Regulation D so that the regulation will conform to the amended statute.

Because the amendment will recognize an exemption that is provided by statute and because the Board believes that this amendment will result in a more even application of reserve requirements on depository institutions doing business in Hawaii, the Board, for good cause, finds that the notice and public comment procedures provided by 5 U.S.C. 553(b) with regard to this action are contrary to the public interest.

Effective December 18, 1981, pursuant to the Board's authority under section 19(b) of the Federal Reserve Act, 12 U.S.C. 461(b), Regulation D, 12 CFR Part 204, is amended as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

In § 204.4, paragraph (f) is revised to read as follows:

§ 204.4 Transitional adjustments.

* * * * *

(f) *Nonmember depository institutions with offices in Hawaii.* Any depository institution that, on August 1, 1978, (1) was engaged in business as a depository institution in Hawaii, and (2) was not a member of the Federal Reserve System at any time on or after such date shall not maintain reserves imposed under this part against deposits held or maintained at its offices located in Hawaii until January 2, 1986. Beginning January 2, 1986, the required reserves on deposits held or maintained at offices located in Hawaii of such a depository institution shall be determined by reducing the amount of required reserves under § 204.3 in accordance with the following schedule:

Maintenance periods occurring between	Percentage that computed reserves will be reduced
Jan. 2 to Dec. 31, 1986	87.5
Jan. 1, 1987 to Jan. 6, 1988	75
Jan. 7, 1988 to Jan. 4, 1989	62.5
Jan. 5, 1989 to Jan. 3, 1990	50
Jan. 4, 1990 to Jan. 2, 1991	37.5
Jan. 3, 1991 to Jan. 1, 1992	25
Jan. 2, 1992 to Jan. 6, 1993	12.5
Jan. 7, 1993 forward	0

By order of the Board of Governors of the Federal Reserve System, November 20, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-34119 Filed 11-24-81; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 217

[Docket No. R-0214]

Interest on Deposits; International Banking Facility Time Deposits; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document corrects two clerical errors contained in final regulations authorizing the issuance of international banking facility (IBF) time deposits which were published November 9, 1981 (46 FR 55237).

FOR FURTHER INFORMATION CONTACT: Paul S. Pilecki; Senior Attorney (202/452-3281), Legal Division, Board of Governors of the Federal Reserve System.

The following corrections are made in FR Doc. 81-32350 appearing on 55237 in the issue of November 9, 1981:

1. On page 55238, in column one, § 217.1(l)(1)(ii)(C) is corrected by changing "of" the first time it appears to read "or".

2. On page 55238, in column one, § 217.1(l)(2)(ii) is corrected by changing "or" the fourth time it appears to read "of".

By order of the Board of Governors, acting through its Secretary pursuant to delegated authority, November 19, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-34120 Filed 11-24-81; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Share, Share Draft and Share Certificate Accounts; Statement of Policy

AGENCY: National Credit Union Administration (NCUA).

ACTION: Statement of policy.

SUMMARY: This policy statement sets forth the views of NCUA with respect to the calculation and assessment of premature withdrawal penalities for share certificate accounts that have been issued with variable dividend rates and for share certificate accounts to which additions have been made subsequent to the date of issuance.

EFFECTIVE DATE: November 25, 1981.

ADDRESS: Send comments to: Robert S. Monheit, Regulatory Development Coordinator, Office of the General Counsel, National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Deputy General Counsel or Ross Kendall, Staff Attorney, Office of the General Counsel, at the above address or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: Federal credit unions may pay variable dividend rates on share certificate accounts in at least three circumstances. First, effective August 1, 1981, the NCUA Board acted to remove any dividend ceiling for share certificate accounts opened after that date with maturities of four years or more. With respect to such certificates, therefore, Federal credit unions may offer to pay whatever dividend rate they wish, including a variable dividend rate, provided required disclosures are made. Second, effective November 1, 1981, the NCUA Board removed the dividend ceiling for IRA and Keogh accounts. Thus, a variable dividend rate may be paid on these accounts as well. Third, with respect to other share certificate accounts with maturities of less than four years, the dividend ceilings set forth in paragraph (h) of § 701.35 still apply. With respect to such accounts, however, paragraph (g)(ii)(A) of § 701.35 provides that the dividend rate may be expressed as a percentage above or below the rate declared for regular share accounts. Thus, for example, where a certificate is issued with a three year maturity and its rate is to be 400 basis points above the rate declared for regular shares, it is conceivable that this rate will vary over the life of the certificate in relation to variations in the declared regular dividend rate. The purpose of this policy statement is to set forth the views of NCUA with respect to the calculation and assessment of premature withdrawal penalties for share certificate accounts that have been issued with variable dividends rates.

