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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as final rule the provisions of an interim rule which increased the user fees charged for cotton classification, testing, and standards. The revision in fees reflects the recent amendment to the Cotton Statistics and Estimates Act and is necessary to recover the costs of providing services.

EFFECTIVE DATE: January 27, 1988.

FOR FURTHER INFORMATION CONTACT: Fred S. Mullins, Cotton Division, AMS, USDA, Washington, DC 20090-6456, (202) 447-2145.

SUPPLEMENTARY INFORMATION: An interim rule which detailed the increased user fees for cotton classification, testing, and standards was published in the **Federal Register** on September 18, 1987 (52 FR 35215). This interim rule stated the reasons for revising classification user fees due to a recent amendment on August 20, 1987, to section 3a of the Cotton Statistics and Estimates Act (7 U.S.C. 473a) and the need to increase other user fees to recover, as nearly as practicable, the costs of providing these services. A 45-day comment period was given to interested persons to submit their views on the proposed user fee increases. The comment period ended November 2, 1987, with no comments having been received. Therefore, based upon the above the interim rule is adopted as a final rule as originally published.

This rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect only a modest increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increases will not affect competition in the marketplace; (3) the amounts of the increase in fees are needed to continue to provide services at the levels desired by the industry; and (4) the use of the services is voluntary. The secretary is authorized by statute to recover the costs of the services.

The information collection requirements contained in the rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Pursuant to 5 U.S.C. 533, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because a sufficient comment period was included in the interim rule with no comments received, the interim rule is adopted as a final rule without change, and no useful purpose would be served by such a delay.

List of Subjects

7 CFR Part 27

Cotton classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseed, Chemists, Samplers, Grades.

Accordingly, the interim rule amending 7 CFR Parts 27, 28, and 61 which was published at 52 FR 35217-35221 on September 18, 1987, is adopted as a final rule without change.

Dated: January 22, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-1652 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children, Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program Regulations concerning the formula through which the Department shall allocate funds for administrative and program services to State agencies. The formula prescribed by this rule differs from the one currently in use. In accordance with this rule, the Department shall henceforth allocate funds for administrative and program services to State agencies on the basis of previous fiscal year funding levels and on the basis of the number of participants served. The intent of this formula is to preserve a reasonable measure of funding stability while promoting funding levels necessary to provide equivalent service to participants. With the administrative and program services funds tied more closely to participation, the Department expects that the formula will more equitably allocate available funds to meet the administrative and program services costs in State agencies and will remove disincentives for achieving economies in food costs that allow service to greater numbers of participants.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, VA 22302, (703) 756-3746.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been classified to be *not major*. The Department does not anticipate that this rule would have an annual effect on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor would this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. Section 17(i) requires the Department to "* * * divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Legislative directives for the distribution of administrative and program services funds to State agencies are provided in section 17 (h)(1) and (h)(2). Section 17(h)(1) reads in part. "The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration." This paragraph further stipulates that not less than one-sixth of the funds State agencies expend for nutrition services and administration are to be used for nutrition education activities, unless a State agency requests authorization to spend less than the required amount and provides documentation that funding from other sources will be used for such activities. Section 17(h)(2) further requires the Secretary to "* * * allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies." In summary, the CNA directs the Department to allocate to State agencies 20 percent of the total Federal funds available for the WIC Program (minus funds expended for evaluation and pilot projects under subsection (g)) for administrative and program services according to a formula that provides a minimum amount and that considers the varying needs of State agencies.

Current Funding Formula

On July 2, 1987, a final rule was published (52 FR 25182) that set forth the formulas for allocating both WIC food and administrative and program services funds. While this rule made revisions to the formula for allocating food funds, the rule did not make any changes to the existing administrative and program services funding formula. The current formula for allocating administrative and program services funds, in use since fiscal year 1984, provides funds in two ways. First, a guaranteed grant amount is calculated which is the lesser of: (a) 21 percent of a State agency's food grant, or (b) the State agency's ratio of administrative and program services funds to food funds allocated in the previous year, multiplied by the current year's food grant. Second, a discretionary fund is available for allocation by each Food and Nutrition Service (FNS) regional office. The purpose of the discretionary fund is to provide for the varying needs of State agencies. The amount of discretionary funds available to each regional office for allocation to its respective State agencies is determined based on each of its State agencies' ratio of administrative and program services funds to food funds from the previous fiscal year. The difference between the product of the State agency's ratio and its current year's food grant and the State's guaranteed administrative and program services grant represents the State's contribution to the regional discretionary fund. The sum of all States' contributions forms the regional discretionary fund.

