

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on September 18, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective January 14, 1988

Pago Pago, American Samoa—Pago Pago Intl, VOR/DME or TACAN-B, Amdt. 4

Atlantic, IA—Atlantic Muni, NDB RWY 12, Amdt. 7

Cambridge, OH—Cambridge Muni, VOR-A, Amdt. 1

Cambridge, OH—Cambridge Muni, NDB RWY 4, Amdt. 5

Zanesville, OH—Zanesville Muni, VOR RWY 22, Amdt. 2

Zanesville, OH—Zanesville Muni, NDB RWY 4, Amdt. 11

Sheboygan, WI—Sheboygan County Memorial, VOR RWY 3, Amdt. 6

Sheboygan, WI—Sheboygan County Memorial, VOR RWY 21, Amdt. 6

... Effective December 17, 1987

Visalia, CA—Visalia Muni, ILS RWY 30, Amdt. 4

Kissimmee, FL—Kissimmee Muni, VOR/DME-A, Amdt. 6

Kissimmee, FL—Kissimmee Muni, NDB RWY 15, Amdt. 8

Kissimmee, FL—Kissimmee Muni, RNAV RWY 15, Amdt. 4

Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 41, Amdt. 10

Bloomington-Normal, IL—Bloomington-Normal, VOR RWY 21, Amdt. 16

Bloomington-Normal, IL—Bloomington-Normal, VOR/DME RWY 21, Amdt. 1

Bloomington-Normal, IL—Bloomington-Normal, LOC BC RWY 11, Amdt. 7

Bloomington-Normal, IL—Bloomington-Normal, ILS RWY 29, Amdt. 7

Baltimore, MD—Baltimore-Washington Intl, VOR RWY 28, Amdt. 20

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 28, Amdt. 7

Newberry, MI—Luce County Hale, VOR RWY 11, Amdt. 8

Newberry, MI—Luce County Hale, VOR RWY 29 Amdt. 8

Cross Keys, NJ—Cross Keys, VOR RWY 9, Amdt. 4

Washington, NC—Warren Field, VOR/DME RWY 5, Amdt. 2

Harrisburg, PA—Capital City, RADAR-1, Amdt. 12

Houston, TX—Houston Intercontinental, NDB RWY 8, Amdt. 9, Cancelled

Houston, TX—Houston Intercontinental, NDB RWY 26, Amdt. 1, Cancelled

Rutland, VT—Rutland State, LDA RWY 19, Amdt. 4

... Effective November 19, 1987

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Orig.

... Effective October 22, 1987

Coeur D'Alene, ID—Coeur D'Alene Air Term, VOR RWY 5, Amdt. 2, Cancelled

Coeur D'Alene, ID—Coeur D'Alene Air Term, VOR-A, Orig.

Coeur D'Alene, ID—Coeur D'Alene Air Term, NDB RWY 5, Amdt. 1

Coeur D'Alene, ID—Coeur D'Alene Air Term, ILS RWY 5, Amdt. 3

[FR Doc. 87-22231 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**14 CFR Part 1207****Standards of Conduct; Correction**

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule, correction.

SUMMARY: A final rule entitled "Standards of Conduct" was published in the Federal Register on June 16, 1987 (52 FR 22755-22764). An error was made in the paragraph stating the procedure of how to include employees who are GM-13 or GS-13 in the category of employees who must file confidential statements of employment and financial interests. This is corrected below.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Siegel, 202 453-2465.

1. 14 CFR Part 1207.405 (a)(4) is correctly revised to read as follows:

§ 1207.405 [Corrected]

(a) * * *

(4) Employees classified below the GM-13 or GS-13 level under 5 U.S.C. 5332, or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of

§ 1207.405(a)(1) or § 1207.405(a)(3), when designated in writing by the Designated Agency Ethics Official, after such designation has been justified in accordance with 5 CFR 735.403(d).

* * *

John E. O'Brien,

General Counsel.

[FR Doc. 87-22273 Filed 9-25-87; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION**16 CFR Part 13**

[Docket C-3215]

Prohibited Trade Practices, and Affirmative Corrective Actions; American Hoechst Corporation, et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, American Hoechst Corp. to divest certain polyester fiber businesses. The respondent must make the divestiture to a Commission-approved acquirer within one year and must obtain the Commission's prior approval for certain acquisitions for the next ten years.

DATE: Complaint and Order issued July 2, 1987.¹

FOR FURTHER INFORMATION CONTACT: FTC/A-3302, Ronald B. Rowe, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: On Thursday, March 5, 1987, there was published in the Federal Register, 52 FR 6806, a proposed consent agreement with analysis in the Matter of American Hoechst Corporation, Hoechst Aktiengesellschaft, and Celanese Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Polyester textile fibers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87–22261 Filed 9–25–87; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket C–3216]

Prohibited Trade Practices, and Affirmative Corrective Actions; L'Air Liquide Societe Anonyme Pour L'Etude et L'Exploitation des Procédes Georges Claude

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, L'Air Liquide to divest some assets to resolve any antitrust concerns in the production and sale of liquid gases and to obtain prior Commission approval for similar acquisitions.

DATE: Complaint and Order issued July 15, 1987.¹

FOR FURTHER INFORMATION CONTACT: FTC/S–2105, Ernest A. Nagata, Washington, DC 20580, (202) 326–2714.

SUPPLEMENTARY INFORMATION: On Tuesday, November 4, 1986, there was published in the Federal Register, 51 FR 40039, a proposed consent agreement with analysis in the Matter of L'Air Liquide Societe Anonyme Pour L'Etude Et L'Exploitation Des Procédes Georges Claude, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered a modified order to divest, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: Section 13.5 Acquiring corporate stock or assets; S.13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Liquid gases, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 87–22262 Filed 9–25–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; State Supplemental Provisions; Agreements; Payments; Mandatory Passalong of Federal Supplemental Security Income Benefit Increases to Recipients of State Supplementary Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: The final regulations provide the rules we will use to implement the amendments made to the passalong provisions of section 1618 of the Social Security Act (the Act) by section 186 of Public Law (Pub. L.) 97–248 (Tax Equity and Fiscal Responsibility Act of 1982), enacted September 3, 1982; section 147 of Pub. L. 97–377 (Fiscal Year 1983 Continuing Budget Resolution for the Department of Health and Human Services), enacted December 21, 1982; section 402 of Pub. L. 98–21 (Social Security Amendments of 1983), enacted April 20, 1983; and section 12201(a) of Pub. L. 99–272 (Consolidated Omnibus Budget Reconciliation Act of 1985), enacted April 7, 1986.

Generally, the passalong provisions of section 1618 of the Act require States that supplement the Federal supplemental security income (SSI) benefit to “pass along” Federal cost-of-living increases to individuals who are eligible for State supplementary payments. In order to meet the passalong requirements of the Act, States that make supplementary payments on or after June 30, 1977, must have in effect an agreement with the Secretary to continue making these supplementary payments and to keep them at certain levels. If a State does not have such an agreement in effect, or if the State has such an agreement but does not keep the payments at the required levels, the State is subject to loss of Medicaid reimbursement under title XIX of the Act. However, the State will not be found to be out of compliance with the passalong requirements because it did not keep its payments at a particular level if it maintains its total annual expenditures for State supplementary payments at an amount at least equal to its expenditures for such payments in the preceding 12-month period provided that the State was in compliance for such preceding 12-month period.

DATES: These rules are effective September 28, 1987, but the statutory changes which the regulations reflect were effective on the dates provided for by the legislation, namely; section 186 of Pub. L. 97–248, enacted September 3, 1982; section 147 of Pub. L. 97–377, enacted December 21, 1982; section 402 of Pub. L. 98–21, enacted April 20, 1983; and section 12201(a) of Pub. L. 99–272 enacted April 7, 1986. Because the rules implementing section 12201(a) of Pub. L. 99–272 (see § 416.2097(c)) were not included in the Notice of Proposed Rulemaking, we are publishing these rules as final rules but will consider any comments concerning that provision that we receive by November 27, 1987, and will revise such rules if public comment warrants.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203 or deliver them to the Office of Regulation, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during the same hours by making arrangements with the contact person below.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Dave Smith, 3-B-3 Operations Building,
6401 Security Blvd., Baltimore, Maryland
21235, (301) 594-7460.

SUPPLEMENTARY INFORMATION:**Introduction**

These regulations were published as a Notice of Proposed Rulemaking in the *Federal Register* on February 25, 1985 (50 FR 7607) with a 60-day comment period. A number of comments were received and are discussed under the heading titled *Discussion of Comments*. In addition to the changes made as a result of the comments, we made some minor clarifications to the regulations in order to make them easier to read and understand. The following regulations sections were clarified: 20 CFR 416.2096(c)(5), 416.2096(c)(3)(i); 416.2096(c)(3)(ii); 416.2097 (a) and (c); and 416.2098.