A related issue has recently arisen concerning the assessment of the required minimum penalties on share certificate accounts to which additions have been made after the date the account was opened. Effective May 6, 1981, the NCUA Board ruled (46 FR 26275) that additions to share certificate accounts need no longer automatically reset the account's maturity provisions. As noted in the preamble to that rule, minimum penalties for premature withdrawal from such accounts remain in effect. This policy statement is intended to set forth the views of NCUA with respect to the calculation of the amount of the minimum penalty that must be assessed in the event of premature withdrawal from such accounts.

Paragraph (e) of § 701.35 spells out the mandatory minimum penalties that must be imposed in connection with premature withdrawals from share certificate accounts. This subsection provides that, at a minimum, an amount equal to the lesser of 90 days of dividends on the amount withdrawn or all dividends on the amount withdrawn since the date of issuance or renewal must be forefeited as a result of a premature withdrawal from an account with a maturity of one year or less. For accounts with maturities of greater than one year, a premature withdrawal must at a minimum result in the forfeiture of the lesser of all dividends for 180 days on the amount withdrawn or all dividends on the amount withdrawn since the date of issuance or renewal. Where a share certificate has been issued at a stated dividend rate that will not vary over the term of the certificate, calculation of the minimum penalty in accordance with this formula is straightforward. Where, however, a certificate is issued at a dividend rate that fluctuates over its term, or where additions to an existing account have been made subsequent to the date of issuance, calculation of the penalty becomes more complex. This policy statement will help explain the methods and available options for Federal credit unions in this regard.

IRPS 81-9

It is the view of the NCUA Board that, with respect to a share certificate account issued with variable dividend rates (i.e., a dividend rate that changes during the term of the certificate), paragraph (e) of § 701.35 may be interpreted in the following manner. Paragraph (e) essentially calls for the forfeiture of a specified number of days worth of dividends in the event of premature withdrawal from the share certificate account. Where dividends have accrued over the specified period at several different rates, it is necessary to first select a single rate to apply to the amount prematurely withdrawn in order to calculate the amount of the penalty. In selecting this penalty rate, Federal credit unions may:

(a) Select the rate in effect on the date the account was opened;

(b) Select the rate in effect on the date of the premature withdrawal; or

(c) Calculate an average of the various rates in effect for the period the funds were on deposit. In calculating this average, the various rates must be weighted in accordance with the relative length of time each was in effect.

It is the view of NCUA that any one of these three methods may be utilized. To ensure the enforceability of the method chosen, a clause specifically addressing this point should be incorporated into the account contract (i.e., the share certificate or other written document evidencing the terms and conditions of the account). It is also noted that the disclosures required by § 701.35(f) of NCUA's regulations include "The effect of premature withdrawal." To meet this disclosure requirement, Federal credit unions may wish to specify in their disclosure forms the precise method used to determine the applicable penalty rate on floating rate accounts, or they may wish to simply indicate that a substantial penalty will be incurred in the event of premature withdrawal. The latter type of disclosure is acceptable if the share certificate provides the details of the penalty method used.

It is expected that the above methods will not be utilized by Federal credit unions in such a way as to render the mandatory minimum penalty provisions a nullity. Thus, the NCUA Board will consider a variable rate scheme in which the operative rate for calculation of the penalty is set unreasonably low to be an attempt at circumvention of § 701.35(e). For example, where a variable rate certificate is issued with a provision establishing the effective rate on the date of issuance at zero in order that, pursuant to the first permissible option outlined above, no penalty need be applied, NCUA will consider such action a violation of the minimum penalty requirement of § 701.35(e).