FNS regional offices determine the amount each State agency will receive of the discretionary fund. The underlying premise of these discretionary allocations by the regional offices is that their close working relationships with the State agencies afford them greater awareness of the State agencies' varying needs.

Regional offices have allocated discretionary funds using factors such as the State agency's ratio of administrative and program services funds to food funds from the previous year, administrative and program services cost per participant, service to high risk participants and funding for special projects. In fiscal year 1987, approximately 17 percent of total administrative and program services funds were awarded through the discretionary grant component. Nationally, however, most State agencies received the amount of discretionary funds they "contributed" to the regional fund, and only 3 percent of the total discretionary funds were actually redistributed to other State agencies.

Concerns About the Existing Formula

Establishing each State agency's administrative and program services funding level as a percentage of its food funding level has been a stable and straightforward method of funding. The Department is concerned, however, that this method may entail some inequity in the distribution of funds under the formula among State agencies and regions of the country.

There is a general recognition that the use of these ratios in calculating the grant amounts available for distribution to State agencies does not yield fully equitable results.

Additionally, the Department is concerned that the current formula is a disincentive to a State agency's reduction of food costs per participant. Such lower food costs permit service to a greater number of participants. However, under the current formula, State agencies must provide administration and program services for each additional participant with no increase in administrative funding.

• *Alternative Formula Proposed*

A proposed rule containing an alternative funding formula was published for comment in the **Federal Register** (52 FR 27005) on July 17, 1987. In the development of the proposed formula, the Department consulted with members of the WIC community.

particularly the National Association of WIC Directors (NAWD). Discussions with the NAWD representatives centered on the formulation of funding principles, the consideration of factors affecting administrative and program services costs, and the critique of specific formula options under development. These discussions proved to be pivotal in the design of the proposed formula, whose fundamental difference from the current formula was use of participation levels instead of ratios to food funds as a basis for allocating administrative and program services funds.

• *Description of the Proposed Formula*

The objectives of the proposed formula were to give all State agencies the opportunity to provide equivalent service to participants and equivalent management oversight and to remove existing disincentives to reducing food costs in order to serve more participants. To accomplish these objectives within the context of ongoing program operations, the Department proposed to implement change in funding levels gradually. Thus, the proposed formula would allocate funds to maintain previous funding levels while promoting a gradual movement toward a funding level that represents each State agency's "fair share", or parity, funding level. The purpose of the parity grant component was to reflect the funding levels State agencies would receive if all available administrative and program services funds were allocated primarily on the basis of participation. The Department proposed two methods for determining parity grant levels, both of which recognized the higher per participant costs associated with smaller participation levels. The fundamental difference between the two methods was that one (Option A) made no adjustment for differing salary costs among States, while the other (Option B) did.

The implementation of the formula was designed to ensure gradual movement toward the parity level. Each State agency would receive a stability funding level equal to the total amount received in the previous fiscal year *provided* that participation levels did not decrease. If FNS projected a decrease in participation for a State agency, that State agency would receive its previous year funding level decreased by an amount commensurate with the projected decrease in participation. The purpose of stability funding is to maintain a measure of funding stability from year to year, and most funds available for administrative and program services would be allocated through this component of the formula. Any funds remaining after stability funding is satisfied would be allocated as residual funds on the basis of participation levels. State agencies could qualify for residual funds in two ways: (1) Projected participation increases over the levels of participation in the previous year, or (2) parity grant levels which exceeded stability funding levels.

Although the goal of the proposed funding formula was eventually to fund all State agencies at their parity grant levels, a two-pronged approach to residual funding was proposed to provide further encouragement to State agencies to increase participation levels. Thus, State agencies which otherwise might not qualify for residual funding under the parity grant component of the formula would still qualify for some additional funding if they could increase participation.