These regulations also implement section 12201(a) of Pub. L. 99-272 (Consolidated Omnibus Budget Reconciliation Act of 1985), which adds section 1618(f) to the Act and which was enacted subsequent to the notice of proposed rulemaking. We are including regulations reflecting this provision as final regulations but with an opportunity for public comment. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. Section 1618(f), as added by section 12201(a), provides a special rule for passalong compliance for the period January 1, 1984 through December 31, 1985 under which a State will not be found out of compliance for that period if in the period January 1, 1986 through December 31, 1986 its supplementary payment levels are not less than its payment levels in effect in December 1976 increased by the percentage by which the Federal Benefit Rate has increased after December 1976 and before February 1986. The language of the statute is not subject to any interpretation. The regulation implementing section 12201(a) does not involve an exercise of discretion or administrative policy choice. It does not grant or deny rights beyond those provided by the statute. Accordingly, we have determined that under 5 U.S.C.

553(b)(3), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on the regulations implementing section 1618(f) of the Act since opportunity for public comment is unnecessary.

Relationship of Federal SSI Benefit and State Supplementary Payment

Beginning January 1974, the SSI program replaced the Federal/State matching grant program of assistance to the aged, blind, and disabled. To assure that individuals converted to SSI from the State rolls received at least the same amount as before the conversion, the States were required to supplement the SSI payment to these individuals where necessary. In addition to these mandatory payments, the States could, at their election, provide optional supplementary payments to SSI recipients.

Purpose of the Passalong Provision

The purpose of the passalong provision of section 1618 of the Act is to encourage States to pass along to SSI beneficiaries the amount of any Federal benefit increase. Some States had not done this prior to enactment of section 1618 on October 21, 1976. Instead, when Congress enacted cost-of-living increases in the Federal SSI benefit amount, some States would reduce the levels of the State supplementary payments by the amount of the Federal benefit increase. Thus, the SSI beneficiaries in these States received the same combined Federal/State benefit they were receiving before the increase, and did not receive the additional money provided by the benefit increase.

Description of the Passalong Provision

The original passalong provisions of section 1618 of the Act required States that supplemented Federal SSI benefits to "pass along" Federal cost-of-living increases to individuals eligible for State supplementary payments. To meet the passalong requirements, a State that makes supplementary payments on or after June 30, 1977 must, under an agreement with the Secretary, continue making the payments and keep them at certain levels. If the State does not comply it is subject to loss of Medicaid reimbursement under Title XIX of the Act. A State will not be found out of compliance with the requirement that it maintain its payments at certain levels with respect to any particular month or months if it maintains its total expenditures for supplementary payments in the 12-month period within which the month or months fall, beginning on the effective date of any

increase in the level of SSI benefits pursuant to section 1617, at least equal to its expenditures for such payments in the preceding 12-month period provided that the State was in compliance for such preceding 12-month period.

Amendments to Passalong Provision

Congress, over the past 4 years, has enacted four amendments to section 1618 of the Act.

Section 186 of Pub. L. 97-248 (section 1618(c) of the Act) permitted a State which had not maintained all its December 1976 payment levels, but had been meeting the passalong requirements through total annual expenditures, to switch to the maintenance-of-payment-levels method without having to pass along all the Federal cost-of-living increases that had occurred since December 1976. Prior to the enactment of section 1618(c), for months from July 1, 1977 through June 30, 1982, a State shifting from the total-annual-expenditures method to the maintenance-of-payment-levels method was required to maintain its supplementary payments at levels at least equal to its December 1976 levels or, if a State first made supplementary payments after December 1976, the levels for the first month the State made supplementary payments. However, section 1618(c) provided that for any period beginning after June 30, 1982, a State switching to the maintenance-of-payment-levels method could elect to maintain the payment levels in effect in the immediately preceding December rather than those in effect in either December 1976 or in the first month thereafter that the State began making such payments. Because of the interaction of section 402 of Pub. L. 98-21 (discussed below) with section 186 of Pub. L. 97-248, section 1618(c) was applicable only to the period from July 1, 1982, through March 31, 1983, and the only December a State switching from the total-annual-expenditures method to the maintenance-of-payment-levels method could use was December 1981.

Section 147 of Pub. L. 97-377 (section 1618(d) of the Act) created a special method of compliance for meeting the passalong requirements of section 1618 of the Act by the total-annual-expenditures test for the period July 1, 1980 through June 30, 1981. Under this provision, the total expenditures for that period must only have equaled or exceeded the total expenditures for July 1, 1976 through June 30, 1977, rather than the total expenditures for the preceding 12-month period. As noted above, this provision did not become effective until December 21, 1982. Therefore, we will

give credit to States which already had made additional payments (prior to the enactment of section 147 of Pub. L. 97-377) in order to make up shortfalls for the July 1, 1980 through June 30, 1981 period, if the States so request. This credit will be limited to the amount of "excess" payments made by the State and will be applied to any shortfall(s) in total expenditures (should one exist) in any period(s) ending on or before December 31, 1986. A 3-year period has been selected to parallel the exception for shortfall States formerly provided in § 416.2096(c) of the regulations for the three 12-month periods ending before July 1980. Also, the 3-year period imposes a limit that is long enough to provide the States with some flexibility and yet short enough so that we can close these periods and resolve the accounts. This is noted in § 416.2096(c)(3)(ii) of the final regulations. This policy was explained in the preamble of the Notice of Proposed Rulemaking but was inadvertently omitted from the regulation itself.

Section 402 of Pub. L. 98-21 (section 1618(e) of the Act) changed the measure for determining passalong compliance from a concept of "State supplementary payment level" to a concept of a "combined level" of State supplementary payments and Federal SSI payments and established the March 1983 combined level as the base for compliance for months after March 1983. The purpose of this change was twofold: to prevent States on the total-expenditures method of compliance from reverting to December 1976 or other levels below the March 1983 levels; and to require that States maintaining supplementary payment levels pass along that part of the July 1983 Federal SSI benefit increase that would have occurred had there been a cost-of-living increase in July 1983.

Section 401 of Pub. L. 98-21 amended section 1617 of the Act to provide for an increase in SSI benefit rates effective July 1, 1983. The passalong provisions of section 1618(b) of the Act refer to total expenditures for State supplementary payments in a 12-month period beginning on the effective date of any Federal SSI benefit increase pursuant to section 1617 of the Act. Prior to July 1983, all section 1617 increases were cost-of-living adjustments (COLA's) and are referred to as such in the existing regulations. The July 1983 general Federal SSI benefit increase was not a COLA, but it did take place pursuant to section 1617 of the Act. For this reason, the passalong provisions of section

1618(b) apply to the July 1983 Federal SSI benefit increase.

Section 111 of Pub. L. 98-21 provides in effect that future COLA's in SSI benefits will occur in January rather than July as they had in the past. Therefore, the current and immediately preceding 12-month periods for passalong compliance under the total-expenditures test will run from January through December, beginning January 1, 1984. This change in the effective date for future COLA's from July 1 to January 1 caused a transitional 6-month period to occur that does not appear to have been contemplated by the passalong statute, which measures compliance in 12-month periods beginning with the effective date of each increase in the federal SSI benefit rate pursuant to section 1617 of the Act. That 6-month period is July 1, 1983 through December 31, 1983. Section 416.2096(c)(3)(i) of the final regulations provides a special rule for compliance under the total-expenditures test for this 6-month period. This rule is explained under *Discussion of Comments*.

Section 12201(a) of Pub. L. 99-272 (section 1618(f) of the Act) provided a special method of compliance for the period January 1, 1984 through December 31, 1985. A State will not be found out of compliance for that period if in the period January 1, 1986 through December 31, 1986, its supplementary payment levels are not less than its supplementary payment levels in effect in December 1976 increased by the percentage by which the Federal Benefit Rate has increased after December 1976 and before February 1986.

Revisions to the Regulations

We have updated § 416.2095 to reflect the reorganization of this subpart.

In § 416.2096(a), we discuss the State agreement with the Secretary. Basically, the State must have in effect an agreement with the Secretary to continue making supplementary payments at certain levels. For months prior to April 1983, these levels must have been either the levels in effect in December 1976 or, if newly established payments, the levels in effect for the first month of payment, or, in certain circumstances, the levels in effect in December 1981. For months beginning April 1983, the supplementary payment levels must be such as to maintain the combined supplementary/SSI payment levels of March 1983, increased by any subsequent Federal SSI benefit increases except that a State need pass along only a portion of the July 1, 1983, increase to the Federal Benefit Rate (FBR) and essential person increment. Effective July 1, 1983, the FBR was

increased \$20/\$30 for an individual/couple and the essential person increment increased by \$10. While these increases are not actually cost-of-living increases, they are increases pursuant to section 1617 of the Act and are, therefore, subject to the passalong requirements of section 1618 of the Act. A State was required to pass along only \$9.70/\$14.60 (individual/couple) and raise the essential person increment by \$4.50. This represents the amount by which the FBR and essential person increment would have increased had there been a COLA (3.5 percent) effective July 1, 1983. A State could reduce its supplement by any amount up to \$10.30/\$15.40 (individual/couple) and reduce the essential person increment by up to \$5.50.

