companies have requested an additional period in which to supply their comments. In order to assure the widest possible participation on this proposal, the time for comment will be extended for 30 days following the publication of this notice.

DATE: Written comments must be submitted by November 26, 1979.

ADDRESS: Chief, Size Standards Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John D. Whitmore, (202) 653-6373.

Dated: October 17, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 79-33089 Filed 10-25-79; 8:45 am]

BILLING CODE 8025-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Hazardous Substances and Articles; Proposed Exemption From Labeling Requirements for Certain Writing Instruments and Cartridges

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission proposes to exempt certain rigid or semi-rigid writing instruments and cartridges from the labeling requirements of the Federal Hazardous Substances Act insofar as such requirements would apply because the ink is a hazardous substance in that it is "toxic" as defined by the Commission's regulations or because the ink contains 10 percent or more by weight of ethylene glycol or diethylene glycol. The exemption is proposed because the Commission has preliminarily found that the conditions specified in the exemption are such that full compliance with the labeling requirements otherwise applicable under the act is not necessary for the adequate protection of the public health and safety. The exemption was requested by the Gillette Company.

DATES: Interested persons are invited to submit written data, views, or