parties would be welcomed. ADDRESS: General Services Administration (VR), Washington, DC 20406.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-1547 Filed 1-14-81; 8:45 am]

BILLING CODE 6820-61-M

Public Buildings Service

41 CFR Part 101-20

[FPMR Amdt. D-77]

Rules and Regulations Governing Public Buildings and Grounds

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation revises the GSA rules and regulations governing public buildings and grounds. It encourages the public to exercise its right to use these buildings and grounds but ensures GSA of its responsibility to safely and efficiently operate and maintain the public buildings and grounds under its charge and control.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent L. Crivella, Legal Counsel, Public Buildings Division, Office of General Counsel (202 566-0495).

SUPPLEMENTARY INFORMATION:

(a) Background

The Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541), among other things, encourages the use of auditoriums, meeting rooms, courtyards, rooftops, and lobbies of public buildings by persons, firms, or organizations engaged in cultural, educational, or recreational activities that will not disrupt the operation of the buildings. GSA recognizes that once these areas had been designated by the Congress as public fora, consideration must be given to the constitutional guarantees of freedom of speech, free exercise of religion, and the right to peaceable assembly. GSA may not prohibit persons, firms, or organizations from occasionally using these areas of public buildings solely on the basis of the content of the activity.

These regulations have been established to promote the occasional use of public buildings under the charge and control of GSA for cultural, educational, and recreational activities, as well as activities protected by the First Amendment. GSA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not significant for the purposes of Executive Order 12044.

(b) Comments Received

On February 15, 1980, a notice of proposed rulemaking was published in the **Federal Register** (45 FR 10379) concerning the procedures to be followed in permitting the occasional use of public buildings and grounds under the charge and control of GSA. Interested parties were given an opportunity to submit comments on or before April 15, 1980. All comments were considered. GSA received eight comments on the proposed rule. Comments were received from Government agencies who occupy GSA-controlled buildings, religious organizations, and organizations concerned about the preservation of civil liberties. Organizations representing artists who desire to display art in public buildings also submitted comments. Many of these comments focused on significant constitutional issues relevant to the GSA proposal. The comments received have been helpful and the legal issues raised by the comments have prompted further revisions to the proposal. In the final rule GSA has endeavored to be attentive to the First Amendment rights of individuals who desire to use areas of public buildings as a forum for the expression of ideas, advocacy of causes, and solicitation of funds, as well as responsive to GSA's duties to safely and efficiently maintain and operate these public buildings.

(c) Specific Comments

The following is a categorized summary of the major issues which were commented on and the actions taken:

Permitted activities. Two commenters criticized the regulations because they did not describe all of the activities which will be allowed in the public areas of public buildings. The Public Buildings Cooperative Use Act of 1976 (Cooperative Use Act) specifically permits the use of public areas of public buildings for cultural, educational, and recreational activities. "Cultural," "educational," and "recreational" activities are defined in the Cooperative Use Act and those definitions have been incorporated into these regulations in § 101-20.701 (h), (i), and (j).

GSA recognizes that persons or organizations engaging in activities constitutionally protected by the First Amendment must be afforded access to public areas of public buildings. However, GSA does not believe that it is necessary, or possible, to list in these regulations all activities protected by the First Amendment. Modifications have been made to the proposed regulations which should lend greater specificity to this area. For example, § 101-20.702 has been revised to require persons or organizations desiring to use a public area of a public building or its grounds for the purpose of soliciting funds to submit one of the three statements listed in § 101-20.702(c), (1), (2), or (3). Through this revision GSA intends to clarify that it will permit solicitation by all those persons and organizations to which the statements in § 101-20.702(c) would refer, if the proposed solicitation would otherwise be in accord with the provisions of Subpart 101-20.7. That is, with the exception of those types of solicitation proscribed by § 101-20.308, solicitation of funds is an activity permitted in accordance with the provisions of Subpart 101-20.7. Examples of permissible forms of solicitation would be the solicitation of funds for religious purposes and the solicitation of funds for tax-exempt organizations. Distribution of literature is another example of an activity clearly stated to be permissible in public areas of public buildings. § 101-20.309 provides for this activity. GSA does not intend the above-mentioned examples to be a limitation on the extent of activities permitted in public areas of public buildings.