The final step under the proposed funding formula was to provide for discretionary funding by FNS regional offices. The Department proposed to retain the discretionary funding concept, which is part of the current formula, in order to allow some flexibility in the funding process for meeting the varying needs of State agencies. The Department proposed to accomplish this by subtracting 10 percent of each State agency's total grant (stability grant plus any residual funds for which the State agency qualified) and aggregating those amounts for all State agencies within each FNS region. The FNS regional office would then distribute the funds based on the needs of State agencies within the region.

• *Comments Received on the Proposed Formula*

A total of 234 letters were received which provided comments on the proposed formula. The commentors represented 48 State agencies, 155 local agencies, and 31 interested groups. The Department considered the comments received in formulating this final rule. Following is a discussion of the major issues raised by commentors in response to the proposed rule for allocating WIC administrative and program services funding.

General Issues: Formula Concepts and Concerns

• *Support for the Proposal*

A total of 228 commentors provided comments supporting or opposing the proposal to revise the formula used to allocate funds for administrative and program services. Basic approval or disapproval could not be determined for six comment letters received. Of the 228 comment letters, 74 percent generally supported the proposal. Their support was conditional on one or more recommended modifications; 103 commentors limited their comments to support for the adoption of either Option A or Option B as the preferred method for determining parity grants. Sixty commentors (26 percent) opposed the proposed rule in its entirety. The common elements of the objections raised by these commentors include the need for additional research into the costs of administering the WIC Program, the complexity of the proposal and the perception that certain State agencies or regions of the country would be disadvantaged by the adoption of the proposed formula.

• *Participation—Based Funding*

A smaller number of commentors (43) specifically addressed the concept of participation-based funding. Of this number, 71 percent supported the concept, and 29 percent opposed. Those who opposed the use of participation as a basis for allocating administrative and program services funds cited problems which they believe are inherent in this funding approach, such as the lack of predictability in funding levels from year to year and reduced per participant funding without significant increases in funds appropriated by Congress (since participation-based funding would be expected to promote increases in participation). While such outcomes could result from funding based solely on participation, most of the funds will, in fact, be allocated on the basis of prior year funding levels. However, the ultimate objective of the new funding formula is to provide funds primarily on the basis of the number of participants served. The Department continues to believe that this is a fair method of allocating funds.

A related issue raised by 26 commentors was the concern that participation-based funding may encourage some State agencies to serve more eligible persons by reducing the quantity and quality of food packages. With regard to food cost economies, it is the Department's intent that State agencies will review current policies and practices on food package design, food delivery systems, and vendor selection and monitoring practices to determine potential cost-saving measures. However, State agencies should not contemplate measures detrimental to the nutritional integrity of food packages. Any changes to food packages will be reviewed carefully by FNS in accordance with guidelines outlined in FNS Instruction 804-1, *WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring*. If FNS determines that a State agency has improperly reduced the nutritional content of food packages such State agency will risk the imposition of funding sanctions, as described in Section 246.19(a)(2) of the WIC Program Regulations.

• *Gradual Change*

A basic featue of the proposed formula was the gradual change from funding levels determined by the current formula to funding levels which are primarily based on participation. Most commentors who addressed this feature of the proposal supported the need for gradual change, and some commentors recommended consideration of placing a cap on the amount of change allowed for funding levels from one year to the next. Other commentors were opposed to limiting the amount of change in funding levels because this would impede the movement toward parity funding. While recognizing the concern expressed on behalf of State agencies which will receive a lesser share of funding under the new formula, the Department believes that the new formula fairly balances the need for funding stability with the need to promote funding which emphasizes equivalent service to participants throughout the country. The first priority under the new formula will be to allocate funds on the basis of State agencies' previous year grant levels; it is only after stability funding is fully satisfied that any remaining funds will be allocated on the basis of participation. Given the fact that most funds available for allocation for administrative and program services will be allocated through the formula's stability component, the Department does not believe that further restrictions on changes to funding levels are warranted.