With respect to share certificate accounts to which additions have been made subsequent to the date of issuance, NCUA interprets the premature withdrawal provisions of § 701.35(e) to be capable of two equally supportable constructions in arriving at the appropriate amount of dividends that must be forfeited. Where additions to an existing account are made and some time thereafter a premature withdrawal occurs, one permissible construction is to hold that the withdrawal consists first of the funds added to the account most recently, then next most recently, and so on. Equally permissible is a construction that deems any premature withdrawal to consist of funds that have been on deposit for relatively the longest periods of time. Obviously, the former construction will result in a smaller figure for purposes of calculating the minimum penalty called for by § 701.35(e), since the dividends that have accrued on the amounts deposited most recently will be the smallest. In the view of the NCUA Board, Federal credit unions may adopt either construction. The considerations outlined in the preceding paragraph concerning notice to account holders apply equally in this context.

By the National Credit Union Administration Board on November 18, 1981.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 18-34112 Filed 11-24-81; 8:45 am]

BILLING CODE 7535-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 148

Equal Access to Justice Act; Final Rules to Implement the Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Adoption of final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission"), in accordance with the Equal Access to Justice Act ("Act"), is adopting final rules to implement the Act. The Act, which took effect on October 1, 1981, provides for the award of reasonable attorney fees and other expenses to eligible private parties who prevail in covered administrative adjudicatory proceedings and civil litigation brought by or against the United States. The statute requires all agencies conducting adjudicatory proceedings covered by the Act to establish uniform procedures for making awards. In accordance with the Act, in order to facilitate the establishment of uniform rules, the Administrative Conference of the United States has issued model rules to implement the new law with respect to administrative adjudicatory proceedings. The Commission is adopting the model rules as its final rules, subject to certain technical changes designed to reflect particular Commission procedures and proceedings.[1]

EFFECTIVE DATE: November 25, 1981.

FOR FURTHER INFORMATION CONTACT: William E. Gressman or Elizabeth M. Knoblock, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-9880.

[1] These rules concern only administrative adjudicatory proceedings involving the Commission. Litigation involving the Commission before federal courts is not covered by these rules; the procedures for awards as to such matters will be resolved by the various federal courts.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act ("Act"), Pub. L. No. 96–481, 94 Stat. 2325–2330, authorizes the award of reasonable attorney fees and other expenses to eligible private parties who prevail in certain adversary adjudications under 5 U.S.C. 554 and in civil actions, other than tort cases, by or against the United States unless the government's position is found to be substantially justified or an award would be unjust given special circumstances. The Act, effective October 1, 1981, requires federal agencies conducting adjudicatory proceedings covered by its terms to establish and to implement uniform award procedures after consulting with the Chairman of the Administrative Conference of the United States.[2]

On March 10, 1981, the Chairman of the Administrative Conference published draft model rules to implement the Act and requested public comment.[3] The draft regulations were developed with the assistance of an interagency task force and were designed to provide a blueprint for agencies to use in developing their own rules.[4]

After receiving numerous comments from government agencies and other interested individuals and organizations, the Administrative Conference published final model rules on June 25, 1981.[5] The Chairman of the Administrative Conference noted, that although the Chairman's statutory role is consultative, the Act does require uniform procedures.[6] Agencies were admonished, "in pursuit of this statutory objective, to give serious consideration to the model rules * * *"[7] In addition, agencies were reminded that "[m]odel rules are, by their nature, general" and were advised to "where possible, make them more specific, including references to particular agency units, proceedings and procedures where appropriate, and eliminating irrelevant or redundant material."[8]

Upon reviewing the model regulations, the Commission has determined to follow the recommendation of the Administrative Conference and adopt the rules as drafted with the exception of certain minor additions, deletions or substitutions where necesssary to reflect existing Commission procedures and proceedings. In general, the Commission has renumbered the sections while keeping the subparts intact in order to conform to the general structure of the Commission's regulations. As for specific changes, the following discussion will identify the sections where such changes were effected and explain the changes to the extent explanation is deemed necessary.