Public areas. One commenter criticized the definition of the term "public area" as being overly vague. The commenter suggested that GSA specify in the regulations which areas were to be available for public use and how many permits would be allowed for each area. GSA is aware that other agencies have issued regulations which list the specific areas available and the maximum number of permits for those areas. However, there exists a practical difference between other agencies' regulations and GSA's. Other agencies' regulations usually apply to only a small number of facilities. For example, the Federal Aviation Administration has recently issued regulations (45 FR 35314, May 27, 1980) which apply to only two facilities, Washington National Airport and Dulles Airport. GSA's regulations, however, would apply to thousands of public buildings under the charge and control of GSA. Because of the lack of similarity of most of the buildings with regard to their construction, design, and physical layout, it would not be possible to issue regulations listing the specific areas of each public building available for use. Nor would it be possible to specify the maximum number of permits which could be issued for these areas. GSA believes that the definition of the

term "public area" set forth in these regulations specifies, to the extent practicable, those areas of public buildings available for use. It is not intended that the examples listed in §101–20.701(b) (that is, lobbies, courtyards, meeting rooms, and auditoriums) be a limitation on the areas in a specific building that are available for use under these regulations. The fact that the Cooperative Use Act lists lobbies, courtyards, meeting rooms, and auditoriums as available for use is evidence that these areas are appropriate places for the exercise of certain First Amendment expressions. Whether areas other than lobbies, courtyards, meeting rooms, and auditoriums are "public areas" depends upon the purpose or use of the area. An area that is open to members of the public to visit or transact Government business does not necessarily convert that area into a "public area" for purposes of this regulation. However, if such an area has been made available to members of the public for expression of their First Amendment rights, whatever form that may take, then the area would be a "public area."

Permit system. Several commenters criticized the provision which required that an application for a permit be submitted at least 30 days but no more than 90 days in advance of the proposed use as being too restrictive. GSA agrees. The final regulations will require that a decision on the issuance of a permit be made promptly and not later than 10 days of receipt of a completed application. Three commenters criticized the requirement in §101–20.702(a) that applicants for a permit provide information regarding their identity. The commenters asserted that applicants desiring to distribute literature have a right to anonymity that would be violated by §101–20.702(a). The commenters cite the case of Talley vs. California, 362 U.S. 60 (1960) in support of their argument. GSA respectfully disagrees. The regulations in the Talley vs. California case are distinguishable from the present regulations. In that legal case persons seeking to distribute literature (leaflettors) were required to place their name, address, and the organization they represented on the literature itself. By complying with this requirement, the leaflettor's identity was known to the person receiving the literature. It was feared that revealing the leaflettor's identity to the person receiving the literature might deter peaceable discussion of public matters of importance and therefore have a chilling effect on the leaflettor's First Amendment right to distribute this literature. Under GSA's regulations, a leaflettor is not required to place his or her name, address, and the organization represented on the literature. The identity of the leaflettor would not be known to the person receiving this literature and there would be no deterrent to the peaceable discussion between the parties of public matters of importance.

Restrictions on behavior. Several commenters also criticized the requirement contained in §101–20.707(a)(5) that all permittees wear identification badges while conducting the activities. The commenters expressed the same above-mentioned concern; i.e., the leaflettors' right to anonymity would be violated. GSA agrees in part. The regulations have been modified to require that only those permittees engaging in the solicitation of funds not prohibited by §101–20.308 would be required to wear an identification badge.

Several commenters also criticized the requirement contained in §101–20.707(a)(6) that donations be accepted only at solicitation booths. This requirement has been deleted from the final regulations. All comments have been considered. Modifications have been made to the proposed regulations as set forth below.

Accordingly GSA amends 41 CFR Part 101–20 as follows:

Subpart 101–20.3—Conduct on Federal Property

1. Section 101–20.302 is revised to read as follows:

§ 101–20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101–20.7. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the buildings manager and the ranking representative of the Federal Protective Service Division responsible for protection of the facility or the area. This requirement does not preempt the authority of the Regional Director, Federal Protective Service Division, or any other authorized GSA official to effect a security alert of a facility in accordance with GSA Order, Physical Security of Buildings Alert Guidelines (PBS 5930.16), dated February 20, 1976. This action shall be coordinated with the designated official. The designated official is defined in § 101–20.504–3(f) as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

2. Section 101–20.303 is revised to read as follows:

§ 101–20.303 Preservation of property.

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

3. Section 101–20.307 is revised to read as follows:

§ 101–20.307 Alcoholic beverages and narcotics.

Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. This prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings

manager who shall inform the Federal Protective Officer, or other authorized officials, responsible for the security of the property.

4. Section 101–20.308 is revised to read as follows:

§ 101–20.308 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the occupant agencies; (b) concessions or personal notices posted by employees on authorized bulletin boards; (c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454); and (d) lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 [40 U.S.C. 490(a)(16)]. Public areas of GSA-controlled property may be used for other activities permitted in accordance with Subpart 101–20.7.

5. Section 101–20.309 is revised to read as follows:

§ 101–20.309 Distribution of handbills.

Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in § 101–20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public areas of the property as defined in § 101–20.701(b), unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the buildings manager under Subpart 101–20.7 and shall conduct distribution in accordance with the provisions of Subpart 101–20.7. Failure to comply with those provisions is a violation of these regulations.

6. The captions in Subpart 101–20.7, the table of contents and two new sections are added. Thus Subpart 101–20.7 is revised as follows.

Subpart 101–20.7—Occasional Use of Public Areas in Public Buildings

Sec.

