

Sunshine Act Meetings

Federal Register

Vol. 50, No. 241

Monday, December 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Home Loan Bank Board.....	1
Federal Mine Safety and Health Review Commission.....	2, 3
Federal Reserve System.....	4, 5
Foreign Claims Settlement Commission.....	6
Securities and Exchange Commission.....	7

1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:30 a.m., Friday, December 20, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Accounting for Options
Securities Disclosures
Industry Conflicts of Interest
Interstate Activities Statement of Policy
No. 33, December 12, 1985.

Jeff Sconyers,
Secretary.

[FR Doc. 85-29804 Filed 12-12-85; 2:19 pm]

BILLING CODE 6720-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 11, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, December 11, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the already published items heard, the Commission also discussed the following:

1. Youghiogheny & Ohio Coal Co., Docket No. LAKE 85-90.
2. Hobet Mining & Construction Co., Docket No. WEVA 84-113-R, etc., (Consideration of petition for discretionary review).

It was determined by a unanimous vote of Commissioners that these items be included in the meeting and that no

earlier announcement of the additions was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-29811 Filed 12-12-85; 3:00 pm]

BILLING CODE 6735-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 11, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, December 11, 1985.

PLACE: 1730 K Street, NW., Room 600, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Halfway, Inc., Docket No. WEVA 85-15. (Issues include whether the administrative law judge properly determined that a roof control violation was "significant & substantial").

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-29812 Filed 12-12-85; 3:00 pm]

BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Thursday, December 19, 1985.

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

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on

without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal by the Federal Reserve Bank of New York to offer automated clearing house services to Chase ACH, Inc.

2. Cost of Federal Reserve notes in 1986.

Discussion Agenda

3. Federal Reserve Bank budgets for 1986.
4. Publication for comment of proposed amendments to Regulation Q (Interest on Deposits) regarding advertising and disclosure practices of member banks.
5. Proposed revisions to Quarterly Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29774 Filed 12-12-85; 11:07 am]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Thursday, December 19, 1985, following a recess at the conclusion of the open meeting.

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

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 9, 1985.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29775 Filed 12-12-85; 11:07 am]

BILLING CODE 6210-01-M

6

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2-86

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME:

Tuesday, January 21, 1986 at 9:30 a.m.

Wednesday, January 22, 1986 at 9:30 a.m.

SUBJECT MATTER: Consideration of Final Decisions issued on objections under the Vietnam Claims Program (Pub. L. 96-209), and POW claims under the War Claims Act of 1948 as amended.

Subject matter listed above, not disposed of at the scheduled meeting.

may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 - 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 - 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on December 11, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 85-29767 Filed 12-12-85; 11:07 am]

BILLING CODE 4410-01-M

7

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published] 50FR50252.

STATUS: Open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, December 4, 1985.

CHANGE IN THE MEETINGS: Deletions.

The following item will not be considered at an open meeting scheduled for Thursday, December 12, 1985, at 11:00 a.m.:

Consideration of a proposal by the Philadelphia Stock Exchange, Inc. (File No. SR-Phlx-85-10) to trade options on European Currency Units. For further information, please contact Alden Adkins at (202) 272-2843.

The following item will not be considered at an open meeting scheduled for Thursday, December 12, 1985, at 3:00 p.m.:

Oral argument on an appeal by Owen V. Kane, the vice president of a registered brokerdealer, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

The following item will not be considered at a closed meeting scheduled for Thursday, December 12, 1985, following the 3:00 p.m. open meeting:

Post oral argument discussion.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272-2091.

Dated: December 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-29780 Filed 12-12-85; 11:42 am]

BILLING CODE 8010-10-M

Federal Register

Monday
December 16, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 198
Aviation Insurance; Comprehensive
Revision of Current War Risk Insurance
Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 198

[Docket No. 24223; Amdt. Nos. 11-27; 198-2]

Aviation Insurance; Comprehensive Revision of Current War Risk Insurance Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the provisions of the Federal Aviation Regulations dealing with the Federal aviation insurance program. These revisions are necessary to reflect certain amendments to the Federal Aviation Act which broadened the scope of risks which may be insured by the Administrator. This rule implements those legislative changes and, in addition, extensively revises the current aviation insurance regulations to better reflect current air carrier insurance needs and commercial insurance practice.

EFFECTIVE DATE: January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Harris, Office of Aviation Policy and Plans (APO-230), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3711.

SUPPLEMENTARY INFORMATION:

Background

In 1951, the Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the Federal Government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the event of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The aviation insurance program was incorporated in Title XIII of the Federal Aviation Act of 1958 (Act). Statutory responsibility for the program was transferred by the Department of Transportation Act to the Secretary of Transportation who delegated this authority to the Federal Aviation Administrator (49 CFR 1.47 (b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters, and, as a matter of policy, the FAA had always conservatively interpreted the definition.

In the early 1970's this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these news risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred with the potential result of termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad discretionary authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1977. These amendments, included in Pub. L. 95-163, removed from Title XIII all references to risk categories. It authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. Such insurance can only be issued if commercial insurance for those operations is not available on reasonable terms.

The Aviation Insurance Program

Title XIII authorizes the Administrator to issue two forms of insurance: insurance with premium and insurance without premium. The two forms of insurance do not differ in the scope of coverage, only in the charge for protection. In the case of premium insurance, the Administrator accepts financial liability for claims payable and charges applicants a premium commensurate with the risks covered. In the case of nonpremium insurance, coverage is provided to applicants performing contract services for other Federal departments and agencies

which have entered into indemnity agreements with the FAA. Under the terms of these agreements, the FAA would be reimbursed for the costs of any payable insurance claims. Therefore, because the FAA does not assume any financial liability in the provision of this insurance, no premium fees are charged. Applicants are charged only a small aircraft registration fee to recover the administrative costs of providing the insurance. The fundamental policy underlying both programs is that the Government should not provide insurance on a regular or routine basis; rather, commercial problems should be resolved by commercial entities.