• *Interaction with the Food Funding Formula*

Thirty-nine commentors, representing a broad spectrum of State agencies and interested groups, expressed concern that the objectives of the proposed formula conflict with those of the formula by which food funds are allocated to State agencies. A new food funding formula which was published as a final rule in the **Federal Register** (52 FR 25182) on July 2, 1987, provides funding incentives to State agencies based on their service to participants who are at the greatest risk due to nutritional deficiences or medical conditions. The objective of this funding policy is to encourage State agencies to target benefits to eligible persons who are at the greatest nutritional risk and who therefore have a greater need for program benefits. However, the proposed administrative and program services funding formula would provide funding incentives to State agencies to increase participation without regard to the nutritional risk status of the additional participants. Since the number of participants that a State agency can serve is directly related to the cost of the food packages provided to participants, lower food expenditures result in the ability to serve more people. However, commentors pointed out that high risk participants, particularly infants, tend to require more expensive food packages, and thus State agencies which serve a greater percentage of high risk participants are likely to have higher per participant food expenditures. Commentors contended that a State agency could be rewarded under the food formula for targeting benefits to high risk participants and penalized under the proposed administrative and program services funding formula for having higher per participant food expenditures.

The Department agrees that the two formulas differ with regard to funding objectives. In an effort to determine whether these differences could produce the conflict predicted by commentors, the Department conducted computer simulations of the two formulas with results projected into fiscal year 1989. Based on these simulations, it appears that well-targeted State agencies would receive slightly less in funding compared to State agencies which are less well-targeted. Although the reduction of administrative and program services funding for well-targeted State agencies was slight (less than 1 percent reduction of the administrative grant per participant), the Department believes that it is prudent to provide a targeting incentive in the administrative and program services funding formula. Therefore, a specific targeting factor has been incorporated into the final formula which will reward State agencies for service to high risk participants. In doing so, the Department reaffirms the important program goal of targeting WIC benefits to those in greatest need.

Stability Funding

Forty-two commentors addressed issues related to the stability component of the proposed funding formula. Six commenters supported the proposal as stated or with some modifications; 36 commentors opposed the provision. Those who opposed objected to the proposed methodology of reducing a State agency's previous year funding level by an amount commensurate with projected participation decreases. Commentors stated that stability funding should at least equal the amount of funds received in the previous year. A majority of the opposing commentors also recommended that an adjustment for inflation should be added to the previous year grant levels when computing stability grants under the new formula.

The Department concurs with the recommendation that stability funding should equal the previous year's total administrative and program services funding level with no reductions for projected participating decreases. The State agency's stability funding level is based on a known, objective value—the preceeding year administrative and program services funding level—although the exact amount of that level may not be final until well into the succeeding fiscal years. Preclusion of an adjustment for projected decreases in participation will improve predictability of funding levels for the State agencies. An appropriate change has been incorporated into the final rule. However, the Department decided not to include an inflation adjustment for determining stability grants. The Department's reasoning on this matter is that the introduction of an inflation factor into the formula would severely limit the amount of funds available for residual funding, thus hampering the movement toward parity funding.

Residual Funding

• *Projected Participation*

Due to the revised method of determining stability funding as discussed in the preceding paragraph, use of projected participation in the final rule is limited to calculating the amount of residual funding for which a State agency qualifies. The Department proposed to project participation by dividing each State agency's current fiscal year food grant by its food expenditures per participant (FEP) averaged over the most recent closed-out 12 months. That quotient would be divided by 12 to arrive at a monthly participation level. The FEP is derived from participation and food expenditures reported by State agencies to FNS on the Form FNS-498, WIC Monthly Financial and Program Status Report. To account for increased costs in the current fiscal year, the FEP would be increased by the same base anticipated rate of inflation that would be applied in determining current year food grants.

A total of 38 commentors addressed issues related to projected participation. Half of these commentors generally supported the concept of projecting participation, although most suggested modifications to the proposed methodology. The other half opposed the use of projections, and many recommended, instead, the use of average monthly participation levels from the previous year. State agencies which have initiated or plan to initiate infant formula rebate programs or other competitive bidding systems designed to reduce food costs were particularly concerned about this issue.

Commentors generally felt that the proposed methodology would result in inaccurate projections. Specific recommendations to improve the accuracy of the projections included using more recent data to calculate each State agency's FEP and adjusting the FEP for prospective food cost savings and for the additional cost of serving high risk participants.

While acknowledging certain limitations to the proposed method of projecting participation, the Department believes that it represents a fair and reasonable approach to forecasting participation. With the exception of the computations used to determine an inflation adjustment for FEP, the Department intends to project participation as proposed. The Department's reasons for retaining the proposed methodology for projecting participation are summarized below.