101–20.700 Scope of subpart.
101–20.701 Definitions.
101–20.702 Permits.
101–20.703 Disapproval of application or cancellation of permit.
101–20.704 Appeals from disapproval of application or cancellation of permit.
101–20.705 Schedule of use.
101–20.706 Services and costs.
101–20.707 Restrictions on behavior.
101–20.708 Posting of notices and information bulletins.
101–20.709 Nonaffiliation with the Government.

Subpart 101–20.7—Occasional Use of Public Areas in Public Buildings

§ 101–20.700 Scope of subpart.

The Public Buildings Cooperative Use Act of 1976 (Pub. L. 94–541), among other things, encourages the occasional use of public areas of public buildings and grounds for cultural, educational, and recreational activities. The purpose of these regulations is to create rules and procedures to be followed in permitting the occasional use of public buildings and grounds for these and other activities authorized by this subpart.

§ 101–20.701 Definitions.

(a) "Public building" shall mean any building and its grounds, or part thereof, under the charge and control of the General Services Administration.

(b) "Public area" shall mean any area of a public building or its grounds ordinarily open to members of the public, such as lobbies, courtyards, auditoriums, meeting rooms, and any other area not specifically leased by any lessee of the public building.

(c) "Buildings manager" shall mean the employee of GSA designated to supervise the implementation of the occasional use provision of the Public Buildings Cooperative Use Act within a particular public building and its grounds.

(d) "Regional officer" shall mean the regional director of the Buildings Management Division of GSA designated to supervise the implementation of the occasional use provision of the Public Buildings Cooperative Use Act within those regions that GSA may from time-to-time create.

(e) "Applicant" shall mean any person or organization who applies for a permit to use a public area within a public building or its grounds.

(f) "Permittee" shall mean any person or organization who has been granted a permit to use a public area within a public building or its grounds.

(g) "Recognized labor organization" shall mean a labor organization recognized under Title VII of the Civil Service Reform Act of 1978 (Pub. L. 95–454) governing labor management relations.

(h) "Cultural activities" shall mean activities, including but not limited to films, dramatics, dances, and musical presentations, and fine are exhibits, whether or not these activities are intended to make a profit.

(i) "Educational activities" shall mean activities, including but not limited to the operation of libraries, schools, day care centers, laboratories, and lecture and demonstration facilities.

(j) "Recreational activities" shall mean activities, including but not limited to the operation of gymnasiums and related facilities.

(k) "Commercial activities" shall mean activities undertaken for the primary purpose of obtaining a profit for the benefit of an individual or organization organized for profit, as opposed to activities whose purpose is the expression of ideas or advocacy of causes, whether of a religious, artistic, political, charitable, educational, or cultural nature, where the commercial aspects involved are incidental to the purpose of the activity.

§ 101–20.702 Permits.

(a) Application. Any person or organization desiring to use a public area of a public building or its grounds shall first obtain a permit from the buildings manager. To obtain this permit, a copy, sample, or description of any material or item proposed for distribution or display and a written statement shall be submitted setting forth the following:

(1) The full name, mailing address, and telephone number of the applicant;

(2) The full name, mailing address, and telephone number of the person or organization sponsoring, promoting, or conducting the proposed activity;

(3) The full name, mailing address, and telephone number of the individual person or persons who will have supervision of and responsibility for the proposed activity;

(4) A description of the proposed activity;

(5) The proposed dates and hours during which the activity is to be carried out; and

(6) The approximate number of persons to be engaged in this activity, if known.

(b) Applicants authority. If the applicant claims to represent an organization, a letter or other documentation is required showing that

the applicant has authority to represent that organization.

(c) Applications for permit to solicit contributions. Any person or organization desiring to use a public area of a public building or its grounds for purposes of soliciting funds not prohibited by § 101–20.308 shall, in addition to the above requirements, submit a statement signed by the applicant that the:

(1) Applicant represents and will be soliciting funds for the sole benefit of a religion or religious group;

(2) Applicant's organization has received an official Internal Revenue Service (IRS) ruling or letter of determination stating that the organization or its parent organization qualifies for tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5); or

(3) Applicant's organization has applied to the IRS for a determination of tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5), and that the IRS has not yet issued a final administrative ruling or determination of this status.

(d) Failure to complete application. Failure to submit the information required by paragraphs (a), (b), and (c), of this section shall result in denial of a permit.

(e) Filing. Applications shall be filed during regular working hours in the buildings manager's office or such other place as he or she may designate. Applications may be submitted by mail or in person.

(f) Permit issuance. A single permit shall be issued within 10 days following receipt of the completed application by the buildings manager.

(1) Each permit shall authorize the permittee to conduct the activity for the period of time requested; provided that a permit shall not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the regional officer. After the expiration of the permit, a new permit may be issued to the former permit holder upon submission of a new application. In such a case, applicants may be permitted to incorporate by reference any required information or documentation filed with a previous application.