Currently, the Administrator may issue aviation insurance for aircraft registered either in the United States or in a foreign country against damage or loss resulting from any risk with regard to aircraft and persons and property on board provided the following conditions are met:

(1) The President has determined that the continuation of specified air services is in the foreign policy interests of the United States;

(2) The operation of the aircraft is either in foreign air commerce or between two points outside the United States; and

(3) The Administrator has found that insurance for the particular operation cannot be obtained on reasonable terms from the commercial insurance market.

In order for the first condition to be satisfied, the Administrator must consult with other interested Federal agencies as the President may require to establish a basis for determination by the President that foreign policy reasons mandate providing insurance so that air service can continue. This condition is a significant determinant of whether the issuance of Federal insurance is warranted. Before Title XIII was amended, the key question was whether the risk to be insured fell within the category of "war risks" as defined in the Act.

The foreign policy consideration is linked to the second qualification: the only risks insurable are those arising from the operation of an aircraft between two points outside the United States or in foreign air commerce. In light of the requirement that air service be in the foreign policy interest of the United States, in the case of aircraft engaged in foreign air commerce, only that portion of a flight commencing with the last stop in the United States and continuing to be destination abroad will be eligible for the Aviation Insurance Program. For the third condition to be

satisfied, the Administrator must determine that commercial insurance is unavailable on reasonable terms and conditions. Establishing the unavailability of coverage requires an investigation of several facets of commercial coverage. Specifically, the Administrator must determine whether certain risks are being excluded and for which operations. An investigation also must be made as to whether the applicant for insurance can obtain commercial coverage in amounts sufficient to cover the full reasonable value of aircraft and associated liability. Finally, if adequate commercial coverage is available, the Administrator must ascertain whether that insurance is available at reasonable premium rates.

Premium Program

In accordance with the provisions of Title XIII, premiums for premium insurance are based, insofar as is practicable, upon consideration of the risk involved. Rates charged for the premium program have been geared to the most recent charges for coverage purchased from the commercial insurers plus an increase judged necessary to reflect the additional hazard which caused the commercial insurers to terminate coverage or increase its cost to an unreasonable level. Recognizing the purpose of Title XIII, an effort is made to arrive at a rate which is fair, reasonable, and nondiscriminatory. The amount of the premium ordinarily includes a deductible and a factor for claims adjustment expenses.

Furthermore, the rate is set at a level high enough to encourage commercial insurance companies to reenter the market after a crisis has passed.

Nonpremium Program

In addition to the premium program, the Administrator may, in accordance with Section 1304 of the Act, provide insurance for air carriers under contract to other Federal departments or agencies without premium, in consideration of an indemnity agreement between the Department of Transportation and the department or agency seeking insurance. At present, indemnity agreements exist between the Department of Transportation and the Department of Defense (DOD) and State (DOS) respectively. Under the terms of those agreements, if DOD or DOS requests insurance coverage for aircraft operations in support of its departmental activities, and commercial insurance is unavailable, the FAA will provide the necessary insurance. The insurance is provided without a premium cost to the air carriers concerned; however, a \$200 per aircraft

registration fee is required to recover the administrative costs of providing this insurance. In the event of loss or damage due to a risk covered by nonpremium insurance, DOD or DOS, under the terms of the agreements, will indemnify the FAA for payment of claims.

At the present time, Title XIII nonpremium insurance provides the insurance basis for contract operations which would be performed during periods of activation of the Civil Reserve Air Fleet (CRAF). DOD requires each air carrier participant in the CRAF program to apply to the FAA for nonpremium hull and liability war risk insurance. Commercial war risk aviation insurance is unavailable for aircraft operations performed pursuant to CRAF activation.

Explanation of Changes

Part 198 is revised to reflect the statutory changes with regard to eligibility for Title XIII insurance and the scope of insurance risks and to reflect the current needs of air carriers and evolving commercial aviation insurance practice.

At the time Part 198 was originally promulgated, commercial war risk insurance policies contained a 24-hour automatic cancellation clause in the event of outbreak of war between any of the five post World War II "great powers." This clause created a special problem concerning the availability of commercial insurance coverage. Since notification 24 hours prior to cancellation may not have provided sufficient time for air carriers to remove their aircraft from high risk environments or for the FAA to process an application for Title XIII premium insurance, a potential gap in war risk insurance coverage existed.

In recognition that this potential gap in coverage could seriously constrain the growth of international civil aviation, Part 198 previously provided for the issuance of interim coverage to bridge this gap. This was accomplished by issuing to air carriers interim binder policies, of 3 years in duration, in consideration of a \$200 per aircraft binding fee. Interim binders incorporated by reference all the terms of the standard premium war risk insurance policy. Coverage provided by the interim binders automatically came into force following activation of the 24-hour cancellation clause in commercial war risk insurance policies. The interim binders remained in force until the FAA either issued a premium war risk policy or notified the insured of its intent to cancel the interim binder policy and the notice period has passed. Because the

FAA had to give 5 days advance notice of its intent to cancel an interim binder policy, ample time was provided for the insured to remove its aircraft from a high risk environment.