If a State does not maintain these levels, but does make total State supplementary payments during a 12-month period that are at least equal to the expenditures for such payments made in the 12-month period before a Federal benefit increase, we will consider the State to have complied with the passalong requirements provided that the State was in compliance for such preceding 12-month period. We have also revised § 416.2096 to provide for a special 6-month transition period (July 1, 1983 through December 31, 1983) for total expenditures purposes. This is necessary to effectuate properly the provision of Pub. L. 98-21 whereby SSI cost-of-living increases beginning with 1984 occur in January rather than July, as discussed above, which caused a cost-of-living increase to occur on January 1, 1984—6 months following the previous SSI benefit increase.

In an effort to avoid passing along to SSI recipients the July 1983 Federal benefit increase, some States, which had not maintained all their December 1976 supplementary payment levels, but which had increased some of their supplementary payment levels, might have switched from the total expenditures test (which they had been meeting to comply with the passalong requirements) to maintenance of their December 1976 or other levels lower than their March 1983 levels. To prevent States from doing this, Congress introduced in section 1618(e), as added by Pub. L. 98-21, the concept of the combined supplementary/SSI payment level and established the March 1983 combined level for payment level passalong compliance purposes. Section 416.2096(b) was revised to reflect this provision.

We have deleted from the regulations the exception found at § 416.2096(c)(3)

for compliance with the passalong requirements under the total-expenditure test for the three 12-month periods ending before July 1980, because this exception has become obsolete due to passage of time.

In § 416.2097, a new section, we provide that in order for a State to comply by the payment-levels method the combined supplementary/SSI payment level for each payment category must at least equal the total of the Federal SSI benefit and State supplementary payment that a recipient with no countable income received for March 1983, increased by the amount of all subsequent SSI Federal benefit increases (including cost-of-living increases) except that we use for the amount of the July 1983 increase the amount (3.5 percent) by which the Federal benefit rate would have increased had there been a COLA. For months after March 1983, States that choose to comply by a means other than the total-expenditures test must maintain these combined March 1983 levels in order to comply with the passalong requirements.

For months prior to April 1983, the rules for passalong compliance are based on the definition of "supplementary payment level". In § 416.2098(f), we continue to define the December 1976 (or later month if it was the first month of supplementation) supplementary payment level as the amount of the supplementary payment established by the State that an individual in each payment category received in the State in December 1976 (or later month if it was the first month of supplementation) if the individual had no countable income. States must have maintained these levels to comply with the passalong requirements.

For example, the Federal SSI, benefit amount in December 1976 for an individual living in his or her own household and having no income was \$167.80 per month. If a State made a \$50 per month optional State supplementary payment to individuals in this situation, they would receive a total payment of \$217.80 per month under the SSI program. In July 1977, the Federal cost-of-living increase was \$10 and the Federal SSI benefit amount was increased to \$177.80 per month. Under these circumstances, a State would maintain the level of its supplementary payment if the State continued to make a \$50 per month supplementary payment above the Federal SSI benefit to individuals in this situation. Thus, the individuals would receive a total payment of \$227.80 per month under the SSI program, and the Federal cost-of-

living increase of \$10 per month would be passed along to them.

Pub. L. 97-248 made one change as to what month's supplementary payment level a State could maintain under certain conditions and still comply with the payment-levels test. Section 186 of Pub. L. 97-248, effective September 3, 1982, provided that when a State had not maintained one or more of the December 1976 supplementary payment levels but, instead, had met the total-expenditures test for a particular 12-month period and decided to switch to the maintenance-of-payment levels test for the next 12-month period, the State could elect to maintain all its supplementary payment levels in effect in the preceding December instead of the December 1976 levels, provided that the preceding December was subsequent to 1980. Because of the interaction of section 402 of Pub. L. 98-21 with section 186 of Pub. L. 97-248, this option could be applied only for the period July 1, 1982, through March 31, 1983, and the only supplementary payment levels which could be elected instead of those which were in effect in December 1976 were those which were in effect in December 1981. Section 416.2098(b)(2) reflects this change.

In § 416.2099 (formerly § 416.2098), we discuss what we will require the States to do to show that they are complying with the passalong rules. Generally, a State must keep records and provide information about: (1) Its supplementary payment levels in December 1976 or, if no supplementary payments were made in December 1976, the first month such payments were or are made; (2) its March 1983 supplementary payment levels; (3) its total expenditures for supplementary payments for the 12-month period beginning July 1976 through June 1977 and the following 12-month periods, as well as its advance estimates of the total State supplementary payment expenditures for each 12-month period covered by the passalong agreement between the State and the Secretary; and (4) its total expenditures for supplementary payments in the 6-month period July 1983 through December 1983. If a State is not complying with the passalong rules, the State will be subject to a finding by the Secretary of ineligibility for payments under title XIX (Medicaid) of the Act.

Discussion of Comments

As previously indicated, we received a number of comments on the Notice of Proposed Rulemaking published in the Federal Register on February 25, 1985 (50 FR 7607). A summary of the comments and our responses follows.

Comment: One State suggested that paragraph (4) of § 416.2097 be clarified, or that we add a paragraph which would provide that State payments should be counted for passalong purposes in the month of entitlement when the State can document such month and the month of issuance if the entitlement month cannot be identified.

Response: The State's comment obviously applies to § 416.2096(c)(4) since § 416.2097 has no paragraph (4). Our policy, as reflected in § 416.2096(c)(4), has been to count the payment in the 12-month period in which it is processed (paid). The only instance in which we count payments made in the current 12-month period for a previous period is when the payments are made to correct a shortfall. In such an instance the payments are counted (included) as payments in the shortfall period only. (See § 416.2096(c)(5)). We do not believe a change in our present procedures would be beneficial to the States or to the SSI program. We must have a final cut-off date for each 12-month period since we cannot continue to reopen closed periods. If we reopened closed periods we would be increasing base-year amounts against which succeeding 12-month periods must be measured.

Comment: One commenter stated that it is unclear how court ordered retroactive payments will be treated for passalong purposes under § 416.2096(c)(5). Will the payments be recorded in the period in which the payments are made, thus inflating the State's expenditures in the current 12-month period, or will they be apportioned over the periods to which the court order applies?

Response: Section 416.2096(c)(5) provides that total State expenditures for a relevant 12-month period include adjustments in State supplementary payments made after the expiration of the relevant 12-month period if the payments are made to correct a shortfall. This is the only exception provided in the regulations to our general policy that State payments are attributed to the periods in which they are actually made. We believe the regulation is clear, i.e., there is no additional exception for court ordered retroactive payments. Therefore, court ordered retroactive payments will be recorded in the period in which the payments are made. Historically, all State supplementary payments have been recorded on the cash basis of accounting. As stated in the previous response, we cannot continually reopen closed periods. Therefore, § 416.2096(c)(5) is not being revised.

Comment: Two States suggested that for the July 1, 1983 through December 31, 1983, period (the transitional 6-month period) an additional comparison period or periods be permitted for those States complying with section 1618 of the Act by the total-expenditures method. The States requested that, for compliance purposes, total expenditures for the period January 1, 1983 through December 31, 1983, be at least as much as the total expenditures in the period January 1, 1982 through December 31, 1982. An additional comparison period suggested is to compare total expenditures for July 1, 1983 through December 31, 1983, with expenditures for July 1, 1982 through December 31, 1982.

Response: After considering the implications of these comments we are revising § 416.2096(c)(3)(i) to include two additional comparison periods. They are: (1) That total expenditures for State supplementary payments in the 12-month period January 1, 1983 through December 31, 1983, must be at least as much as in the 12-month period January 1, 1982, through December 31, 1982; or (2) that total expenditures for State supplementary payments in the 6-month period July 1, 1983 through December 31, 1983, must be at least as much as in the 6-month period July 1, 1982 through December 31, 1982. As provided in the Notice of Proposed Rulemaking a third comparison period would require that total expenditures for State supplementary payments in the 6-month period July 1, 1983 through December 31, 1983, be at least equal to one-half of the total expenditures for the period July 1, 1982 through June 30, 1983. Since it appears that Congress did not contemplate this 6-month period, the choice of comparison periods is a matter within the Secretary's authority to issue regulations that are necessary for efficient administration of the Act. Use of each of the three periods described above for purposes of passalong compliance for the 6-month transitional period is consistent with section 1618(b) of the Act, which measures compliance for total-expenditure States by the amount expended in the preceding period. Since the 6-month period overlaps two 12-month periods (July 1, 1983 through June 30, 1984 and January 1, 1983 through December 31, 1983), it is appropriate to provide several alternative comparison periods.