(2) If permits are requested for the same public area for the same time period, the buildings manager will issue permits on a first-come-first-served basis.

§ 101–20.703 Disapproval of application or cancellation of permit.

(a) Grounds for disapproval or cancellation. The buildings manager shall disapprove any application or cancel an issued permit for use of a public area if the proposed use:

(1) Is a commercial activity as defined in § 101–20.701(k);

(2) Obstructs the free ingress and egress of the users of the public area;

(3) Damages the public building or any property within the public building;

(4) Disrupts the official business of the agency or agencies occupying the public buildings;

(5) Interferes with a tenant's quiet enjoyment of their leasehold;

(6) Interferes with a previously approved use of the public area by another member, or members, of the public;

(7) Is obscene within the meaning of obscenity in 18 U.S.C. 1461–65;

(8) Pertains to any judicial proceeding then pending in the public building and this use is intended to influence or impede the judicial proceeding;

(9) Is in violation of the prohibition against political solicitations in 18 U.S.C. 603; or

(10) Is being conducted with a permit issued in response to an intentionally false or incomplete application.

(b) Notice of disapproval of application or cancellation of permit. Upon disappproving an application or canceling an issued permit for any of the above reasons, the buildings manager shall:

(1) Notify promptly the applicant or permittee in writing of disapproval or cancellation and the reasons for this action; and

(2) Inform the applicant of his or her right to appeal the disapproval or cancellation to the regional officer under § 101–20.704.

§ 101–20.704. Appeals from disapproval of application or cancellation of permit.

(a) Time for appeal. Within 5 calendar days of notification of the buildings manager's decision to disapprove any application or cancel an issued permit under § 101–20.703, the applicant or permittee may appeal the buildings manager's determination to the regional officer by notifying the regional officer, in writing, that he or she desires to appeal.

(b) Record. Although a trial-type hearing or presentation is not required, the applicant or permittee and the buildings manager shall have the opportunity to orally state the reasons that the application or cancellation should or should not be approved. Written materials and documents may also be submitted. The regional officer shall affirm or reverse the buildings manager's determination based on this information.

(c) Time for review. The regional officer shall affirm or reverse the buildings manager's determination within 10 days of the date on which the regional officer received the applicant or permittee's notification of his or her desire to appeal. If the regional officer does not rule within this period, the application will be considered to be approved or the permit validly issued.

(d) Notification. Upon reaching a decision on an appeal taken under § 101–20.704, the regional office shall promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefore.

§ 101–20.705 Schedule of use.

(a) Schedule. Nothing in these regulations shall prevent the buildings manager from:

(1) Reserving certain times of the year for use of public areas of the public buildings for official Government business;

(2) Setting aside certain days or time for maintenance, construction, or repair; or

(3) Preempting an approved use of a public area for official Government business.

(b) Time. Public areas made available may be used during or after the regular working hours of Federal agencies, provided this afterhour use will not interfere with the conduct of Government business. When public areas are used by permittees under Subpart 101–20.7 after normal working hours, all adjacent areas not approved for afterhours usage shall be locked, identified by signs, or physically barricaded, as appropriate, to restrict the participants' movements to only that space or areas(s) approved for usage.

§ 101–20.706 Services and costs.

(a) Costs. The space to be provided under these regulations is furnished free of charge. Services normally provided at the building in question, such as security, cleaning, heating, ventilating, and air-conditioning, shall also be provided free of charge by GSA. The applicant shall be requested to reimburse GSA for services over and above those normally provided. If the applicant desires to provide services, such as security and cleaning, this request must be approved by the regional officer. The Regional Administrator may provide the services free of charge if the cost is insignificant and if it is in the public's interest.

(b) Alteration of public area. Generally, there shall be no alteration to public areas used under these regulations by persons, firms, or organizations, unless it is determined by the Regional Administrator that changes should be made in a public building to encourage and aid in the proposed use.

The permittee must make adequate provisions for the:

(1) Protection of the safety of an user of the public area; and

(2) Prevention of injury or damage to the public building.

(c) Program requirements. The furnishing of any item necessary for the proposed activity, such as tickets, audiovisual equipment, etc., shall be the responsibility of the permittee.

§ 101-20.707 Restrictions on behavior.

(a) General. The permittee shall be subject to the rules and regulations governing public buildings and grounds in Subpart 101-20.3. In addition, a permittee shall:

(1) Not misrepresent his or her identity to the public;

(2) Not distribute any item for which the prior approval of the buildings manager or his or her representative has not been obtained, under § 101-20.702(d) of these regulations;

(3) Not leave leaflets or other material unattended at any place on GSA-controlled property;

(4) Not conduct any activities in a misleading or fraudulent manner;

(5) Not discriminate on the basis of race, creed, color, sex, or national origin, in conducting the permitted activities; and

(6) Not engage in activities that would interfere with the preference afforded the blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107).