• The projections are based on the most objective information available—final (closed-out) food expenditure and participation data, as reported by State agencies, and current year food grant levels. Use of data that is not closed-out could result in preliminary FEP's that may be inaccurate.

• The use of a 12 month average of final (closed-out) food expenditures and participation captures the full picture of State agency activity regarding participation and food expenditures. Use of a shorter time period to average food expenditures and participation could result in an average FEP that reflects temporary or seasonal fluctuations in food prices or participation levels.

• Prospective consideration of food cost savings or other action that might increase participation (e.g., elimination of sales tax on WIC food purchases) would introduce an unacceptable level of unreliability into participation projections. The projection methodology adopted in this rule will recognize participation increases due to cost savings actually achieved. While there will be a brief time lag between actual participation increase and the subsequent influx of administrative funding to manage these increases, the Department believes this is a more prudent and objective manner in which to allocate administrative resources.

• A specific targeting factor has been incorporated into the parity grant component of the formula. Addition of a specific targeting factor more clearly reinforces the program goal of targeting benefits to high risk participants.

One change that will be made concerns the calculations of the inflation factor to be applied to each State agency's average FEP. As several commentors correctly pointed out, the rate of inflation used should match the period of time used to calculate the FEP through the current fiscal year. Therefore, an inflation factor will be applied to the FEP which will accomplish that objective.

•Residual Funding Based on Projected Participation Increases

As proposed, State agencies may qualify for residual funds based on participation increases projected by FNS. The amount of residual funds would be determined by applying a multiplier to the projected increase in participation from the previous year. The multiplier would equal an administrative expenditure per participant (AEP) averaged from the lowest quartile of AEP's from the previous fiscal year.

Eighteen commentors addressed this aspect of the proposed funding formula. Four commentors opposed the allocation of residual funds based on projected participation increases. These commentors stated that all residual funds should be allocated only on the basis of the parity grant component. Another issue that concerned several commentors was the proposed method of comparing projections from year to year as a basis for determining changes in participation levels. Commentors felt that without some comparison to actual average annual participation levels beyond the first year, the projections would lose any similarity to actual participation levels. A third issue addressed was the proposed use of an average AEP drawn from the lowest quartile of AEP's. In general, commentors felt that it was not equitable to use the same multiplier for all State agencies because their costs in serving each additional participant vary. The position taken was that the smallest State agencies, in particular, would not be adequately compensated for their comparatively higher expenditures on a per participant basis.

The Department has retained this provision of the new funding formula as proposed. The Department believes that it is appropriate to recognize efforts undertaken by higher cost State agencies to reduce food costs and increase participation. Many such State agencies would not otherwise receive residual funds through the parity component of the formula. Regarding the concern about comparing projections from year to year, this method will ensure that any changes in participation or food expenditures per participant not accounted for in the previous year's projections will be considered in the current year's projections. Also, it should be noted that projected participation decreases from one year to the next year will not affect funding levels as this procedure was deleted due to the revised method of determining stability grants.

Regarding the concern that the use of one standard AEP multiplier will not adequately compensate all State agencies for the cost of serving additional participants, the Department is reluctant to make additional adjustments. To do so would reduce the amount of residual funds available to State agencies based on the parity grant component of the new formula. This would considerably slow the movement toward fair share funding based on participation, which is the ultimate objective of the new formula.

•Residual Funding Based on Parity Grant Determinations

As proposed, the purpose of the parity grant component of the new funding formula is to reflect "fair share" funding levels for State agencies based primarily on participation. Parity grant calculations provide another means by which State agencies may qualify for residual funding; the difference between the stability funding level and the parity funding level equals the amount of residual funds for which a State agency qualifies. The Department offered two approaches to determining parity funding levels, Option A and Option B. Option A would provide funds on the basis of a per participant rate. Option B would provide funds on the basis of a constructed salary budget which computes the number of State and local staff according to staff to participant ratios and salaries paid within the State; the balance of funds would be paid out on a flat administrative grant per person. Both options would recognize the higher costs associated with smaller participation levels on a per participant basis.