Subpart A—General Provisions

Section 148.1 Purpose of these rules: Here and throughout the rules, the phrase "this agency" has been replaced by "the Commission." In addition, the term "adversary adjudication" or "administrative proceeding" has been changed to "adjudicatory proceeding."[9]

Section 148.3 Proceedings covered: The Commission has deleted the reference to ratemaking proceedings, since no such proceedings are conducted by the Commission. In place of the reference to licensing proceedings, the Commission has substituted a reference to its registration and contract market designation proceedings. Such proceedings are covered under the Act only to the extent that they are brought to determine whether or not to suspend or revoke a registration or designation[10] and are otherwise adjudicatory proceedings. Proceedings brought to determine whether or not to grant or renew registrations or contract market designations are excluded.[11] Further, a reference to reparations proceedings has been incorporated to clarify that such proceedings are not covered by the Act because the Commission is not a party to such actions conducted before the Commission.

Section 148.4 Eligibility of applicants: Here and throughout the rules, the Commission has substituted the term "Presiding Officer" for the term "adjudicative officer."[12]

Section 148.5 Standards for awards: In determining when an award should not be made to a prevailing eligible applicant, the burden of proof is on the Commission to show that the award may be avoided because its position was reasonable in law and fact. The model rules place the burden on "agency counsel."[13] This term, however, is used to refer to the litigating unit against which an award is sought.[14] The Commmission believes that awards should be sought against the Commission, not its litigating units.

Section 148.6 Allowable fees and expenses: The highest rate at which the Commission may pay expert witness fees is statutorily limited to "the maximum daily rate prescribed for GS-18 under section 5332 of the United States Code."[15] This statutory limitation has been incorporated into paragraph (b) of this section. Moreover, the reference to engineering reports in paragraph (d) of § 0.106 of the model rules has been deleted, since such reports are not relevant to Commission proceedings.

Section 148.7 Rulemaking on maximum rates for attorneys: The Commission already has petition procedures under § 13.2 of the Commission's regulations, 17 CFR 13.2, for those who seek to have the Commission issue, amend or repeal any rule of general application. The Commission believes that this regular petition procedure will best govern petitions to change the maximum rate for attorney fees under the Act. The Commission has, therefore, not adopted the brief petition procedures in subsection (b) of § 0.107 of the model rules, but rather incorporated by reference the detailed petition procedures of § 13.2 of the Commission's regulations.

The section of the model regulations dealing with delegation of authority to take final action on matters pertaining to the Act[16] has not been included in the Commission's rules, since the Commission is not delegating its

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[2] Section 203(a)(1) of the Act, 5 U.S.C. 504(c)(1).

[3] 46 F.R. 15895–15905.

[4] *Id.*

[5] 46 F.R. 32900–32915.

[6] 46 F.R. at 32900.

[7] *Id.*

[8] *Id.* at 32911.

[9] The term "adjudicatory proceeding" is defined in Commission Rule 10.2(b), 17 CFR 10.2(b), as "a judicial-type procseding leading to the formulation of a final order." Unlike the Commission's definition, the model rules expressly refer to adjudiciations involving other agencies. 46 FR at 32912. Although the Commission has never had before it an adjudicatory proceeding in which another agency was involved, the language of the model rules has been retained in the event that such a situation should alse in the future. The Commission has, however, added a sentence in § 148.3(a) explaining that, for the most part, the covered adjudicatory proceedings are those defined in § 10.2(b) of the rules and that Part 14 proceedings (relating to suspension or disbarment from appearance and practice before the Commission), if they involve a hearing, are also covered.

[10] The Commission does not conduct proceedings to modify registrations or designations.

[11] 46 FR 32913, thus, denials of registration or designation are excluded. 46 FR 32901.

[12] The term Presiding Officer is defined in § 10.2(n) of the Commission's Rules, 17 CFR 10.2(n), to include an Administrative Law Judge, a hearing officer, a member of the Commission or the Commission itself if it is to preside at a hearing. Part 10 of the Commission's regulations, 17 CFR Part 10—the Rules of Practice, sets forth the procedural rules that govern in adjudicatory proceedings before the Commission. Normally, an Administrative Law Judge or hearing officer presides in the first instance and it is contemplated that such will usually be the case as to award proceedings under the Act. The conduct of award proceedings will be in accordance with the Rules of Practice to the extent they are not inconsistent with the rules set forth in this Part 148.

[13] 46 FR at 32913.

[14] 46 FR at 32911.

[15] Section 12(b) of the Commodity Exchange Act, 7 U.S.C. 16(b). See 46 FR at 32913.