To an extent, technological innovations in aviation eliminated the need for the interim binder policies. The introduction of long-range jet aircraft and the establishment of instantaneous global communications systems currently enable air carriers to move aircraft to insurance "safe-havens" from any point on the globe on 24-hours notice.

The introduction of the CRAF program eliminated any residual need for the interim binders. By providing a mechanism whereby Title XIII nonpremium insurance automatically is substituted for commercial war risk insurance in the event of major war, the CRAF program bridged the potential gap which previously existed between commercial and Title XIII war risk insurance coverage. In the event of major war, commercial war risk insurance would be automatically terminated, CRAF would be activated and that portion of the United States civil aircraft fleet required to fulfill United States foreign policy needs thus would come under the control of DOD, and Title XIII nonpremium war risk insurance coverage would become effective, thereby precluding a need for interim binder coverage.

Accordingly, the interim binder policies have fallen into disuse. Because no air carrier continues to have active interim binder policies, the continued availability of these policies apparently serves no useful purpose. Therefore, this revision will delete all specific references to interim binder policies.

The principal statutory changes to Title XIII enacted by Pub. L. 95-163 were two-fold and complementary. On one hand, Congress greatly expanded the scope of insurable risks for which the Administrator may provide insurance coverage. On the other hand, Congress strengthened the requirement for Presidential review of the exercise of this expanded authority. The statutory changes are incorporated in §§ 198.1, 198.3, 198.5, and 198.7. These sections present a revised and consolidated statement of aircraft operations eligible for insurance and the scope of insurance coverage available. Section 198.1 contains a specific reference to the requirement for Presidential approval of the insurance. Similarly, §§ 198.3, 198.5, and 198.7 reflect the fact that the Administrator has broad discretionary authority in extraordinary circumstances to accept applications for

any aviation insurance customarily available for commercial sources. This is accomplished by the deletion from Part 198 of all references to categories of insurable risks or types of insurance. In addition, all references to nationality of aircraft are deleted. Even prior to the enactment of Pub. L. 95-163, the Administrator possessed authority to insure the operations of foreign-registered aircraft, and retention in Part 198 of a distinction between United States and foreign-registered aircraft served no purpose. The reporting requirements and responsibilities of applicants for insurance have been consolidated in §§ 198.9, 198.11, 198.13, and 198.15. Section 198.9 is a restatement of the documentation an applicant must provide to demonstrate that commercial insurance is not available on reasonable terms and conditions. Section 198.11 emphasizes the responsibility of air carriers to notify the Administrator promptly of any changes in the status of insured aircraft. Sections 198.13 and 198.15 restate the payment procedures for Title XIII insurance.

The Appendices to Part 198 are substantially revised and consolidated. Whereas the current Appendices to Part 198 contain a separate application form and standard policy format for nearly every type and form of insurance the Administrator was authorized to issue prior to 1977, the new Part 198, will contain a single Appendix which presents a standard application form for insurance. This form has been designed to enable an applicant to apply for any type, form, or amount of insurance coverage. All standard policies will be deleted from Part 198. The Administrator now possesses authority to provide insurance coverage against any risk or peril from specified aircraft operations, and it is, therefore, no longer possible to anticipate all the risk(s) or peril(s) for which insurance may be requested. Rather than attempt to prepare a separate standard policy for every conceivable risk or peril for which an application for insurance may be anticipated, preparation of policies will occur after an application has been accepted and the risks or perils for which coverage is requested can be precisely identified. Although all such policy provisions are, therefore, technically negotiable, the agency has attempted to describe the principal provisions which would be commonly included in premium policies issued by the agency. These principal provisions will include:

- An identification of the insurer and insured parties.

- A description of the amounts of insurance provided.
- Insurance will be provided in any amount requested, provided:
- The amounts do not exceed the corresponding amounts by which the insured is or was insuring or self-insuring applicable aircraft or itself against loss, damage, or liability from the risk covered.
- The amount of hull insurance may not exceed the fair and reasonable value of the aircraft covered.
- A description of any deductibles.
- A single catastrophe limit.
- A statement of the time effectiveness of the insurance.
- A description of the coverage, including:
 - An enumeration of the risks or perils covered (coverage may be provided against any risk or peril customarily covered by commercial insurance companies authorized to conduct business in the United States).
 - Any geographical or other operational limitations.
 - An enumeration of exclusions.
 - A statement of premium rates, including:
 - Any requirement for deposit premiums.
 - Payment schedules and related requirements.
 - Any procedures for revision of premium rates.
 - A description of termination, voidance, and cancellation procedures.
 - Termination will occur:
 - Upon expiration of the statutory authority to issue insurance.
 - Upon expiration of a Presidential determination of foreign policy need for continuation of air services covered by the insurance.
 - If there is a change in the status (ownership, registration, operational mission) of aircraft covered.
 - After notice of termination or cancellation.
 - Upon request of the insured.
 - Voidance shall occur in the event of:
 - Assignment or transfer of insurance without written consent.
 - Concealment, misrepresentation of information, or fraud.
 - Cancellation shall occur if:
 - Comparable insurance becomes available on reasonable terms and conditions.
 - Requested by the insured.
 - A statement of general obligations of the insured to:
 - Defend itself against loss claims.
 - Promptly notify the agency of any event which may result in a claim for compensation.

- Assist the agency in securing all relevant information and evidence concerning loss claims.
- Subrogate to the agency all rights against any other person or entity regarding loss claims.

Discussion

Interested persons were afforded the opportunity to participate in the making of this amendment by Notice 84-15, published on page 35130-35135 of the *Federal Register* of September 6, 1984. Comments were invited for 125 days, ending January 9, 1985. Due consideration has been given to all comments presented in response to this notice.