(b) Identification badges. Permittees engaging in the solicitation of funds not prohibited by § 101-20.308 shall wear an identification badge at all times on GSA-controlled property containing the following:

(1) Name;

(2) Address;

(3) Telephone number; and

(4) Name of group or organization.

§ 101-20.708 Posting of notices and information bulletins.

Only the following types of notices or information bulletins may be posted on bulletin boards in nonpublic areas of the public building:

(a) Official business notices of the occupant agency;

(b) Request for funds for welfare, health, and other purposes, approved by the head of the occupant agency;

(c) Notices to Federal employees by concessionaries and agency employees of groups or organizations recognized by the occupant agency;

(d) Personal notices of agency employees, such as the sale of an employee's home, requests for carpool participation, etc.; and

(e) Recognized labor organization notices and issuances on space provided by the agency under agreement between the agency and the recognized labor organization.

§ 101-20.709 Nonaffiliation with the Government.

The General Services Administration reserves the right to advise the public through signs or announcements of the presence of any permittees and of their nonaffiliation with the Federal Government.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 5, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 81-1339 Filed 1-14-81; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Time Limits for States To File Claims

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with a comment period.

SUMMARY: HHS will pay a State the Federal share of a State expenditure, under a State plan approved under any of several titles of the Social Security Act, only if the State files a claim with HHS for that expenditure within 2 years (15 months in some cases) after the calendar quarter in which the State made the expenditure. This rule implements section 306 of the "Adoption Assistance and Child Welfare Act of 1980."

EFFECTIVE DATE: January 1, 1981.

COMMENT DATE: Your comments will be considered if we receive them no later than March 16, 1981.

ADDRESSES: Send your written comments to the Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For financial assistance programs under Titles I, IV-A, X, XIV and XVI (AABD): Kent Dickson—(202) 245-2056. For child support enforcement programs under Title IV-D: Pera P. Daniels—(301) 443-2910. For child welfare services programs under title IV-B and foster care and adoption assistance programs under Title IV-E: Jim Rich—(202) 755-7583. For social services programs under Titles I, IV-A, X, XIV, XVI (AABD) and XX: Bettye Mobley—(202) 472-3075. For medical assistance programs under Title XIX: Miles McDermatt—(301) 594-5726. For general legal questions: Richard K. Wulff—(202) 245-6733.

SUPPLEMENTARY INFORMATION:

Regulatory Procedural Requirements

We have determined that under E.O. 12044 these regulations are significant but no Regulatory Analysis is required.

We are publishing them as a final rule without prior Notice of Proposed Rulemaking (NPRM) and opportunity for public comment because they are necessary to implement section 306 of Pub. L. 96-272, which imposes a deadline of December 31, 1980 for States to file certain claims. Public Law 96-272 was enacted June 17, 1980, leaving insufficient time for us to publish an NPRM, allow time for public comment, consider the comments, and publish final regulations before January 1, 1981. Therefore, we find that notice and comment on these regulations before they take effect would be impracticable and contrary to the public interest.

Nonetheless, we wish to have the advantage of the information and opinions we may receive through public comments, and we will consider any comments we receive by the stated date. After we consider any comments we receive, we will make changes in these regulations as we deem appropriate.

We also find good cause for issuing these regulations with an effective date less than 30 days after issuance, because the statutory effective date is January 1, 1981.

Because this regulation applies only to States and imposes no conditions and requirements on small entities, the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

Statutory Basis

Section 306 of Pub. L. 96-272, the "Adoption Assistance and Child Welfare Act of 1980," adds a new section 1132 to the Social Security Act (the Act). Its intent is to enable HHS to know the total amounts of its obligations for each fiscal year within a reasonable time after the end of the year. The provision prohibits HHS from paying Federal financial participation (FFP) for a State expenditure made after September 30, 1979, under a State plan approved under certain titles of the Act,

unless the State files a claim with HHS for that expenditure within 2 years after the calendar quarter in which the State made the expenditure. For State expenditures made before October 1, 1979, section 306(b) of Pub. L. 96-272 requires the State to file the claim before January 1, 1981. However, in accordance with the provisions of the attached regulations, we are waiving the January 1, 1981 filing date and extending it to May 15, 1981, without States having to request a waiver. We find good cause for this waiver because States will need additional time to comply with these regulations.

The law applies these time limits to State expenditures under State plans approved under the following titles of the Act: I, IV, V, X, XIV, XVI, XIX and XX. The law also applies these time limits to State expenditures under any other provision of the Act which may be enacted in the future that provides, on an entitlement basis, for FFP in expenditures made under State plans or programs.

The law provides four exceptions to the time limits: (1) Adjustments to prior year costs;

(2) Audit exceptions;

(3) Court-ordered retroactive payments; and

(4) Any claim for which the Secretary decides there was good cause for the State's not filing it within the time limit. Lateness of a claim attributable to a State's neglect or administrative inadequacies is not considered good cause. When the Secretary decides there was good cause for not filing within the time limit, the time for filing will be extended only for the time period the State reasonably needs.