[16] Section 0.109, 46 FR at 32913.

authority to take such final action at this time.

Subpart B—Information Required From Applicants

Section 148.12 Net worth exhibit: As suggested by the model rules, the Commission has incorporated by reference the provisions of its Freedom of Information Act procedures—Part 145 of the Commission regulations, 17 CFR Part 145.

Section 148.14 When an application may be filed: In subsection (a) of this section, the Commission has incorporated by reference its separate hearing procedure for a significant and discrete portion of an adjudicatory proceeding from § 10.63(b) of the Commission's Rules of Practice, 17 CFR 10.63(b). In addition, in subsection (c) of this section, the Commission has incorporated its procedures for final agency action and final orders in §§ 10.84 and 10.104 of its Rules of Practice, 17 CFR 10.84 and 10.104.

Subpart C—Procedures for Considering Applications

Section 148.22 Answer to application: Here and throughout the remainder of the rules, the term "agency counsel" has been replaced by "counsel for the Commission or for another relevant agency," in order to clarify the applicability of the rules in the case of any adjudicatory proceedings before the Commission to which another agency is also a party.

Section 148.25 Settlement: The model rules provide that an applicant and agency counsel "may agree on a proposed settlement * * *" [17] The commentary of the Administrative Conference states that this language "is based on the assumption that agency litigators must ordinarily obtain approval from an Administrative Law Judge or from the agency in order to settle a proceeding." [18] The Commission believes, however, that its substituted phrase, "the applicant may propose settlement," is a more appropriate reflection of the Commission's procedures, which allow a private party to propose a settlement to the Commission without the concurrence of Commission counsel. Settlements may be approved only by the Commission.[19] Similarly, the Commission has substituted the language "offer a proposed settlement" for "agree on a proposed settlement" [20] where the offer occurs before an application has been filed. The Commission has also incorporated by reference its settlement procedures in § 10.108 of the Commission's Rules of Practice, 17 CFR 10.108.

Section 148.27 Decision: The Commission has incorporated by reference its procedures for issuing initial decisions under § 10.84 of the Commission's Rules of Practice, 17 CFR 10.84.

Section 148.28 Commission review: The Commission has established a time limit of fifteen days for the filing of an application for review of an initial decision. This limit is the same as that set for review of any initial decision under § 10.102(a) of the Commission's Rules of Practice, 17 CFR 10.102(a). The Commission has also added a provision stating that initial decisions "shall not become final pending Commission disposition." [21] Moreover, initial decisions which are not reviewed will become final thirty days after service upon the parties rather than thirty days after they are "issued" as provided in the model rules.[22] The Commission has included a provision that an application to the Commission for review of an initial decision on a fee application is a prerequisite to the seeking of judicial review of a final order on the application entered pursuant to the initial decision. Finally, the Commission has provided that if the Commission decides to take review, the applicant and counsel for the Commission or for another relevant agency shall file such briefs and address such issues as the Commission may direct.

Section 148.30 Payment of award: The Commission has included the name and address of the office that will handle payment of awards. The Commission has also included a requirement that applicants submitting statements that no court review will be sought must provide a copy of such statements to counsel for the Commission. In addition, the Commission has added language to clarify when payment of an award will occur.

The Commission finds that these rules relate solely to matters of agency procedure and practice.[23] Therefore, the provisions of the Administrative Procedure Act as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation are not applicable. These rules will become effective on November 25, 1981.[24]

In consideration of the foregoing, the Commission hereby adopts a new Part 148 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 148—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COVERED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); sec. 10(c), Pub. L. 89-554, 80 Stat. 392 (5 U.S.C. 704); sec. 101(a)(3), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j)).

Subpart A—General Provisions

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible

[17] 46 FR at 32914.

[18] 46 FR at 32911.

[19] See 17 CFR 10.108.

[20] 46 FR at 32914.

[21] Similar language applies to all initial decisions under § 10.84(c)(1) of the Commission's Rules of Practice, 17 CFR 10.84(c)(1).

[22] 46 FR at 32915.