The FAA received one response to this notice. The commentator had three comments to make.

1. The commentator did not believe that fair market value was an appropriate standard to apply when establishing the maximum limits of hull insurance coverage available under Title XIII. He noted both that the aircraft market is subject to erratic fluctuations and that financiers and lessors of aircraft generally require hull coverage equal to or greater than a stipulated loss value, which may exceed market value at a particular time. Therefore, the commentator suggests that the appropriate standard for the limitation in the amount of insurance coverage would be that it could not exceed that which is currently purchased in the commercial market, and required by lenders and lessors as the case may be. The FAA agrees with the commentator that fluctuation in the market value for aircraft negates its use to establish maximum limits of hull insurance coverage. Therefore, the proposed reference to market value in § 198.7(a) is deleted and the fair and reasonable value of the aircraft will be the maximum limit of hull insurance coverage. Fair and reasonable value is the standard specified in Title XIII and the existing Part 198.

2. The commentator is concerned that the proposed eligibility criteria in § 198.1(b) and the supplementary explanation of these criteria (i.e., domestic segments of operations to or from a foreign point with an intermediate stop in the United States are not eligible for Title XIII insurance coverage) may be a potentially serious deficiency in this program because situations may arise in which the nonavailability of commercial insurance coverage for domestic segments could preclude operations in foreign air commerce which are required to carry out the foreign policy of the United States. The exclusion of domestic

segments from Title XIII coverage furthers the congressional intent that, to the maximum extent possible, all entities should self-insure for domestic risks and is consistent with the legislative history of the 1977 amendments to Title XIII. Therefore, the FAA has not changed the eligibility criteria in § 198.1 from those in the NPRM.

3. The commenter is concerned that, in circumstances other than Stage III activation of the Civil Reserve Air Fleet (CRAF), Title XIII insurance may not be available on a timely enough basis to preclude gaps in insurance coverage. It is recommended that the problem of potential gaps in coverage possibly could be resolved by provision of immediate nonpremium Title XIII coverage for all CRAF stages in the event of cancellation of commercial insurance and the issuance of binder policies for non-CRAF operations.

The first suggestion raises several policy and practical problems. Title XIII nonpremium insurance coverage is provided at the request of Federal agencies which indemnify the Administrator against losses claimed under the coverage. The requesting agency both assumes the financial risk for loss claims and specifies which operations it desires to be covered by Title XIII insurance. Therefore, provision of Title XIII coverage CRAF Stages I & II would have to be requested in initiated by the Department of Defense.

Furthermore, the FAA is required by statute to limit the provision of Title XIII insurance to situations in which commercial insurance cannot be obtained on reasonable terms and conditions. Because all commercial war risk insurance policies contain a specific CRAF Stage III Activation exclusion or automatic termination clause, the nonavailability of commercial coverage can be predetermined and administrative provision made for the automatic applicability of Title XIII coverages. The FAA knows of no circumstance involving CRAF Stages I & II operations in which the nonavailability of commercial insurance can be predetermined. Therefore, FAA determinations concerning the availability of commercial insurance for all situations other than those specified in exclusion or automatic termination clauses must be made on a case-by-case basis at the time of application. As a practical matter, the FAA does not believe that failure to provide for automatic extension of Title XIII to CRAF Stages I & II will impair a carrier's ability to respond to Federal

Government airlift requirements in emergency situations. Because Title XIII policies already have been issued to carriers for CRAF Stages III operations, these coverages can be extended at the request of the Department of Defense to CRAF Stages I and II operations upon a determination by the FAA of the nonavailability of commercial insurance. The FAA believes that in all conceivable circumstances this process could be completed within 48 hours. In fact, on several occasions during the past 2 years, Title XIII coverage has been provided on this basis for Stage I operations within 48 hours of the FAA's receipt of notice of the need for Title XIII insurance.

Past historical experience does not support the commenter's second conclusion concerning the adequacy of advance notice from commercial insurers and a possible requirement for issuance of binder policies. Binder policies have been available to applicants prior to issuance of this rule. No carrier has applied for binder policies within the last 5 years, and all previously issued policies have expired; i.e., they have fallen into total disuse. The FAA believes this is ample evidence that the carriers perceive no need, at this time, for the FAA to issue binder policies.

Moreover, this rule in no way precludes the issuance of binder policies in the event need is demonstrated for such policies. It merely deletes standardized war risk binder policies together with all other standardized policies from Part 198.

Furthermore, following the 1977 amendment of Title XIII, issuance of binder policies would be contingent upon an initial or recurrent Presidential determination of foreign policy need. The FAA does not believe such need could currently be demonstrated on a continuing basis.

In the final analysis, the issue raised by the commenter is how much advance notice commercial insurers will provide and whether the FAA can provide Title XIII insurance within that time frame. When the potential need for Title XIII premium insurance has arisen during past emergency situations, the FAA has been able to secure all required determinations and complete all administrative measures necessary to issue Title XIII insurance within 48 hours. The FAA believes this response capability has proved fully adequate to meet the needs of air carriers and thereby precludes the need to issue binder policies.

Regulatory Evaluation

As stated in the preamble to this final rule, the FAA will: (1) Consolidate and simplify the regulatory procedures and requirements applicable to the provision of aviation insurance and (2) editorially align these procedures and requirements with changes in the FAA's statutory authority to issue aviation insurance. Because applicants for aviation insurance currently are complying with the statutory requirements for issuance of aviation insurance, the FAA does not contemplate applicants having to incur any additional costs in securing insurance. Rather, the proposed simplification of the regulations may enable applicants to realize a small administrative cost saving. Therefore, the proposed amendment will have no net adverse economic impact on the public and a full regulatory evaluation pursuant to the Department of Transportation Order 2100.5 is not required.