Comment: One State requested both a credit and that the final regulations provide for credit for State supplementary payments expended during the 12-month period July 1, 1981, through June 30, 1982, to make up a

shortfall for the 12-month period July 1, 1980 through June 30, 1981. The State further requested that credits used to make up the shortfall not be added to a calendar year's total expenditures in measuring future compliance.

Response: We have provided for credits to States which made additional payments (prior to the enactment of section 147 of Pub. L. 97-377) in order to make up shortfalls for the July 1, 1980 through June 30, 1981, period. Credits must have been used by December 31, 1986. Once a base year expenditure amount under the total-expenditures method of compliance has been established, it cannot be decreased while the State remains on this method of compliance. If, in the succeeding calendar year, the State spends less than it spent in the prior year, a shortfall results. Credits are then used to increase the current year expenditures to the base year amount. The base year has not changed. To permit a State to use the amount expended prior to the addition of the credits as a new (and lower) base year would reduce the base-year amount for future years. This would clearly be inequitable to recipients.

Comment: One State requested that a "good faith effort" provision be incorporated in the regulations to cover the July 1, 1983 through December 31, 1983, period. The State was unaware of the fact that, under the payment-level method of compliance, at least a portion of the July 1, 1983, Federal benefit increase was required to be passed along to all recipients. It further stated that misinformation and lack of understanding on its part resulted in a reduction of a payment level. It also points out that a lack of published regulations also hindered its ability to make the proper decision to pass along the increase.

Response: Almost simultaneously with passage of the 1983 amendments, all States were notified that while the July 1, 1983, increase in the Federal benefit rate was not a cost-of-living adjustment (COLA) it took place pursuant to section 1617 of the Act. We notified all States in writing that they were required to pass along at least that portion of the increase that would have been required had there been a COLA in July 1983 (3.5 percent). Only seven States were out of compliance for the transitional 6-month period and were so notified by the Secretary. Since the other States have complied with the passalong requirements for this period, it would not be equitable to incorporate a "good faith effort" provision into the regulations.

Because these final regulations are being published after the close of this 6-month period and include additional compliance periods, we will soon be notifying States of the exact amount of their shortfalls. For this reason also, we are granting States additional time to correct any shortfalls. Any State with a shortfall for the transitional 6-month period must either restore retroactively the deficient payment levels to the March 1983 level or March 1983 level as adjusted (payment-level States) or increase payments to recipients in the current calendar year (total-expenditures States) by December 31, 1987.

Comment: One commenter does not believe the interpretation placed on section 402 of Pub. L. 98-21 (that the March 1983 payment levels must be maintained) is in compliance with the wording of the law or the intent of Congress. The commenter believes it was the intent of Congress to lock into regulation the March 1983 payment level for those States which had, at some point after 1977, reduced benefits below the December 1976 level and met the passalong requirements with aggregate expenditures.

Response: We do not agree with the above interpretation. This interpretation would permit the continued use of December 1976 State supplementary payment levels to satisfy the passalong requirements (section 1618(a)(4)).

The legislative history of section 402 of Pub. L. 98-21 clearly supports our position that the March 1983 levels are those that now must be maintained. The House bill substituted the State supplementary payment levels in effect in March 1983 for those in effect in December 1976 as the levels States must maintain to comply with the passalong requirements. The Senate amendment would have given States the option of maintaining either December 1976 levels or March 1983 levels. The Conference Committee rejected the Senate amendment, agreeing instead to follow the House version. See H.R. Rep. No. 47, 98th Cong., 1st Sess. 165-166 (1983).

Therefore, while section 1618(a)(4) of the Act still refers to levels in effect for December 1976 (in reference to payment-level States) the law does not provide these levels as bench marks for months after March 1983. For months after March 1983 a State which elects the payment level(s) method for complying with section 1618 of the Act must maintain the combined Federal/State payment level(s) in effect in March 1983 increased by all federal cost-of-living adjustments occurring subsequent to March 1983 except that a State need

passalong only a portion of the July 1, 1983, increase in the FBR's as discussed above.

Comment: One commenter believes that section 402 of Pub. L. 98-21 was only intended to update the payment level standard set forth in section 1618(a)(4) and was not intended to foreclose States from meeting passalong requirements under section 1618(c) of the Act. The commenter contends that a State which complies by the total-expenditures method for any period on or after June 30, 1982, may switch to the maintenance-of-payment-levels method of compliance if it maintains the payment levels in effect during December of the immediately preceding 12-month period. A State which complied with the payment-level standard of section 1618(a)(4) must, for months after March 1983, maintain payment levels in accordance with the combined-levels method set forth in section 1618(e).

Response: We do not believe that section 1618(e), as added by section 402 of Pub. L. 98-21 must be applied so narrowly. The combined supplementary-payment-level standard of section 1618(e) is applicable to "a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) * * *." In other words, a State meeting the basic passalong payment-level requirement of section 1618(a)(4) by a method other than by maintaining total annual expenditures for supplementary payments under section 1618(b), must maintain its payment levels in accordance with section 1618(e). Since a State that satisfies passalong by complying with the "previous December" payment-level-method of section 1618(c) would be a State "not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) * * *," such a State would appear from this language to now be required to comply with the payment level provisions of section 1618(e) rather than the "previous December" payment levels set forth in section 1618(c). Furthermore, section 1618(e) provides that for any months after March 1983, a State shall be treated as meeting the basic passalong requirement of section 1618(a)(4) "if and only if" it maintains the March 1983 combined levels together with the July 1983 passalong amount of section 1618(e)(2) and any subsequent increases in the Federal SSI benefit. The language "if and only if" stresses that Congress intended for there to be no exception to the March 1983 passalong level requirement, such as the December 1976

level requirement of section 1618(a)(4) or the previous December level requirement of section 1618(c).

In addition to the express language of section 1618(e), the legislative history of that section also provides some indication of the intent of the legislature with respect to the continued applicability of section 1618(c). In this regard, the differences in the Senate version of section 1618(e) of the Act from the version proposed by the House Bill, as summarized in the Conference Committee Report on H.R. 1900, dated March 24, 1983 (H.R. Rep. No. 98-47, 98th Cong., 1st Sess. 165, 166 (1983)) are most significant. Both the House and Senate versions continued the aggregate-spending-level option of section 1618(b) of the Act without change. As to the supplementary-payment-level option, however, the Senate version retained the December 1976 requirement of section 1618(a)(4) of the Act as well as the "previous December" option of section 1618(c) of the Act and made the March 1983 standard yet a third method for compliance available to the States, rather than a substitute for the December 1976 payment-level option. On the other hand, the House Bill required States which opt for maintaining supplementary payment levels to maintain March 1983 levels plus the July 1983 passthrough amount plus all subsequent increases in the FBR, in lieu of maintaining the December 1976 levels.

The Conference Committee rejected the Senate Amendment, which provided for the continuance of section 1618(c) of the Act and recommended adoption without change of the House Bill, which made clear that States which elect to meet the passthrough requirement by recourse to the supplementary-payment-levels option must, without exception, comply with the new March 1983 standard. Thus, in passing the House Bill into law, Congress abandoned section 1618(c) of the Act in favor of a uniform March 1983 supplementary-payment-level standard applicable to all States which meet the passthrough requirement by maintaining supplementary payment levels.

Moreover, under the commenter's approach, two classes of States meeting passalong requirements under the levels test could be created over time: those that were required to meet the precise test of 1618(e), and those that would be permitted to use as the basis for subsequent passalong compliance whatever their previous December levels happened to be. Since under Pub. L. 98-21, total-expenditure compliance is

now measured for the period January through December, those levels could be significantly below the combined levels required under section 1618(e). Since such a result could seriously undermine the purpose of the passalong provision, which is to protect recipients from erosion of their benefits, we do not believe that the statute must be read to authorize it.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not create any costs. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

Section 416.2099 of this final rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements were requested to send them to us and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Robert J. Fishman. No comments were received on the information collection requirements.

Section 416.2099 was formerly § 416.2098, and this section has been approved by the Office of Management and Budget, approval number 0960-0240.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: July 17, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 21, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart T of Part 416 continues to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383; sec. 212 of Pub. L. 93-66, 87 Stat. 155; sec. 401 of Pub. L. 92-603, 86 Stat. 1485; sec. 8 of Pub. L. 93-233, 87 Stat. 956; secs. 1 and 2 of Pub. L. 93-335, 88 Stat. 291.