[23] The Commission also notes that since these rules are procedural in nature and additionally have a potentially beneficial, rather than adverse, impact on small businesses, the provisions of the Regulatory Flexibility Act do not apply to them. Moreover, since the Equal Access to Justice Act rules do not call for collection of information from the general public by the Commission, but rather implement the new statute in the context of particular ongoing adjudicatory proceedings, the provisions of the Paperwork Reduction Act do not apply to them.

[24] The Commission notes that the Equal Access to Justice Act became effective on October 1, 1981 and that the new law presently provides that it will expire on September 30, 1984. Because the law is already effective, the Commission finds good cause to make the rules effective upon publication in the **Federal Register**.

individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this Part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 148.2 When the Act applies.

The Act applies to any adjudicatory proceeding pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Reparation proceedings under Section 14 of the Commodity Exchange Act, 7 U.S.C. 18, are not covered by the Act since the Commission is not a party thereto. Proceedings brought to determine whether or not to grant or renew registrations or contract market designations are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this Chapter; Part 14 proceedings, if they involve a hearing, are also covered.

(b) The Commission may also designate a proceeding not listed in paragraph (a) as covered by the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The Commission's failure to so designate a proceeding shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

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

§ 148.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adjudicatory proceeding for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this Subpart and in Subpart B.

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

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more that 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adjudicatory proceeding was initiated.

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

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

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Presiding Officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the Presiding Officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

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

§ 148.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adjudicatory proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission, which may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adjudicatory proceeding or if special circumstances make the award sought unjust.

§ 148.6 Allowable fees and expenses.

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

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the maximum daily rate prescribed for GS–18 under section 5332 of Title 5 of the United States Code. However, an award may also include the reasonable expenses of the attorney, agent, or witnesss as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

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

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

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

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

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

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

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

§ 148.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this Part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with § 13.2 of this Chapter

§ 148.8 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in an adjudicatory proceeding before the Commission and takes a postion that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency in the adjudicatory proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

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

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

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

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

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 148.12 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 148.4(f) of this Part) when the adjudicatory proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this Part. The Presiding Officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the adjudicatory proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the Presiding Officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Commission or other agency against which the applicant seeks an award, but need not be served on any other party to the adjudicatory proceeding. If the Presiding Officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the adjudicatory proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act as provided in Part 145 of this Chapter. For that purpose, the applicant shall file a copy of its motion with the Commission's Freedom of Information Act Compliance Staff in the Office of the Secretariat, Washington, D.C.

§ 148.13 Documentation of fees and expenses.

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

§ 148.14 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adjudicatory proceeding or in a significant and discrete substantive portion of the proceeding, subject to the separate hearing procedure pursuant to § 10.63(b) of this Chapter, but in no case later than 30 days after the Commission's final disposition of the adjudicatory proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision by the Presiding Officer becomes final pursuant to § 10.84 of this Chapter; (2) issuance of an order disposing of any petitions for reconsideration of the Commission's final order in the proceeding pursuant to § 10.106 of the Rules of Practice; (3) if no petition for reconsideration is filed, the last date on which such a petition could have been filed pursuant to § 10.106 of the Rules of Practice; or (4) issuance of a final Commission order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration.

Subpart C—Procedures for Considering Applications

§ 148.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adjudicatory proceeding, except as provided in § 148.12(b) for confidential financial information.

§ 148.22 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Commission or other agency against which an award is sought may file an answer to the application. Unless counsel for the Commission or for another relevant agency requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If counsel for the Commission or for another relevant agency and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the Presiding Officer upon request by counsel for the Commission or for another relevant agency and the applicant.

(c) Any answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of counsel for the Commission or for another relevant agency. If the answer is based on any alleged facts not already in the record of the adjudicatory proceeding, counsel for the Commission or for another relevant agency shall include with the answer either supporting affidavits or a request for further proceedings under § 148.26 of this Part.

§ 148.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adjudicatory proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 148.26 of this Part.

§ 148.24 Comments by other parties.

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

§ 148.25 Settlement.

The applicant may propose settlement of the award to the Commission before final action on the application, either in connection with a settlement of the adjudicatory proceeding, or after the adjudicatory proceeding has been concluded, in either case in accordance with § 10.108 of this Chapter. If a prevailing party offers a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 148.26 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

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

§ 148.27 Decision.