Programs Not Affected by the Regulations

The list of titles contained in section 306 of Pub. L. 96-272 includes Titles V and XVI. However, not all of the programs funded under these titles are affected by the requirements of section 306.

Title XVI "Supplemental Security Income for the Aged, Blind and Disabled" (SSI) is a Federal income maintenance program and does not have a State plan requirement. Consequently, the SSI program is not affected by section 306 or the regulations contained herein. Title XVI (AABD), however, is covered by the statutory provision and our regulations.

The Supplemental Security Income/Disability Children's Program and Vocational Rehabilitation Program established under SSI does contain a State plan requirement as does the Title V "Maternal and Child Health and Crippled Children's Services" program. However, these programs are formula grant programs that operate in the following manner. Once the State plan is approved, funds are made available to States in advance of expenditures on the basis of a predetermined formula. Claims are not made against the Federal program for reimbursement of expenditures. Consequently, we do not believe that the provisions of section 306 have an impact on these programs and we have not included them in our regulations.

The programs funded under Title IV are covered by section 306, i.e., Titles IV-A, IV-B, IV-C, IV-D and IV-E. These regulations apply to all except the Title IV-C program. The Work Incentive (WIN) program established under section 402(a)(19)(G) and Title IV-C of the Act involves coordination between this Department and the Department of Labor. We have decided to prepare a separate regulation under section 306 for the WIN program to allow full consideration by both Departments.

Administrative Interpretations and Rules

These regulations contain the following provisions—

(1) "Claim" is a request for FFP in the manner and format required by our program regulations, and instructions or directives issued thereunder;

(2) "Adjustment to prior year costs" is an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed;

(3) "Audit exception" is a proposed adjustment by the responsible Federal agency to any expenditure claimed by a State by virtue of an audit;

(4) "Court-ordered retroactive payment" is either a retroactive payment a State makes to an assistance recipient or other individual, under a Federal or State court order, or a retroactive payment we make to a State under a Federal court order. While we will accept claims based on Court-ordered retroactive payments as timely, we do not necessarily agree to be bound by a State or Federal decision when we were not a party to the action.

An "adjustment to prior year's costs" is limited to claims for services or medical assistance based on interim rates that subsequently are determined to be higher or lower than originally claimed. It has been our experience that in these areas subsequent adjustments are unforeseen and unavoidable. Consequently, we believe they should not be subject to the time limits. We believe that a broader exception would render the statutory provision a nullity. However, we would welcome comments based upon the actual experience of the commenters as to the desirability of expanding this exception.

"Good cause" for late filing in these regulations is lateness due to circumstances beyond the control of the State. We specifically exclude from these circumstances, neglect or administrative inadequacies of the State legislature, as well as by offices of the State's executive branch and local agencies as appropriate. We have included examples of "good cause" i.e., acts of God or documented action or inaction of the Federal government. We believe that these examples constitute valid instances of "good cause" for a late claim that are beyond the State's control, but we recognize that there may be other situations that are equally valid. The regulation is sufficiently flexible to accommodate these situations. Nonetheless, we would welcome comments on the desirability of expanding examples based upon the actual experience of the commenters.

The State programs under the affected titles of the Act are administered at the Federal level by four different agencies of HHS: the Health Care Financing Administration, the Office of Child Support Enforcement, the Office of Human Development Services, and the Social Security Administration. A State that wants to request waiver of the time limit for "good cause" ordinarily should file its request with the appropriate HHS agency. When a request affects the programs of more than one of these agencies, the submission should be sent to the Director, Division of Cost Allocation in the appropriate HHS Regional Office. The decision whether to grant or deny the waiver request will be made by the Secretary.

Part 95 of Subtitle A of 45 CFR is amended as follows:

1. The authority citation for Part 95 is revised to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b-2; sec. 306(b), 94 Stat. 530, 42 U.S.C. 1320b-2 note.

2. A new Subpart A is added to read as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

Subpart A—Time Limits for States To File Claims

Sec.

95.1 Scope.
95.4 Definitions.
95.7 Time limit for claiming payment for expenditures made after September 30, 1979.
95.10 Time limit for claiming payment for expenditures made before October 1, 1979.
95.13 In which quarter we consider an expenditure made.
95.19 Exceptions to time limits.
95.22 Meaning of good cause.
95.25 When to request a waiver for good cause.
95.28 What a waiver request for good cause must include.
95.31 Where to send a waiver request for good cause.
95.34 The decision to waive the time limit for good cause.

* * * * *

Subpart A—Time Limits for States To File Claims

§ 95.1 Scope.

(a) This subpart establishes a two year time limit (15 months in some cases) for a State to claim Federal financial participation in expenditures under State plans approved under the following titles of the Social Security Act:

Title I—Grants to States for Old-Age Assistance and Medical Assistance for the Aged.