Regulatory Flexibility Determination

This rule will not impose any new requirements on small entities. Because it simplifies the regulatory procedures and requirements for applying for aviation insurance, any applicant, small or large, may realize a small administrative cost saving. Therefore, the FAA has determined that this amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

This rule will not significantly influence international trade involving aviation products or services. This rule implements changes in statutory authority to provide Title XIII aviation insurance. The changes did not change the fundamental policy underlying the administration of Title XIII; i.e., commercial problems should be resolved to the maximum extent possible by commercial entities and the Government should provide aviation insurance only in extraordinary circumstances. Rather, these statutory changes sought only to bring administration of Title XIII into conformity with current insurance practices. FAA believes that the net impact on international trade in aviation services of the regulatory implementation of these changes through this will be insignificant. Therefore, the FAA believes that this amendment will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States and will not eliminate existing or create additional barriers to the sale of U.S. aviation

products and services in foreign countries.

Paperwork Reduction Act

Approval for the data collection requirements imposed by Part 198 has been obtained from the Office of Management and Budget. Part 11 is amended by this final rule to include the OMB approval number for those requirements.

Note.—For the reasons set forth previously, the FAA has determined that the revision: (1) Does not involve a major rule under Executive Order 12291, (2) is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11043; February 26, 1979); and (3) does not warrant preparing a full regulatory evaluation as the impact is minimal. For reasons set forth previously, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 11

Rulemaking, Exemptions, Agency information collection.

14 CFR Part 198

Transportation, Air transportation, War risk insurance, Aviation insurance.

Issued in Washington, DC, on December 6, 1985.

Donald D. Engen,
Administrator.

The Amendments

PART 11—[AMENDED]

In consideration of the foregoing, the Federal Aviation Administration amends Part 11 and Part 198 of the Federal Aviation Regulations (14 CFR Part 11 and Part 198) as follows:

1. The authority citation for Part 11 is revised to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401–1405, 1421–1431, 1481, 1502; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449, January 12, 1983].

§ 11.101 [Amended]

2. In § 11.101 of Part 11, paragraph (b) is amended to add the following listing:

* * *

Part 198.....2120–0514

3. Part 198 is revised to read as follows:

PART 198—AVIATION INSURANCE

Sec.

198.1 Eligibility of aircraft for insurance.
198.3 Basis of insurance.

Sec.

198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premium insurance—payment of premiums.
198.15 Nonpremium insurance—payment of registration fees.

Appendix A Form of Application named in § 198.9

Authority: 49 U.S.C. 1531 through 1542; 49 U.S.C. 106(g) [Revised, Pub. L. 97–449, January 12, 1983]; and 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft for insurance.

An aircraft operation is eligible for insurance if:

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States;

(b) The aircraft operation is in foreign air commerce or between two or more points all of which are outside the United States; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms and conditions from any company authorized to engage in an insurance business in a State of the United States.

§ 198.3 Basis of insurance.

(a) Application for insurance with premium may be made if the eligibility criteria in § 198.1 are met. Premiums charged for insurance shall be based, insofar as practicable, upon consideration of the risk involved.

(b) Applications for insurance without premium may be made if the eligibility criteria in § 198.1 are met and air services are to be performed under contract to a Federal agency which has agreed to indemnify the Administrator, acting for the Secretary of Transportation, against all losses covered by such insurance.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage with respect to the following persons, property, or interests:

(a) Aircraft engaged in operations which are eligible for insurance, as defined in § 198.1;

(b) Any person employed or transported on the aircraft referred to in paragraph (a);

(c) The baggage of persons referred to in paragraph (b);

(d) Cargoes transported or to be transported on the aircraft referred to in paragraph (a);

(e) Any other liability of the aircraft referred to in paragraph (a) or of its owner or operator of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft the amount insured may not exceed the amount by which the applicant has otherwise insured or self-insured the aircraft or itself against damage or liability arising from any risk. In the case of hull insurance, the amount insured shall not exceed the fair and reasonable value of the aircraft.

(b) Policies issued without premium may be revised from time to time, by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or contracts or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Application for insurance.

(a) Application for premium or nonpremium insurance shall be made in accordance with the applicable form set forth in Appendix A of this part. Application for hull and liability insurance shall be filed on the same form.

(b) Each applicant for insurance with premium under this part also shall submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or any other change in the status of an aircraft covered by insurance under this part, notice shall be given to the Administrator within 10 working days after the change in status.

§ 198.13 Premium insurance—payment of premiums.

The premium for insurance issued under this part shall be paid within 10 days after receipt, by the insured, of notice that premium payment is due. Premiums shall be sent to the Federal Aviation Administrator by check made payable to the Federal Aviation Administration.

§ 198.15 Nonpremium insurance—payment of registration fees.

(a) The registration fee for each aircraft to be covered by nonpremium insurance shall be \$200. The fee shall cover the cost of hull and liability insurance.

(b) An application for nonpremium insurance shall be accomplished by the proper fee, payable by check to the order of the Federal Aviation Administration. Registration fees are not returnable unless applications are rejected.

(c) Requests made after issuance of a nonpremium policy for the addition of aircraft shall be accompanied by the registration fee for each aircraft.

Appendix A—Form of Application Named in § 198.9**UNITED STATES OF AMERICA****Department of Transportation****Federal Aviation Administration***Application for Aviation Insurance*

Application is made for aviation insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, as amended, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached "Schedule of Aircraft," with the understanding that this application does not commit the Government to any liability or make the applicant liable for any premium or fees unless insurance is effected by the Federal Aviation Administrator.