The Presiding Officer shall issue an initial decision on the application in accordance with the provisions of § 10.84 of this Chapter. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position was substantially justified, whether the applicant unduly or unreasonably protracted the adjudicatory proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 148.28 Commission review.

Either the applicant or counsel for the Commission or for another relevant agency may seek review of the initial decision on the fee application by filing an application for review within 15 days after service upon the parties of the initial decision, or the Commission may decide to review the decision on its own initiative. If an application for review is filed, the initial decision shall not become final pending Commission disposition of the application. If neither the applicant nor counsel for the Commission or for another relevant agency seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the Commission 30 days after it is served upon the parties. An application to the Commission for review of an initial decision on the fee application is a prerequisite to the seeking of judicial review of a final order of the application entered pursuant to the initial decision. Whether to review a decision is a matter within the discretion of the Commission. In the event the Commission decides to take review, the applicant and counsel for the Commission or for another relevant agency shall file such briefs and address such issues as the Commission may direct. If review is taken, the Commission will issue a final decision on the application or remand the application to the Presiding Officer for further proceedings.

§ 148.29 Judicial review.

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

§ 148.30 Payment of award.

An applicant seeking payment of an award from the Commission shall submit to the Executive Director of the Commission, 2033 K Street, N.W., Washington, D.C. 20581, a copy of the Commission's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. At the same time, the applicant shall provide a copy of his submissions to counsel for the Commission. The Commission will, within 60 days of receipt of the applicant's submissions, forward to the United States Department of the Treasury a Standard Form 1166, "Voucher and Schedule of Payments," so as to have the Treasury Department issue a check in the amount awarded in the Commission's decision, unless judicial review of the award or of the underlying decision in the adjudicatory proceeding has been sought by the applicant or any other party to the adjudicatory proceeding.

Issued by the Commission on November 20, 1981, in Washington, D.C.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 81-34053 Filed 11-24-81; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-81-940]

Community Development Block Grants; State's Program

Correction

In FR Doc. 81-33862 appearing on page 57256 in the issue of Friday, November 20, 1981, make the following correction:

In the first column of page 57258, the bold face heading now reading "Part 270—Community Development Block Grants" should have read "Part 570—Community Development Block Grants".

BILLING CODE: 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7797]

Investment in United States Property by Controlled Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document amends § 1.956-2(b)(1)(ix) of the regulations relating to movable drilling rigs or barges and other exploration and exploitation equipment used on the Continental Shelf of the United States. The regulations clarify the definition of "use of property on the Continental Shelf" and the clarification will provide guidance to taxpayers with respect to existing regulations. The final regulations affect controlled foreign corporations making certain investments in United States property and their United States shareholders.

DATE: The amendment applies to taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Discussion

On August 7, 1980, the Federal Register published final regulations under sections 956 and 958 of the Internal Revenue Code of 1954 (45 FR 52373). Amendments under sections 956 (a), (b) (2), and 958 were made to conform the regulations to amendments to the Internal Revenue Code of 1954. Following publication of the final regulations, a letter from a taxpayer was received indicating that § 1.956-2(b)(1)(ix) of the final regulations, which required that movable drilling rigs and other similar equipment be used exclusively on the Continental Shelf, imposed a requirement not found in the statute. The regulations as adopted were not intended to impose additional requirements on taxpayers; therefore, § 1.956-2(b)(1)(ix) is amended in this document to provide clarification. This document is not intended to be more restrictive than the final regulations as previously adopted. Therefore, property if actually used on the Continental Shelf by the last day of the taxable year following the year of purchase, commencement of storage, or commencement of transit would still qualify as excluded property. This amendment is in the nature of a clarification and will not adversely affect any taxpayer.

Drafting Information

The principal author of these regulations is Jacob Feldman 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 regulations both on matters of substance and style.

Adoption of amendments to the regulations.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.956-2 is amended by revising paragraph (b)(1)(ix) to read as follows:

§ 1.956-2 Definition of United States property.