2. Section 416.2095 is revised to read as follows:

§ 416.2095 Passalong of Federal benefit increases.

(a) *General.* This section and the four sections that follow describe the rules for passing along increases in the Federal SSI benefit to recipients of State supplementary payments.

(1) Section 416.2095(b) indicates when the passalong rules apply to State supplementary payments.

(2) Section 416.2096 describes the basic passalong rules. The States must have an agreement to "pass along" increases in Federal SSI benefits. A State passes along an increase when it maintains (rather than decreases) the levels of all its supplementary payments after a Federal benefit increase has occurred. Generally, a passalong of the increase permits recipients to receive an additional amount in combined benefits equal to the Federal benefit increase. A State can decrease one or more of its payment levels if it meets an annual total expenditures test.

(3) Section 416.2097 explains the required combined supplementary/SSI payment level.

(4) Section 416.2098 explains how to compute the March 1983, December 1981, and December 1976 supplementary payment levels.

(5) Section 416.2099 discusses what information a State must provide to the Secretary concerning its supplementation programs so that the Secretary can determine whether the State is in compliance. That section also discusses the basis for findings of noncompliance and what will occur if a State is found out of compliance.

(b) *When the passalong provisions apply.* (1) The passalong requirements apply to all States (and the District of Columbia) that make supplementary

payments on or after June 30, 1977, and wish to participate in the Medicaid program.

(2) The passalong requirements apply to both optional State supplementary payments of the type described in § 416.2001(a) and mandatory minimum State supplementary payments as described in § 416.2001(c), whether or not these State supplementary payments are Federally administered.

(3) The requirements apply to State supplementary payments both for recipients who receive Federal SSI benefits and those who, because of countable income, receive only a State supplementary payment.

(4) The requirements apply to State supplementary payments for recipients eligible for a State supplementary payment on or after June 30, 1977.

(5) Supplementary payments made by a State include payments made by a political subdivision (including Indian tribes) where—

(i) The payment levels are set by the State; and

(ii) The payments are funded in whole or in part by the State.

3. Section 416.2096 is revised to read as follows:

§ 416.2096 Basic passalong rules.

(a) *State agreements to maintain supplementary payment levels.* (1) In order to be eligible to receive Medicaid reimbursement, any State that makes supplementary payments on or after June 30, 1977, must have in effect an agreement with the Secretary. In this agreement—

(i) The State must agree to continue to make the supplementary payments;

(ii) For months from July 1977 through March 1983, the State must agree to maintain the supplementary payments at levels at least equal to the December 1976 levels (or, if a State first makes supplementary payments after December 1976, the levels for the first month the State makes supplementary payments). For months in the period July 1, 1982 through March 31, 1983, a State may elect to maintain the levels described in paragraph (b)(2) of this section; and

(iii) For months after March 1983, the State must agree to maintain supplementary payments at least sufficient to maintain the combined supplementary/SSI payment levels in effect in March 1983, increased by any subsequent SSI benefit increases, except as provided in § 416.2097(b) and § 416.2097(c).

(2) We will find that the State has met the requirements of paragraph (a)(1) of this section if the State has the

appropriate agreement in effect and complies with the conditions in either paragraph (b) or (c) of this section. We will consider a State to have made supplementary payments on or after June 30, 1977, unless the State furnishes us satisfactory evidence to the contrary.

(b) *Meeting the passalong requirement—supplementary payment levels.* (1) We will consider a State to have met the requirements for maintaining its supplementary payment levels (described in § 416.2098) for a particular month or months after March 1983 if the combined supplementary/SSI payment levels have not been reduced below the levels in effect in March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary/SSI payment levels in effect the first month the State made supplementary payments), increased by any subsequent Federal SSI benefit increases, except as provided in § 416.2097(b) and § 416.2097(c). We will consider a State to have met the requirements for maintaining its supplementary payment levels for a particular month or months between June 1977 and April 1983 if the supplementary payment levels have not been reduced below the levels in effect in December 1976 (or if a State first made supplementary payments after December 1976, the levels in effect the first month the State made supplementary payments, or in certain cases described in paragraph (b)(2) of this section, the levels in effect in December 1981.)

(2) We will also consider a State to have met the requirements for maintaining its supplementary payment levels for a particular month or months in the period July 1, 1982, through March 31, 1983, if the State had met the requirements of paragraph (c) of this section for a particular month or months in the 12-month period July 1, 1981 through June 30, 1982, and, with respect to any month in the period July 1, 1982 through March 31, 1983, the State maintained the payment levels in effect in December 1981.

(3) If a State reduced any of its supplementary payment levels for a month or months within any 12-month period beginning with the effective date of a Federal benefit increase, we will consider the State to have met the requirement to maintain its supplementary payment levels if—

(i) Within 12 months after the relevant 12-month period, the State restores the levels retroactively; and

(ii) The State makes a single retroactive benefit payment to each of

the beneficiaries eligible for the retroactive payment.

(c) *Meeting the passalong requirement—total expenditures.* (1) If a State does not meet the conditions in paragraph (b) of this section, we will consider a State to have met the requirement for maintaining supplementary payment levels for a particular month or months if total State expenditures for supplementary payments in the 12-month period within which the month or months fall, beginning on the effective date of a Federal SSI benefit increase, are at least equal to the total State expenditures for supplementary payments in the 12-month period immediately before the Federal SSI benefit increase provided that the State was in compliance for such preceding 12-month period. The combined Federal/State payment level for those persons receiving a mandatory minimum State supplementary payment can be no lower than the recipient's total income for December 1973 as defined in section 212(a)(3)(B) of Pub. L. 93-66.

(2) If total State expenditures in the relevant 12-month period are less than the total expenditures in the preceding 12-month period (a "shortfall"), we also will consider a State to have met the requirement for maintaining supplementary payment levels for the relevant 12-month period if in the following 12-month period the State increases the total expenditures required for that period by an amount at least equal to the amount of the shortfall in the relevant 12-month period. The increased amount up to the amount needed to correct the shortfall shall be deemed to be an expenditure in the relevant 12-month period, for passalong purposes only. (See paragraph (c)(5) of this section.)

(3)(i) Exception for the 6-month period from July 1, 1983 through December 31, 1983: We will consider the State to have met the total-expenditures requirement for the 6-month period July 1, 1983 through December 31, 1983, if—

(A) Total expenditures for State supplementary payments for the period July 1, 1983 through December 31, 1983, equal or exceed the total of such expenditures for the period July 1, 1982 through December 31, 1982;

(B) Total expenditures for State supplementary payments for the period January 1, 1983 through December 31, 1983, equal or exceed the total of such expenditures for the period January 1, 1982 through December 31, 1982; or

(C) Total expenditures for State supplementary payments for the period July 1, 1983 through December 31, 1983 equal or exceed one-half of the total of

such expenditures for the period July 1, 1982 through June 30, 1983. The provisions of paragraphs (c)(4) and (c)(5) of this section and of § 416.2099 (b), (c), and (d) shall apply to this 6-month period in the same manner as they apply to the 12-month periods referred to therein.

(ii) Exception for the 12-month period ending June 30, 1981: If a State did not meet the conditions in paragraph (b) of this section, we will consider a State to have met the maintenance-of-supplementary-payment-levels requirement for this 12-month period if the State's expenditures for supplementary payments in that period were at least equal to its expenditures for such payments for the 12-month period ending June 30, 1977 (or, if the State made no supplementary payments in that period, the expenditures for the first 12-month period ending June 30 in which the State made such payments); if a State made additional State supplementary payments during the period July 1, 1981 through June 30, 1982, in order to make up a shortfall in the 12-month period ending June 30, 1981 (determined by a comparison with the preceding 12-month period) which later resulted in an excess payment (determined by comparison with the 12-month period July 1, 1976 through June 30, 1977) we will credit the State with the amount of the excess payments if the State so requests. This credit will be applied to any shortfall(s) in total expenditures (should one exist) in any period(s) ending on or before December 31, 1986.

(4) Total State expenditures for supplementary payments are the State's total payments for both mandatory minimum and optional State supplementary payments in the appropriate 12-month period less any amounts deemed to be expenditures for another 12-month period under paragraph (c)(2) of this section, less the amount of any payments recovered and other adjustments made in that period. Total State expenditures do not include State administrative expenses, interim assistance payments, vendor payments, or payments made under other Federal programs, such as Titles IV, XIX, or XX of the Social Security Act.

(5) Adjustments in total State supplementary payments made after the expiration of the relevant 12-month period for purposes of meeting total State expenditures under paragraph (c) of this section shall be considered a State expenditure in the relevant 12-month period only for purposes of the passalong requirement. For purposes of § 416.2080, which discusses the rules for limitation on fiscal liability of States

(hold harmless), these retroactive adjustments are State expenditures when made and shall be counted as a State expenditure in the fiscal year in which the adjustments are made.