Name of Applicant _____
Address _____

Basis of Insurance

- ☐ Insurance with premium
☐ Insurance without premium:

Contracting Federal Agency _____
Date and Number of Contract _____
Hull _____

Amounts set forth in the attached "Schedule of Aircraft" as representing the amount of hull insurance desired for each such aircraft shall not exceed the amount in effect on the date of this application, by which the applicant has insured or self-insured that aircraft.

Liability, Exclusive of Cargo

The type and amounts of coverage required for the aircraft described in the attached "Schedule of Aircraft" shall be indicated and the limits of liability for each such coverage shall be specified in the schedule, but such limits shall not exceed the corresponding amounts in effect on the date of this application by which the applicant has insured or self-insured against liability.

Liability of Cargo

Limits of liability desired for each of the aircraft described in the attached "Schedule of Aircraft" shall be specified.

General

Insurance shall attach no earlier than the commercial insurance terminates or at such time as may be specified in the policy.

If application is for insurance with premium, the rate of premium and the amount of any deductible shall be fixed by the Federal Aviation Administrator, acting for the Secretary of Transportation. The registration fee for insurance without premium is \$200 per aircraft listed on the "Schedule of Aircraft" and is not returnable unless application is rejected. Registration fees are due upon application or revision of the "Schedule of Aircraft" adding aircraft and are payable by check to the Federal Aviation Administration.

The application shall be accompanied by copies of any commercial insurance policy and any company plan of self-insurance applicable to the aircraft listed in the "Schedule of Aircraft."

The "Schedule of Aircraft" attached to policies without premium may be revised from time to time by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or to add contracts.

The application also shall be accompanied by a statement which shall be considered to be incorporated in the application and to form a part thereof, and which shall be signed by the same corporate official who signs the application on behalf of the applicant. The statement shall show that the applicant:

(a) Controls and operates the aircraft listed in the attached "Schedule of Aircraft," and if application is for insurance without premium, has committed such aircraft to the above indicated contract(s);

(b) Is maintaining and has maintained during the 6-month period preceding this application (or since the aircraft was acquired if acquired during the 6-month period) insurance, including demonstrable self-insurance, covering possible injury, loss or damage in amounts which equal or exceed the insurance coverages requested in the application; and

(c) Cannot obtain insurance of the type requested on reasonable terms and conditions from companies authorized to engage in an insurance business in a State of the United States or the District of Columbia,

or has partial commercial insurance coverage, but is unable to obtain the additional needed insurance of the type requested on reasonable terms and conditions from such commercial sources;

Verification shall include evidence of premium rate history, the names of the commercial insurance carriers which have been contacted and the premium rates quoted by such carriers which applicant considers not reasonable, and any conditions or limitations which those carriers would impose or have imposed, such as evidence of cancellation or notice of cancellation, which would cause their insurance to be inapplicable to some or all of the operations by aircraft listed in the "Schedule of Aircraft."

If the application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement setting forth the registration number(s) of the aircraft, the nationality of registration, and the name of the owner or lessee.

The insurance applied for hereunder shall not cover risks to persons or property engaged or transported exclusively in operations between two points in the United States as defined in Section 101(41) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (41)).

Applicant warrants that the particulars herein are true and complete to the best of his or her knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application, including all attachments hereto and all revisions of the "Schedule of Aircraft" hereinafter accepted by the Government and the terms and conditions of the form of policy prescribed by the Federal Aviation Administrator, acting for the Secretary of Transportation, will constitute the basis of any contract between him or her and the United States of America.

Applicant _____
By _____

(Name and Title) _____
Date _____

Schedule of Aircraft**HULL INSURANCE**

Make, model, and configuration (passenger, cargo, or convertible)	FAA identification No. or equivalent	Amount of hull insurance desired for each aircraft	Amount for which each aircraft is currently insured (including self-insurance)	Loss payee

LIABILITY INSURANCE

(Exclusive of cargo)

Amount requested per occurrence	Amount of insurance (including self-insurance) in effect per occurrence

LIABILITY TO CARGO

Amount requested	Amount of insurance (including self-insurance) in effect per occurrence

[FR Doc. 85-29614 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

Registered Federal Report

Monday
December 16, 1985

Part III

Department of Justice

Office of Justice Programs; Bureau of
Justice Assistance

28 CFR Part 65
Emergency Federal Law Enforcement
Assistance; Final Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

28 CFR Part 65

Emergency Federal Law Enforcement Assistance

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Final regulations.

SUMMARY: The Bureau of Justice Assistance of the Office of Justice Programs is hereby publishing the regulations to implement the Emergency Federal Law Enforcement Assistance functions vested in the Attorney General by the Justice Assistance Act of 1984 (Pub. L. 98-473). The regulations describe procedures for applying for and administering funds under this Section of the Act.

EFFECTIVE DATE: These regulations are effective on December 16, 1985.

ADDRESS: Mack M. Vines, Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531 (202/724-5974). (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: R. John Gregrich, Program Manager, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531 (202/724-6838). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984, Title II, Chapter VI, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (the Act), establishes Emergency Federal Law Enforcement Assistance functions, under the direction and authority of the Attorney General, to assist state and/or local units of government in responding to a law enforcement emergency. The Bureau of Justice Assistance of the Office of Justice Programs is publishing the regulations to implement this Section of the Act.