* * * * *

(b) *Exceptions*—(1) *Excluded property.* * * *

(ix) For taxable years beginning after December 31, 1975, movable drilling rigs or barges and other movable exploration and exploitation equipment (other than a vessel or an aircraft) when used on the Continental Shelf (as defined in section 638) of the United States in the exploration for, development, removal, or transportation of natural resources from or under ocean waters. Property used on the Continental Shelf includes property located in the United States which is being constructed or is in storage or in transit within the United States for use on the Continental Shelf. In general, the type of property which qualifies for the exception under this subdivision includes any movable property which would be entitled to the investment credit if used outside the United States in certain geographical areas of the Western Hemisphere pursuant to section 48(a)(2)(B)(x) (without reference to sections 49 and 50).

* * * * *

Since this regulation is clarification of a recently published Treasury decision it is found unnecessary 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).

Joseph T. Davis,

Acting Commissioner of Internal Revenue.

Approved: November 20, 1981.

David G. Glickman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 81-34107 Filed 11-24-81; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL 1979-7]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is approving the deletion from the New Jersey State Implementation Plan of certain transportation and stationary source air pollution control regulations promulgated by EPA in November 1973. EPA agrees with the State's determination that these regulations have been either implemented, superseded, outdated or found to be unreasonable. Consequently, this action to remove unnecessary and duplicative regulations will not adversely affect air quality.

EFFECTIVE DATE: This action is effective November 25, 1981.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 13, 1973 (38 FR 31388), the Environmental Protection Agency (EPA) promulgated as part of the New Jersey State Implementation Plan (SIP) a number of federal regulations for the control of air pollution emissions from transportation and stationary sources in the New Jersey portions of the New York—New Jersey—Connecticut Interstate and Philadelphia Interstate Air Quality Control Regions. These control measures are collectively referred to as the 1973 Transportation Control Plan (1973 TCP). At the time of promulgation of these regulations, EPA noted that it hoped that they eventually would be replaced by State programs. Subsequently, a number of these regulations were revised or revoked and, on December 29, 1978, in response to the requirements of Part D of the Clean Air Act, New Jersey submitted a revision to its SIP for the entire State (1979 SIP).

This 1979 SIP revision contained a number of stationary and mobile source control strategies for attainment of the ozone and carbon monoxide national ambient air quality standards. EPA unconditionally approved this 1979 SIP on April 15, 1981 (46 FR 21994). On April 14, 1981, the New Jersey Department of Environmental Protection also submitted to EPA a document to demonstrate how the 1973 TCP control measures were either implemented, under study, found unreasonable, or already addressed in the 1979 SIP.

EPA reviewed the 1979 SIP in light of this April 14, 1981 document and agreed with the State that there was an adequate demonstration that either the 1973 TCP measures had been adequately addressed, at times in modified form, in the State's 1979 SIP or in other actions as approved by EPA, or that the 1973 TCP measures are not now reasonable. Consequently, on August 4, 1981 (46 FR 39611), EPA proposed revocation of the following federal regulations:

40 CFR part 52	Title of CFR section
1583	Regulation for annual inspection and maintenance.
1584	Exhaust gas recirculation retrofit.
1585	Oxidizing catalyst retrofit.
1587	Regulation limiting on-street parking.
1588	Management of parking supply.
1589	Preferential bus/carpool treatment.
1590	Employer's provision for mass transit priority incentives.
1591	Regulation for a vehicle free zone.
1593	Monitoring transportation mode trends.
1595	Gasoline loading, unloading and transfer.
1599	Control of evaporative losses from the filling of vehicular tanks.
1600	Carpool matching and promotion system

No comments were received on this notice of proposed rulemaking. Today's action to finalize EPA's August 4, 1981 proposal is being made effective immediately since it provides no additional burden on the affected parties.

EPA is also taking final action to revoke a federal regulation at 40 CFR 52.1582(c) which resulted from its partial disapproval of Section 16.3 of the March 1, 1976 version of New Jersey's Subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Substances," promulgated on March 19, 1979 at 44 FR 16386. 40 CFR 52.1605, "EPA-approved New Jersey regulations," is also being revised to reflect this change. These actions result from the action being taken today to revoke 40 CFR 52.1595, "Gasoline loading, unloading and transfer," which has now been superseded by an approved New Jersey regulation.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this aciton is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. This rule withdraws certain SIP provisions pursuant to and consistent with a request by the State. It removes regulatory requirements and imposes no new requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it deletes rather than imposes regulatory requirements.

(Secs. 110, 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502 and 7601))