4. Sections 416.2097 and 416.2098 are redesignated as §§ 416.2098 and 416.2099, a new § 416.2097 is added and, as redesignated, § 416.2098 and paragraph (a) of § 416.2099 are revised. As amended, §§ 416.2097, 416.2098, and 416.2099 read as follows:

§ 416.2097 Combined supplementary/SSI payment levels.

(a) The combined supplementary/SSI payment level for each payment category that must be provided in any month after March 1983 (or if a State first made supplementary payments after March 1983, the combined supplementary SSI payment levels in effect the first month the State made supplementary payments) in order for a State to meet the requirement of the first sentence of § 416.2096(b) is the sum of—

(1) The SSI Federal benefit rate (FBR) for March 1983 for a recipient with no countable income;

(2) That portion of the July 1983 benefit increase computed in accordance with paragraph (b) of this section;

(3) The full amount of all SSI benefit increases after July 1983; and

(4) The State supplementary payment level for March 1983 as determined under § 416.2098.

(b) The monthly FBR's were increased in July 1983 by \$20 for an eligible individual and \$30 for an eligible couple, and the monthly increment for essential persons was increased by \$10 in lieu of the expected cost-of-living adjustment which was delayed until January 1984. However, in computing the required combined supplementary/SSI payment levels for the purpose of determining passalong compliance, we use only the amounts by which the FBR's and the essential person increment would have increased had there been a cost-of-living adjustment in July 1983 (a 3.5 percent increase would have occurred). These amounts are \$9.70 for an eligible individual, \$14.60 for an eligible couple and \$4.50 for an essential person.

(c) For the 24-month period January 1, 1984, through December 31, 1985, a State will not be found out of compliance with respect to its payment levels if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels are not less than its supplementary payment levels in effect in December 1976 increased by the percentage by which the FBR has increased after December 1976 and

before February 1986. The FBR for an individual in December 1976 was \$167.80. The FBR for an individual in effect on January 31, 1986, was \$336.00, an increase of 100.24 percent over the December 1976 FBR. In order for a State to take advantage of this provision for the 24-month period January 1, 1984, through December 31, 1985, the State supplementary payment levels in effect for calendar year 1986 must be at least 100.24 percent higher than the State supplementary payment levels in effect in December 1976. This provision does not apply to State supplementary payments to recipients in Federal living arrangement "D" (residents of a medical facility where title XIX pays more than 50 percent of the costs).

§ 416.2098 Supplementary payment levels.

(a) *General.* For the purpose of determining the combined supplementary/SSI payment levels described in § 416.2097(a), (i.e., the levels that must be provided in any month after March 1983), the supplementary payment level for each payment category must be no less than the total State payment for March 1983 for that payment category that a State provided an eligible individual (or couple) with no countable income in excess of the FBR for March 1983. For July 1983 and successive months, a State can reduce the total State payment for March 1983 as described above by that portion of the July 1983 increase which does not relate to the cost of living (i.e., \$10.30). For States that did not make supplementary payments in March 1983, the supplementary payment level for each payment category must be no less than the total State payment for the first month after March 1983 in which a State makes supplementary payments.

(b) *Calculation of the required mandatory minimum State supplementary payment level.* (1) Except for States described in paragraph (b)(2) of this section, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1973 income, as defined in section 212(a)(3)(B) of Pub. L. 93-66, plus any State increases prior to April 1983, less any reductions made at any time after December 1973 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30), so long as that reduction does not cause the mandatory

minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93-66.

(2) Section 1618(c) of the Act permitted any State that had satisfied the requirements of section 1618 of the Act by the total-expenditures method for the 12-month period July 1, 1981, through June 30, 1982, and that elected to change and meet the section 1618 requirements by the maintenance-of-payment-levels method for the period July 1, 1982, through June 30, 1983, to do so by paying benefits at levels no lower than the levels of such payments in effect for December 1981. However, a recipient's December 1981 total income (December 1981 mandatory minimum State supplement plus the FBR) could not be less than the recipient's total income for December 1973 as defined in section 212(a)(3)(B) of Pub. L. 93-66. For a State that elected the option in the preceding two sentences, the mandatory minimum State supplementary payment level for March 1983 is a recipient's December 1981 total income (but not less than the total income for December 1973 as defined by section 212(a)(3)(B) of Pub. L. 93-66) plus any State increases after December 1981 and prior to April 1983, less any reductions made at any time after December 1981 due to changes in special needs or circumstances, less the March 1983 FBR. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later, the amount calculated under the preceding sentence defining the required March 1983 mandatory minimum State supplementary payment level would continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30), so long as that reduction does not cause the mandatory minimum State supplementary level to fall below that required by section 212(a)(3)(A) of Pub. L. 93-66.

(c) *Calculation of the required optional State supplementary payment level for flat grant amounts.* The optional State supplementary payment level for March 1983 for flat grant amounts is the total amount that an eligible individual (or couple) with no countable income received for March 1983 in excess of the FBR for March 1983. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30). If the State varied its payment levels for

different groups of recipients (e.g., paid recipients different amounts based on eligibility categories, geographic areas, living arrangements, or marital status), each variation represents a separate supplementary payment level.

(d) *Calculation of the required optional State supplementary payment level for individually budgeted grant amounts.* The optional State supplementary payment level for individually budgeted grant amounts for March 1983 is the amount that the State budgeted for March 1983 in excess of the March 1983 FBR for an eligible individual (or couple) having the same needs and no countable income. The amount determined under the previous sentence shall continue for April, May, and June 1983. For July 1983 and later the amount calculated in the first sentence shall continue except that it may be reduced by the amount of the July 1983 Federal increase that was not related to the cost of living (i.e., \$10.30).

(e) *Optional State supplementary payment level for per diem based grant amounts.* (1) The optional State supplementary payment level for March 1983 for per diem grant amounts is the total dollar amount that the State paid to an eligible individual (or couple) with no countable income at rates in effect for March 1983 (number of days in the calendar month multiplied by the March 1983 per diem rate plus any March 1983 personal needs allowance) in excess of the March 1983 FBR.

Example:

March 1983:	
\$15.40	Per diem rate.
× 31	Days in month.
477.40	
477.40	
+ 42.00	Personal needs allowance.
519.40	
519.40	Combined State supplementary/SSI payment.
- 284.30	March 1983 FBR.
235.10	State supplementary payment level.

(2) The optional State supplementary payment level for months subsequent to March 1983 for per diem grant amounts is the total dollar amount that the State paid to an individual (or couple) with no countable income at rates in effect in March 1983 (number of days in the calendar month multiplied by the March 1983 per diem rate plus any March 1983 personal needs allowance) in excess of the March 1983 FBR for an individual (or couple) with no countable income

increased by all FBR increases subsequent to March 1983 with the exception of the July 1, 1983 increase. For the July 1, 1983 increase to the FBR, a State need passalong only that portion of the increase which represented the increase in the cost of living adjustment (3.5 percent).

Example:

Note.—Example assumes the State passed along only \$9.70 of the \$20.00 increase in the FBR effective July 1, 1983.

The March 1983 combined supplementary/SSI payment level for a 31-day month was \$519.40.

July 1983 level:	
\$519.40	March 1983 combined payment.
+ 9.70	July 1983 COLA-equivalent.
529.10	Required July 1983 combined level.
Payment:	
529.10	Required July 1983 combined level.
Payment:	
- 304.30	July 1983 FBR.
224.80	Required State Supplementary level.
Payment:	
529.10	Required July 1983 combined level.
Payment:	
- 42.00	Personal needs allowance.
487.10	
487.10	
+ 31	Days in month.
15.71	Per diem rate.

The required July 1983 combined supplementary/SSI payment level for a 31-day month was \$529.10. This amount is equal to the March 1983 combined payment amount for a 31-day month plus the July 1983 COLA-equivalent (\$519.40 + \$9.70).

(f) *Required Optional State supplementary payment level for months prior to April 1983.* In determining passalong compliance under the maintenance-of-payment-levels test for months from July 1977 through March 1983, we used December 1976 (or December 1981 under the circumstances described in paragraph (g) of this section) as the standard month for determining the required State supplementary payment level. To determine the December 1976 State supplementary payment levels for categories described in paragraphs (a) through (e) of this section substitute "December 1976" for "March 1983" and

"January 1977" for "April 1983" whenever they appear in these paragraphs only.

(g) *Alternative required Optional State supplementary payment level for July 1982 through March 1983.* States which were in compliance solely under the total-expenditures test for the 12-month period ending June 30, 1982, had the option of substituting December 1981 for December 1976 and switching to the maintenance-of-payment-levels test for July 1982 through March 1983 (see § 416.2096(b)(2)). If this situation applies, determine the December 1981 State supplementary payment levels for categories described in paragraphs (a) through (e) of this section by substituting "December 1981" for "March 1983" and "January 1982" for "April 1983" whenever they appear in these paragraphs only.