Title IV-A—Grants to States for Aid and Services to Needy Families with Dependent Children (except for Section 402(a)(19)(G) of the Act).

Title IV-B—Child Welfare Services.

Title IV-D—Child Support and Establishment of Paternity.

Title IV-E—Foster Care and Adoption Assistance.

Title X—Grants to States for Aid to the Blind.

Title XIV—Grants to States for Aid to the Permanently and Totally Disabled.

Title XVI—Grants to States for Aid to the Aged, Blind, or Disabled (AABD), or for Such Aid and Medical Assistance for the Aged.

Title XIX—Grants to States for Medical Assistance Programs.

Title XX—Grants to States for Services.

(b) This subpart also applies to claims for Federal financial participation by any State which are based on any provision of the Act that is enacted after issuance of these regulations and that provides, on an entitlement basis, for Federal financial participation in expenditures made under State plans or programs.

(c) This subpart explains under what conditions the Secretary may decide to extend the time limit for filing claims when a State believes it has good cause for not meeting the time limit.

§ 95.4 Definitions.

In this subpart—

Adjustment to prior year costs means an adjustment in the amount of a particular cost item that was previously claimed under an interim rate concept and for which it is later determined that the cost is greater or less than that originally claimed.

Audit exception means a proposed adjustment by the responsible Federal agency to any expenditure claimed by a State by virtue of an audit.

Claim means a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued thereunder.

Court-ordered retroactive payment means either a retroactive payment the State makes to an assistance recipient or an individual, under a Federal or State court order or a retroactive payment we make to a State under a Federal court order. Although we may accept these claims as timely, this provision does not mean that we necessarily agree to be bound by a State or Federal decision when we were not a party to the action.

Federal financial participation means the Federal government's share of an expenditure made by a State agency under any of the programs listed in § 95.1.

State agency for the purposes of expenditures for financial assistance under title IV-A and for support enforcement services under title IV-D means any agency or organization of the State or local government which is authorized to incur matchable expenses; for purposes of expenditures under title XIX, means any agency of the State, including the State Medicaid agency, its fiscal agents, a State health agency, or any other State or local organization which incurs matchable expenses; for purposes of expenditures under all other titles, see the definitions in the appropriate program's regulations.

State means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa and the Trust Territories of the Pacific.

The Act means the Social Security Act, as amended.

We, our, and *us* refer to HHS's Health Care Financing Administration, Office of Child Support Enforcement, Office of Human Development Services, or the Social Security Administration, depending on the program involved.

§ 95.7 Time limit for claiming payment for expenditures made after September 30, 1979.

Under the programs listed in § 95.1, we will pay a State for a State agency expenditure made after September 30, 1979, only if the State files a claim with us for that expenditure within 2 years after the calendar quarter in which the State agency made the expenditure. Section 95.19 lists the exceptions to this rule.

§ 95.10 Time limit for claiming payment for expenditures made before October 1, 1979.

Under the programs listed in § 95.1, we will pay a State for a State agency expenditure made before October 1, 1979, only if the State filed or files a claim with us for that expenditure before January 1, 1981. Section 95.19 lists the exceptions to this rule.

§ 95.13 In which quarter we consider an expenditure made.

In this subpart—

(a) We consider a State agency's expenditure for assistance payments under title I, IV-A, IV-E, X, XIV, or XVI (AABD) to have been made in the quarter in which a payment was made to the assistance recipient, his or her protective payee, or a vendor payee, even if the payment was for a month in a previous quarter.

(b) We consider a State agency's expenditure for services under title I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI (AABD) or XIX to have been made in the quarter in which any State agency made a payment to the service provider.

(c) For purposes of title XX, the date of expenditure is governed by 45 CFR § 1396.52(d).

(d) We consider a State agency's expenditure for administration or training under title I, IV-A, IV-B, IV-D, IV-E, X, XIV, XVI (AABD), or XIX to have been made in the quarter payment was made by a State agency to a private agency or individual; or in the quarter to which the costs were allocated in accordance with the regulations for each program. We consider a State agency's expenditure under these titles for non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of any State agency in accordance with generally accepted accounting principles.

§ 95.19 Exceptions to time limits.

The time limits in §§ 95.7 and 95.10 do not apply to any of the following—

(a) Any claim for an adjustment to prior year costs.

(b) Any claim resulting from an audit exception.

(c) Any claim resulting from a court-ordered retroactive payment.

(d) Any claim for which the Secretary decides there was good cause for the State's not filing it within the time limit.

§ 95.22 Meaning of good cause.

(a) Good cause for the late filing of a claim is lateness due to circumstances beyond the State's control.

(b) Examples of circumstances beyond the State's control include:

(1) Acts of God;

(2) Documented action or inaction of the Federal government.