The Bureau published proposed regulations on August 7, 1985 (50 FR 31888) in the *Federal Register* to provide for public comment. A very limited number of comments were received. Respondents taking issue with or raising questions about the regulations, as they were proposed, have been responded to individually. Generally, the comments dealt with issues related to: (1) Coordination with other Federal agencies after natural disasters; (2) adherence to the states' legislative prerogatives; and, (3) ensuring against

Federal intervention in matters relating to state or local criminal justice investigative authority. In regard to the latter issue, additional cites from the enabling legislation have been inserted in Subpart B, § 65.11. Other than the referenced additions, the regulations published herein are largely the same as those previously proposed.

This Section of the Act (section 609) is designed to assist jurisdictions experiencing a law enforcement emergency by providing Federal criminal justice assistance to those states and/or localities involved. The term "law enforcement emergency" is defined by the Act as an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law. Equally clear in the Act, and its legislative history, is the firm intention to avoid unnecessary Federal involvement or intervention in matters which are deemed to be primarily of state and local concern. To that end, the Act states that the term "law enforcement emergency" does not include needed planning or other activities related to crowd control for general public safety projects, or situations requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events.

Often cited as examples of situations giving rise to law enforcement emergencies compatible with the Act are the Atlanta child murders and the Mount Saint Helens volcanic eruption. Emergencies like these, which are not of an ongoing or chronic nature, would be eligible for assistance.

State and local jurisdictions experiencing significant law enforcement problems should find it helpful to consult with the United States Attorney(s) in the affected District(s). The U.S. Attorney, as Chairman of the Law Enforcement Coordinating Committee (LECC), can bring the problem to the attention of the LECC members, who are representatives of Federal, state, and local criminal justice agencies. Such an approach will allow the LECC members to jointly assess the situation and, possibly, cause LECC member resources to be directed to the problem. Furthermore, should a state or local jurisdiction later decide to submit a request under the Emergency Federal Law Enforcement Assistance Program, the initial involvement with the U.S. Attorney and the LECC should provide focused information regarding the actual

extent of the problem, and the resources needed to conduct an effective response.

The Act authorizes the Attorney General to receive written applications for assistance from state chief executives. The information submitted will be reviewed and evaluated by the Attorney General. After consultation with the Federal law enforcement community, including the appropriate U.S. Attorney(s), the Attorney General will approve or disapprove the application within 10 days of receipt.

If the Attorney General approves the application, appropriate Federal law enforcement assistance will be provided. The Act defines "Federal law enforcement assistance" as funds, equipment, training, intelligence information, and personnel.

These regulations do not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of \$100 million or more; (b) a major increase in any costs or prices; or, (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because these regulations will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these regulations on such entities is required by the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 65

Grant Programs—Law, Law enforcement, Emergency assistance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed to amend Title 28 Code of Federal Regulations by adding Part 65 to read as follows:

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Subpart A—Eligible Applicants

Sec.

65.1 General.

65.2 State Government.

Subpart B—Allocation of Funds and Other Assistance

65.10 Fund availability.

65.11 Limitations of fund and other assistance use.

65.12 Other assistance.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance

65.20 General.

65.21 Purpose of assistance.

65.22 Exclusions.

Subpart D—Application for Assistance

65.30 General.

65.31 Application content.

Subpart E—Submission and Review of Applications**Sec.**

65.40 General.

65.41 Review of State applications.

Subpart F—Additional Requirements

65.50 General.

65.51 Recordkeeping.

65.52 Civil Rights.

65.53 Confidentiality of information.

Subpart G—Repayment of Funds

65.60 Repayment of funds.

Subpart H—Definitions

65.70 Definitions.

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 et seq.).

Subpart A—Eligible Applicants**§ 65.1 General.**

This subject describes who may apply for emergency Federal law enforcement assistance under the Justice Assistance Act of 1984.

§ 65.2 State Government.

In the event that a law enforcement emergency exists throughout a state or part of a state, a state (on behalf of itself or a local unit of government) may submit an application to the Attorney General, for emergency Federal law enforcement assistance. This application is to be submitted by the chief executive officer of the state, in writing, on Standard Form 424, and in accordance with these regulations.

Subpart B—Allocation of Funds and Other Assistance**§ 65.10 Fund availability.**

For the previous fiscal year (FY '85), \$800,000 was appropriated for emergency Federal law enforcement assistance for the entire country. In FY '86, \$1.5 million has been requested. The FY '86 request has not yet been appropriated and is not currently available. The form and extent of assistance provided will be determined by the nature and scope of the emergency presented; but, in any event, no fund award may exceed the amount ultimately appropriated.

§ 65.11 Limitations on fund and other assistance use.

(a) *Land Acquisition*—No funds shall be used for the purpose of land acquisition.

(b) *Non-Supplantation*—No funds shall be used to supplant state or local funds that would otherwise be made available for such purposes.

(c) *Civil Justice*—No funds or other assistance shall be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(d) *Federal Law Enforcement Personnel*—Nothing in the enabling legislation authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law. (Section 609O(a), of the Act).

(e) *Direction, Supervision, Control*—Nothing in the enabling legislation shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance. (Section 609O(b), of the Act).

§ 65.12 Other assistance.

In accordance with the purposes and limitations of this subdivision, members of the Federal law enforcement community may provide needed assistance in the form of equipment, training, intelligence information, and personnel. The application may include requests for assistance of this nature.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance**§ 65.20 General.**

The purpose of the Act is to assist state and/or local units of government which are experiencing law enforcement emergencies to respond to those emergencies through the provision of Federal law enforcement assistance. The authority and responsibility for implementation of this Section is vested in the Attorney General of the United States.