§ 416.2099 Compliance with passalong.

(a) *Information regarding compliance.* Any State required to enter into a passalong agreement with the Secretary shall provide appropriate and timely information to demonstrate to the Secretary's satisfaction that the State is meeting the passalong requirements. The information shall include, where relevant—

(1) The State's December 1976 supplementary payment levels, any subsequent supplementary payment levels, and any change in State eligibility requirements. If the State made no supplementary payments in December 1976, it shall provide such information about the first month in which it makes supplementary payments;

(2) The State's March 1983 supplementary payment levels, any subsequent supplementary payment levels, and any changes in State eligibility requirements;

(3) The total State expenditures for supplementary payments in the 12-month period beginning July 1976 through June 1977, in each subsequent 12-month period, and in any other 12-month period beginning on the effective date of a Federal SSI benefit increase. The State shall also submit advance estimates of its total supplementary payments in each 12-month period covered by the agreement; and

(4) The total State expenditures for supplementary payments in the 6-month periods July 1, 1982 through December 31, 1982 and July 1, 1983 through December 31, 1983.

(b) *Records.* Except where the Secretary administers the State supplementary payments, the State shall

maintain records about its supplementary payment levels and total 12-month (or 6-month where applicable) expenditures for supplementary payments and permit inspection and audit by the Secretary or someone designated by the Secretary.

(c) *Noncompliance by the States.* Any State that makes supplementary payments on or after June 30, 1977, and does not have a passalong agreement with the Secretary in effect, shall be determined by the Secretary to be ineligible for payments under Title XIX of the Act. A State does not have an agreement in effect if it has not entered into an agreement or has not complied with the terms of the agreement. Ineligibility shall apply to total expenditures for any calendar quarter beginning after June 30, 1977, for which a State has not entered into an agreement. A State that enters into an agreement but does not maintain its payment levels or meet the total-expenditures test in a particular 12-month or transitional 6-month period, shall be determined by the Secretary not to have an agreement in effect for any month that the State did not meet the passalong requirements during that particular period. The State shall then be ineligible for title XIX payments for any calendar quarter containing a month for which an agreement was not in effect. If a State first makes supplementary payments beginning with a month after June 1977, ineligibility shall apply to any calendar quarter beginning after the calendar quarter in which the State first makes payments.

(d) *Notices to States about potential noncompliance.* Within 90 days after the end of the relevant 12-month period, the Secretary shall send a notice to any State that has not maintained its supplementary payment levels and that appears not to have maintained its total expenditures during the period. The notice will advise the State of the available methods of compliance and the time within which corrective action must be taken (see §§ 416.2096(b)(3) and 416.2096(c)(2)) in order to avoid a determination of noncompliance. If the State fails to take the corrective action, the Secretary shall make a timely determination of noncompliance.

(Approved by the Office of Management and Budget under control number 0960-0240.)

[FR Doc. 87-22138 Filed 9-25-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

(FHWA Docket No. 86-17, Notice 2)

Design Standards for Highways;
Standard Specifications for Highway
Signs, Luminaires and Traffic SignalsAGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts for application on Federal-aid highway projects the American Association of State Highway and Transportation Officials' (AASHTO) "Standard Specifications for Highway Signs, Luminaires and Traffic Signals, 1985" except for the requirements of Section 7 of the document which deal with breakaway supports. The FHWA is not yet ready to make a final decision regarding appropriate breakaway requirements for sign and luminaire supports. In the interim, the FHWA will continue to following the requirements for breakaway supports found in section 7 of the 1975 edition of AASHTO's "Standard Specifications for Highway Signs, Luminaires and Traffic Signals."

EFFECTIVE DATE: September 28, 1987.**FOR FURTHER INFORMATION CONTACT:**

Mr. James H. Hatton, Office of Engineering, (202) 366-1629, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1382, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM), FHWA Docket 86-17, (51 FR 40817, November 10, 1986), presented FHWA's proposal to adopt for application on Federal aid highway projects revised specifications for structural supports for highway signs, luminaires, and traffic signals. The FHWA has been following as a design standard on Federal-aid highway projects the specifications found in the 1975 edition of AASHTO's "Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals." In May 1985, AASHTO approved a new edition of these standard specifications which included several revisions to the previous specifications. It is these revised specifications (1985 edition) which FHWA has proposed to adopt.

There were 14 commenters on the NPRM. Comments were received from five State highway agencies, five

suppliers of breakaway luminaire support systems, two distributors of traffic control systems, a lighting support industry group, and a safety advocacy group. Two State highway agencies, one luminaire support supplier, and the two distributors of traffic control devices recommended that FHWA adopt the 1985 AASHTO specification in its entirety.

Four other commenters, two State highway agencies and two luminaire support suppliers, recommended that FHWA adopt the 1985 AASHTO specification except for section 7, Breakaway Supports. It was suggested that FHWA's adoption of section 7 be deferred until there has been an opportunity to evaluate the results of FHWA's ongoing program to crash test existing breakaway luminaire support systems. The safety advocacy group also identified the need for making crash test results publicly available. It has always been FHWA's intention to publish for public information and comment the results from its ongoing luminaire crash testing program before a final decision is made regarding section 7. Additional information on this matter is discussed below.

Three other commenters, two luminaire support suppliers and the safety advocacy group, presented several suggestions concerning additional design information and other design detail modifications that might be included in the 1985 AASHTO specification. The FHWA is of the opinion that these proposed modifications would have no significant impact on the safety of sign and luminaire supports and they are not being incorporated into this final rule. The FHWA will forward the suggested modifications to the AASHTO Subcommittee on Bridges and Structures for its consideration in any future updates to the material in the AASHTO sign and luminaire specification.

Two suggestions could have some bearing on safety and are discussed in further detail as follows. One commenter recommended that the 1985 AASHTO specifications be revised to include guidance covering the placement of luminaires on slopes similar to the guidance that the FHWA issued to its regional offices in 1985. The FHWA is of the opinion that its previous guidance on this matter has served its intended purpose and there is no need to incorporate this material into a standard specification. The FHWA is working with the AASHTO on development of a Roadside Design Guide and this item will be considered for inclusion in that document.

The second comment concerning safety was that revisions to section 1.1.3(C) of the 1985 AASHTO specifications would result in the placement of overhead sign supports in locations vulnerable to vehicle impact and without barrier or impact attenuator protection. The FHWA does not share this concern. The 1985 AASHTO specification eliminates the reference to the fixed 30-foot clear zone for shielding of supports and instead references the AASHTO "Guide for Selecting, Locating, and Designing Traffic Barriers." It is expected that this AASHTO guide will be used for determining appropriate clear zones for the highway facility involved and that supports located within the designated clear zones will be shielded.

Several comments were also received regarding the breakaway support requirements within section 7 of the 1985 AASHTO specification. Issues raised included:

- Concerns about the need to reduce the test vehicle from 2,250 pounds to 1,800 pounds.
- A need for the FHWA to develop a breakaway support standard that covers all licensed vehicles including those weighing as little as 1,200 pounds.
- A recommendation to lower the change of velocity criterion below 15 feet/second.
- A need for compliance dates for any new requirements established.
- Concerns about the reliability of the crash testing methods used at FHWA's testing facility.

As explained below, the FHWA is not proceeding at this time with the adoption of section 7 of the 1985 AASHTO specifications. Comments received to the NPRM regarding section 7 plus anticipated future comments received once the crash tests results are published will be considered later when a final decision is made regarding adoption of section 7.

The FHWA has decided to adopt as a design standard for use on Federal-aid highway projects the provisions of the 1985 AASHTO sign and luminaire specifications with the exception of section 7, Breakaway Supports. For the time being, FHWA's requirements regarding breakaway requirements for sign and luminaire supports will remain to be those found in section 7 of the 1975 AASHTO specification. The reasons for this are discussed below:

The November 10, 1986, NPRM noted that to assist in determining whether currently accepted hardware meets the breakaway requirements of the new 1985 AASHTO specifications, the FHWA would be conducting limited

testing of previously accepted luminaire hardware. Crash testing of various luminaire support systems with an 1,800-pound bogie vehicle at impacts of 20 mph and 60 mph is on-going. The NPRM also noted that when this capability testing was completed the FHWA would publish in the *Federal Register* a supplemental notice summarizing the test results and requesting public comment. Based on FHWA's analysis of the comments received and the test results, the FHWA would then adopt sign and luminaire support breakaway requirements it deemed appropriate.

Several suppliers have provided breakaway luminaire systems for the testing program. This program is taking longer to complete than originally anticipated and overall test results are not yet available. As a consequence, the FHWA will not be in a position to publish the supplemental notice until later this year.