A total of 191 commentors addressed the proposed options of determining parity grants. Of this number, 119 (62 percent) supported Option A, 35 (18 percent) supported Option B, and 37 (19 percent) opposed both options. The majority of commentors supporting Option A were from one region of the country; over two-thirds of the commentors represented one State from that region. Similarly, most supporters of Option B were from a single region, and those opposing both options most frequently represented 2 other regions of the country. The regional split in preferences for the proposed options, as well as for the new formula itself, is understandable due to the shift in funds allocations on a regional basis. The inclusion of salary costs was the most divisive issue. State agencies with higher than average salary costs tended to support Option B, while State agencies with lower than average salary costs supported Option A.

The Department has selected a modified Option A as the method used to determine parity grant levels. A number of factors and issues were considered in reaching this decision. The Department considered the relative merits of the methodologies used in both options, exclusive of the controversy surrounding the use of salary costs as a factor in the formula. Compared to Option A, the methodology used in Option B had several drawbacks. First, the formula was more complex. A second and perhaps more important consideration was the concern raised by commentors regarding assumptions used to determine staffing levels at the local level. Ultimately, the Department concluded that Option A provided a more objective means of allocating funds based on participation.

However, the commentors supporting Option B had valid reasons for recommending the consideration of salary costs in determining parity grant levels. In addition, some commentors pointed out the need to consider the additional costs of serving high risk participants. Taking all of these arguments into consideration, the Department has revised the proposed Option A method of determining parity grant levels to include factors which recognize differential salary costs among State agencies and the relative success in targeting benefits to high risk participants.

Parity grant levels will be computed in 2 parts: first, 80 percent of available administrative and program services funds will be allocated on the basis of administrative grant per participant (AGP) rates adjusted for caseload size as proposed in Option A; and second, the remaining 20 percent of available funds will be allocated on the basis of salary and targeting factors. The salary and targeting factors will be determined as follows:

(1) Each State agency's average annual salary level will be indexed to the national average salary;

(2) Each State agency's share of imputed priority I participants compared to its total average monthly participation level will be indexed to the national average share of imputed priority I participants;

(3) Each State agency's salary index and targeting index will be added together and multiplied against its projected participation level; and

(4) Each State agency's share of the national total determined in step 3 will be determined and then multiplied by 20 percent of the total amount of funds available for administrative and program services.

Following is an example showing the calculations used to determine the amount of funds a State agency would receive based on the salary and targeting factors.

Step 1:

$$\frac{\text{State A average salary (\$25,000)}}{\text{National average salary (\$20,000)}} = \text{State A salary index (1.25)}$$

Step 2:

$$\frac{\text{State A ratio of priority I participation (.50)}}{\text{National ratio of priority I participation (.40)}} = \text{State A targeting index (1.25)}$$

Step 3:

$$\text{(State A salary index (1.25) + State A targeting index (1.25))} \times \begin{array}{c}\text{State A projected}\\ \text{participation (22,000)}\end{array} = \begin{array}{c}\text{State A salary and}\\ \text{targeting factor (55,000)}\end{array}$$

Repeat this step for all State agencies to arrive at a National total (7,000,000)

Step 4:

$$\frac{\text{State A (55,000)}}{\text{National total (7,000,000)}} \times \text{20 percent of total administrative funds (74,000,000)}$$

State A funds for Salary and Targeting=$581,428

Each State agency's parity grant level will equal the funds generated by these computations plus the funds generated using the size-adjusted AGP rates. Further discussions of comments received on these cost factors follow:

• *Use of Size-Adjusted Factors in Parity Component*

Although the Department lacked complete information on the effect of the economy of scale phenomenon on WIC administrative and program services costs, a methodology was proposed to account for the higher participation costs associated with small participation levels. The use of size-adjusted factors in the parity grant component was proposed in order to avert severe reduction in funding levels for State agencies with average monthly participation levels under 15,000.

Thirty-one commentors addressed the economy of scale issue and the proposed use of size-adjusted factors in the new funding formula. There was unanimous support among these commentors for recognizing the special funding needs of State agencies with average monthly participation levels below 5,000; there was less agreement about the proposed method used to compensate the higher per participant costs of these State agencies or that State agencies with participation levels over 5,000 require special consideration. Although a majority of commentors (58 percent) agreed with the proposed methodology of using size-adjusted factors based on reported administrative expenditures per participant (AEP), most commentors suggested modifications to the approach. Commentors most frequently suggested that the first size band containing State agencies with participation levels up to 5,000 should be broken into smaller size bands containing either the first 500 or 1,000 participants. Other commentors opposed the use of size-adjusted factors as a means of compensating State agencies with small participation levels; some recommended that State agencies with fewer than 5,000 participants should be funded outside the formula through the use of minimum grants. Other commentors criticized the data used or the methods by which the size-adjusted factors were determined. Several commentors pointed out that the relative size and number of local agencies affect a State agency's AEP as significantly as the overall participation level.