(c) Circumstances beyond the State's control do not include neglect or administrative inadequacy on the part of the State, State agencies, the State legislature or any of their offices, officers, or employees.

§ 95.25 When to request a waiver for good cause.

The State should request a waiver in writing as soon as the State recognizes that it will be unable to submit a claim within the appropriate time limit.

§ 95.28 What a waiver request for a good cause must include.

The State's request for waiver must include a specific explanation, justification or documentation of why the claim is or will be late. This request must establish that the lateness in filing the claim is for good cause as defined in § 95.22 and not due to neglect or administrative inadequacy. If the claim has not been filed, the State must also tell us when the claim will be filed.

§ 95.31 Where to send a waiver request for good cause.

(a) A request which affects the program(s) of only one HHS agency (the Health Care Financing Administration, or the Office of Child Support Enforcement, or the Office of Human Development Services, or the Social Security Administration) and does not affect the programs of any other agency or Federal Department should be sent to the appropriate HHS agency.

(b) A request which affects programs of more than one HHS agency or Federal Department should be sent to the Director, Division of Cost Allocation in the appropriate HHS Regional Office.

§ 95.34 The decision to waive the time limit for good cause.

The Secretary will make a decision after reviewing the State's request for waiver. If the Secretary decides that good cause exists, the State will be notified of the extended due date. If the Secretary decides that good cause does not exist or that the request for waiver does not provide enough information to make a decision, the State will be so advised.

(Catalog of Federal Domestic Assistance Program Nos. 13.642, Social Services for Low Income and Public Assistance Recipients; 13.644, Social Services Training Grants—Title XX; 13.645, Child Welfare Services—State Grants; 13.679, Child Support Enforcement; 13.714, Medical Assistance Program; 13.775, State Medicaid Fraud Control Units; 13.777, State Health Care Providers Survey Certification; 13.808, Assistance Payments—Maintenance Assistance (State Aid); and 13.810, Assistance Payments—State and Local Training)

Dated: January 2, 1981.

Joan Z. Bernstein,

General Counsel.

Approved: January 9, 1981.

Patricia Roberts Harris,

Secretary of Health and Human Services.

[FR Doc. 81-1543 Filed 1-14-81; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-67; RM-3297]

Radio Broadcast Services; FM Broadcast Station Anchorage, Alaska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (Report and Order).

SUMMARY: This action substitutes Channel 281 for Channel 280A at Anchorage, Alaska, in response to a request from Sourdough Broadcasters, Inc., licensee of Station KKLV (Channel 280A). The license was also modified to specify Channel 281.

EFFECTIVE DATE: February 16, 1981

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 17, 1980.

Released: December 29, 1980.

In the Matter of Amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Anchorage, Alaska).

By the Chief, Broadcast Bureau:

1. The Commission has before it the *Notice of Proposed Rulemaking* 45 FR 13145, published February 28, 1980, inviting comments on a proposal to substitute Class C FM Channel 281 for FM Channel 280A at Anchorage, Alaska. The *Notice* was issued in response to a petition submitted by Sourdough Broadcasters, Inc. ("petitioner"), licensee of FM Station KKLV, Anchorage, Alaska, which requested the substitution described above so that it could upgrade its broadcast facilities. Petitioner filed supporting comments in which it reiterated its intention to use the channel, if assigned.

2. Anchorage (population 124,542) [1] is located on the southern coast of Alaska, approximately 480 kilometers (300 miles) from the Canadian border. It is presently served by six full-time AM stations and 5 commercial FM stations (three Class C and two Class A) and one noncommercial station.

3. Channel 281 can be assigned to Anchorage in conformity with the minimum distance separation requirements. Preclusion would occur on Channels 280A, 281, 282, 283, and 284. Palmer (population 1,140) and Valdez (population 1,005), Alaska are the two communities of population greater than 1,000 without local aural service that would be precluded from use of the aforementioned channels. However, petitioner has shown that alternative channels are available for assignment to these communities.[2] Petitioner indicated that in upgrading its present Class A station to a Class C, it would better serve Anchorage and the surrounding areas. It points to the fact that prior to 1965 the City of Anchorage comprised 14 square miles. After that period, the City of Anchorage merged with the Greater Anchorage Area Borough into a 160-square mile entity known simply as Anchorage.

4. Since the change in the assignment could enable petitioner to provide service to a substantially larger area and it has been shown that there are alternate channels available for assignment to precluded communities without local aural service, we believe the public interest would be served by the proposal.

5. The *Notice* stated that, if no other party expressed an interest in the proposed assignment of Channel 281 to Anchorage, the license of Station KKLV could be modified to the Class C channel.[3] No other party has done so, thus the license of Station KKLV has been modified herein.

6. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of

[1] Population figures are taken from the 1970 U.S. Census.

[2] Petitioner indicated that Channel 285A is available for assignment to Palmer and Channel 296A is available at Valdez.

[3] *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).