So as to not unnecessarily delay FHWA's acceptance of other material in the 1985 AASHTO specification, FHWA is adopting all sections of the 1985 AASHTO specifications with the exception of section 7, Breakaway Supports. In the interim, FHWA's requirements for breakaway sign and luminaire supports on Federal-aid highways will remain to be those found in the 1975 AASHTO specification. These requirements are that satisfactory performance for a breakaway support is indicated when the maximum changes in momentum for a 2,250-pound vehicle, or its equivalent, striking the support at speeds of 20 mph and 60 mph does not exceed 1,100 pound-seconds but desirably does not exceed 750 pound-seconds.

Although the FHWA has not yet adopted section 7, Breakaway Supports, of the 1985 AASHTO specifications, a State or local highway agency has the option to begin applying on Federal-aid highway projects the more stringent requirements of section 7 of the 1985 AASHTO specification if it so chooses.

As previously noted, when the capability testing program for existing luminaire hardware is completed, an overall summary of test results will be published in a supplemental notice. Following an opportunity for public comment, the FHWA will then make a decision as to whether section 7 of the 1985 AASHTO specification should be adopted for application on Federal-aid highway projects.

Discussion of Revisions

The 1985 AASHTO specifications that the FHWA is adopting are divided into sections which address: General features of design; application and

consideration of loads; method of analysis; steel, aluminum, and prestressed concrete design, including corresponding allowable unit stress; foundations and their design criteria; details of design; use of timber; and an accompanying commentary covering each section. The significant changes from the 1975 AASHTO specifications are discussed in detail below.

Section 1. The 1975 edition referred to the need to shield overhead sign supports when placed within 30 feet of the edge of the traveled way. The 1985 edition clarifies that these supports should be shielded wherever warranted. Also, the horizontal clearance from the rail to the face of the support has been clarified to demonstrate that this distance is measured from the back of the rail to the face of the supports.

Section 2. Wind drag coefficients for hexagonal, square and diamond shapes have been added in an attempt to more accurately apply expected wind load forces on structural supports. Information from wind tunnel tests suggests these drag coefficients should now be used in designing structural supports. This should result in a design procedure that incorporates the latest research findings.

Section 3. New requirements are established regarding telescopic field splices for high level lighting supports. Also, changes in the requirements for the use of anchor bolts include: optional use of cut or rolled threads; sizing of bolts due to combined loading of shear and tension; and increases in the allowable unit stresses. These changes should permit the structural designer more flexibility in specifying hardware and will give the industry more flexibility in supplying that hardware.

Section 4. New requirements have been added regarding: width to thickness ratios of compression elements, penetration criteria for longitudinal seam welds, and silicon content of structural steel to be galvanized. These changes have been included to ensure that the structure is a safe, reliable, and economical as possible.

Section 5. The allowable unit stresses for aluminum alloy members have been increased. The stresses allowed are now in conformance with building type structures rather than those for bridge type structures. This will result in more consistency between the factors of safety of aluminum structures and those of steel structures.

Section 6. Changes in the design of prestressed concrete materials include: A new equation for allowable stresses under severe corrosive exposure conditions, such as coastal areas; a

revised ultimate strength design procedure; and recommendations on the use of epoxy coated reinforcement. These changes are expected to merely extend the life expectancy of prestressed concrete materials.

Section 7. The changes in the 1985 edition are not being adopted (see previous discussion).

Section 8. There are no significant changes to this section from the 1975 edition.

Section 9. Suggested deflection criteria for cantilever supports has been added to aid those wishing to control deflection for esthetic purposes. Under the 1985 AASHTO specifications, supports for small roadside signs would be exempt from the minimum thickness requirements for steel support. Experience has indicated that small roadside sign supports not meeting the minimum thickness requirements in the 1975 edition have sufficient durability and that they may have safety advantages.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and the procedures of the Department of Transportation. For the sections of the 1985 AASHTO specifications which are being adopted in this final rule, the economic impacts, if any, are minimal. This determination is based on the fact that, although the Revised Specifications contain standards which in some cases have been clarified, modified, or revised, the basic structural support design criteria will remain essentially the same. For this reason and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies this action will not have a significant economic impact on a substantial number of small entities.

The manufacturers of sign and luminaire support systems may be minimally affected should FHWA decide, at a future date, to adopt section 7 of the 1985 AASHTO specification. A draft regulatory evaluation discussing these impacts was prepared and made available when the November 10, 1986, NPRM was published. This regulatory evaluation will be finalized at such time that the FHWA has made a final decision regarding adoption of section 7 of the 1985 AASHTO specification.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting requirements.

In consideration of the foregoing, Part 625 to Chapter 1 of Title 23, Code of Federal Regulations, is amended as set forth below.

Issued on: September 22, 1987.

Ray A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby amends 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.4, paragraph (b)(5) is amended to read as follows:

§ 625.4 Standards, policies, and standard specifications.

* * * * *

(b) * * *

(5) Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1985, and Interim Revisions, AASHTO 1986, except for section 7, Breakaway Supports. The FHWA requirements for breakaway sign and luminaire supports are contained in section 7 of Standard Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals, AASHTO 1975. (3)

* * * * *

[FR Doc. 87-22332 Filed 9-25-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE**Department of the Air Force****32 CFR Part 807****Publications Sales**

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This part has been rearranged and certain areas expanded to clarify handling procedures for specific types of requests from the public. This part provides Air Force procedures for issuing publications and forms to private citizens, organizations and commercial activities.

EFFECTIVE DATE: October 28, 1987.

ADDRESS: SAF/AADPD, Bolling AFB, DC 20332-6468.

FOR FURTHER INFORMATION CONTACT: Walter S. Frazer, SAF/AADPD, Bolling AFB, DC 20332-6468, telephone (202) 767-6077.

SUPPLEMENTARY INFORMATION: On July 24, 1987, the Air Force published a proposed rule on issuing Air Force publications and forms outside the Air Force (52 FR 27825). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 807

Government contracts, government procurement.

Therefore, 32 CFR Part 807 is revised to read as follows:

PART 807—PUBLICATIONS SALES

Sec.

807.1 General requirements.

807.2 Charges.

807.3 Requests for classified material, For Official Use Only (FOUO) material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.

807.4 Availability and non-availability of stock.

807.5 Processing requests.

807.6 Depositing payments.

Authority: 10 U.S.C. 8013.

§ 807.1 General requirements.

(a) Unaltered Air Force publications and forms in this distribution system will be made available to the public with or without charge subject to the requirements of this part. Base Chiefs of Administration will establish procedures to accommodate these requirements and will make available Master Publications Libraries for public use in accordance with AFR 5-31. Requesters will be advised of the availability of these libraries since in many instances this will satisfy their requirements and reduce workloads involved in processing sales requests. If the item is on sale by the Superintendent of Documents, Government Printing Office, refer the request to that outlet.

(b) These unaltered publications and forms are not considered records within the meaning of the Freedom of Information Act (FOIA) as outlined in 5

U.S.C. 552 and implemented by Part 806 of this chapter. Requests which involve the FOIA will be referred to the Chief, Base Administration for processing.

(c) Requests under the Foreign Military Sales Program (FMS) will be processed in accordance with AFR 7-1, Chapter 11.

(d) Requests from foreign governments, their representatives, or international commands are answered only by offices holding delegation of disclosure authority letters, as described in AFR 200-9. Such requests must be sent to the foreign disclosure policy office within a command, and at HQ USAF to HQ USAF/CVAI. Copies of such requests should also be sent to the base public affairs office for their information. Commands will supplement this requirement to include policies pertaining to those items which they have authority to release.

(e) Requests for non-Air Force items will be returned to the requester for submission to appropriate agency.

§ 807.2 Charges.

(a) Air Force policy provides that charges will be applied to all requests unless specifically excluded.

(b) Charges will be applied in accordance with Part 813 of this chapter. Additional guidance is in Part 812, including specific exclusions for charges as listed in § 812.5. As indicated, the list of exclusions is not all inclusive and recommendations for additional exclusions will be forwarded to the OPR for Part 812 of this chapter.

(c) Publications and forms required for contract performance will be furnished without charge to the contractor when these requirements are approved by the government contracting officer.

§ 807.3 Requests for classified material, For Official Use Only (FOUO) material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.

(a) *Classified material.* Answer these requests by telling the requesters that the material is not authorized for release because it is currently and properly classified in the interest of national security as authorized by Executive Order, and must be protected from unauthorized disclosure.

(b) *FOUO material.* Requests will be reviewed by the Office of Primary Responsibility for the material to determine its releasability.

(c) *Accountable forms.* These requests will be returned to the requester stating that the forms are stringently controlled and cannot be released to unauthorized personnel since their misuse could jeopardize Department of Defense