§ 65.21 Purpose of assistance.

The purpose of emergency Federal law enforcement assistance is to provide necessary assistance to (and through) a state government to provide an adequate response to an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law.

§ 65.22 Exclusions.

Excluded from the situations for which this assistance is intended are:

(a) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(b) A situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events.

Subpart D—Application for Assistance**§ 65.30 General.**

The Act requires that applications be submitted in writing, by the chief executive officer of a state, on Standard Form 424, in accordance with these regulations.

§ 65.31 Application content.

The Act identifies six factors which the Attorney General will consider in approving or disapproving an application, and includes administrative requirements to ensure appropriate use of Federal assistance. Therefore, each application must be in writing and must include the following:

(a) *Problem*—A description of the nature and extent of the law enforcement emergency, including the specific identification and description of the political and geographical subdivision(s) wherein the emergency exists;

(b) *Cause*—A description of the situation or extraordinary circumstances which produced such emergency;

(c) *Resources*—A description of the state and local criminal justice resources available to address the emergency, and a discussion of why and to what degree they are insufficient;

(d) *Assistance Requested*—A specific statement of the funds, equipment, training, intelligence information, or personnel requested, and a description of their intended use;

(e) *Other Assistance*—The identification of any other assistance the state or appropriate unit of government has received, or could receive, under any provision of the Act; and,

(f) *Other Requirements*—Assurance of compliance with other requirements of the Act, detailed in other parts of these regulations, including: Nonsupplantation; nondiscrimination; confidentiality of information; prohibition against land acquisition; recordkeeping and audit; limitation on civil justice matters.

Subpart E—Submission and Review of Applications**§ 65.40 General.**

This subpart describes the process and criteria for the Attorney General's review and approval or disapproval of state applications. The original

application, on Standard Form 424, signed by the chief executive officer of the state should be submitted directly to the Attorney General, U.S. Department of Justice, Washington, DC 20530. One copy of the application should be sent to the Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

§ 65.41 Review of State applications.

(a) *Review Criteria*—The Act provides the basis for review and approval or disapproval of state applications. Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider:

(1) The nature and extent of such emergency throughout a state or in any part of a state;

(2) The situation or extraordinary circumstances which produced such emergency;

(3) The availability of state and local criminal justice resources to resolve the problem;

(4) The cost associated with the increased Federal presence;

(5) The need to avoid unnecessary Federal involvement and intervention in matters primarily of state and local concern; and,

(6) Any assistance which the state or other appropriate unit of government has received, or could receive, under any provision of Title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(b) *Review Process*—(1) The Attorney General shall consult with the Assistant Attorney General, Office of Justice Programs, and the Director, Bureau of Justice Assistance, on requests for grant assistance. (2) All requests for assistance of the Federal law enforcement community (e.g., equipment, training, information, or personnel) shall be reviewed by the Attorney General in consultation with appropriate members of the Federal law enforcement community, including the United States Attorney(s) in the affected District(s). Such requests will be subject to statutory restrictions, including section 609O on Federal agency activities. (3) The Attorney General will approve or disapprove each application, submitted in accordance with these regulations, no later than ten (10) days after receipt.

Subpart F—Additional Requirements

§ 65.50 General.

This subpart sets forth additional

requirements under the Justice Assistance Act. Applicants for assistance must assure compliance with each of these requirements.

§ 65.51 Recordkeeping.

(a) The state must assure that it adheres to the recordkeeping requirements enumerated in OMB Circulars, Number A-102 and Number A-128. This requirement extends to participating units of local government, in that they are viewed as the state's subgrantees.

(b) The Attorney General and the Comptroller of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this subdivision which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

§ 65.52 Civil Rights.

The Act provides that "no person in any state shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." Recipients of funds under the Act are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

§ 65.53 Confidentiality of Information.

Section 812 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended and implemented by 28 CFR Part 20) shall apply with respect to information, including criminal history information and criminal intelligence systems operating with the support of Federal law enforcement assistance.

Subpart G—Repayment of Funds

§ 65.60 Repayment of funds.

(a) If Federal law enforcement assistance provided under this subdivision is used by the recipient of such assistance in violation of these regulations, or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) The Attorney General may bring a

civil action in an appropriate United States District Court to recover any amount authorized to be repaid under law.

Subpart H—Definitions

§ 65.70 Definitions.

(a) *Law Enforcement Emergency*. The term "law enforcement emergency" is defined by the Act as an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law. The Act specifically *excludes* the following situations when defining "law enforcement emergency":

(1) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(2) A situation requiring the enforcement of laws associated with scheduled public events, including political convention and sports events.

(b) *Federal Law Enforcement Assistance*. The term "Federal law enforcement assistance" is defined by the Act to mean funds, equipment, training, intelligence information, and personnel.

(c) *Federal Law Enforcement Community*. The term "Federal law enforcement community" is defined by the Act as the heads of the following departments or agencies:

- (1) Federal Bureau of Investigation;
- (2) Drug Enforcement Administration;
- (3) Criminal Division of the Department of Justice;
- (4) Internal Revenue Service;
- (5) Customs Service;
- (6) Immigration and Naturalization Service;
- (7) United States Marshals Service;
- (8) National Park Service;
- (9) United States Postal Service;
- (10) Secret Service;
- (11) United States Coast Guard;
- (12) Bureau of Alcohol, Tobacco, and Firearms; and,

(13) Other Federal agencies with specific statutory authority to investigate violations of Federal criminal law.

(d) *State*. The term "state" is defined by the Act as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

Mack M. Vines,
Director, Bureau of Justice Assistance.