In response to suggestions to adjust the first size band downward, the Department explored several possible adjustments using the same database used to determine the proposed size-adjusted factors (FY 1986 final AEP's). However, none of the proposed revisions provided the intended effect of appropriately increasing compensation for the smallest State agencies without inappropriately reducing compensation for the larger State agencies. Finally, the Department concluded that it is not in the best interest of the Program to reduce the parity funding levels for the larger State agencies which serve the majority of WIC participants. The relatively small amounts of additional compensation sought by the smallest State agencies to meet unfunded legitimate costs of operations can be attained more easily through negotiations with FNS regional offices for discretionary funds. This would not be the case for larger State agencies whose additional funding needs resulting from reducing parity grant levels could exceed the amount of available discretionary funds. The Department considered the comments concerning the relative size and number of local agencies but concluded that it would not be appropriate to include this factor in the formula, since it is under the control of the State agencies. Further, inclusion of the numbers of local agencies in the formula would be a disincentive for State agencies to economize administration by consolidating services.

For these reasons, the proposed size-adjusted factors have been retained in the final funding formula as proposed. The Department believes that the use of size-adjusted factors in the new funding formula adequately accommodates the needs of smaller State agencies which have higher than average administrative expenditures on a per participant basis. On a periodic basis, the Department will review the actual costs differences between the size bands to determine whether the size-adjusted factors need to be revised.

• *Adjustments to Parity Component for Salary Costs*

The Department considered the issue of salary costs separately from the choice of options used to determine parity grant levels. In proposing Option B as one approach to account for salary costs, the Department specifically requested comments on the appropriateness of including salary costs in the funding formula and suggestions of a methodology. Ninety-two comments were received on the issue of including salary costs in the funding formula. Of this number, 24 commentors (26 percent) favored the inclusion of salary costs in the formula, 7 commentors (8 percent) opposed the inclusion of salaries for theoretical reasons, and 61 (67 percent) commentors opposed the inclusion of salaries for practical reasons, citing concerns about the proposed salary database. Those who favored the consideration of salary costs in the funding formula stated that salary costs significantly affect administrative and program services costs in the WIC Program and are not under the control of State agencies. Other commentors opposed the use of a salary factor in the formula on the grounds that this would represent an unwarranted departure from FNS funding policies for food and nutrition programs. These commentors also believed that it is unfair to certain regions in the country to include salary costs without also including other factors affecting administrative and program services costs, such as rurality and geographical factors. Finally, those commentors who opposed the inclusion of salary costs on practical grounds faulted the database that the Department proposed to use in determining average salary levels for WIC staff. As described in the preamble to the proposed rule, the database for the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands would be supplied by the Bureau of Labor Statics (BLS). The BLS data represents the most recent average annual salaries for State and local government workers as reported by each States's employment security agency. Commentors felt that the BLS averages are not appropriate for WIC staff who tend to receive higher than average salaries. They also objected to the age of the database which reflected salaries paid two years ago.

The Department recognizes that this issue represents one of the most controversial aspects of the proposed rule. The Department believes that strong sentiments expressed by commentors on the issue tend to reflect concern about the appropriateness of shifting funds among State agencies due to inclusion of salary costs in the formula. Notwithstanding these concerns, the Department continues to believe that salary costs represent the most significant factor in WIC administrative and program services costs. Based on the budgeted expenditures submitted by State agencies for Fiscal Year 1987, a national average of 72 percent of all administrative and program services funds were budgeted for salaries and fringe benefits. Furthermore, a State agency which must pay higher than average salaries is unlikely to be able to hire as many staff as a State agency with lower salaries. Thus, State agencies which must pay the higher salary levels due to prevailing economic conditions within the State may be understaffed, and WIC participants may receive reduced quality of service.

Regarding concerns expressed about the proposed database for salary costs, the Dapartment notes that a disproportionate number of commentors who raised these concerns were from one region of the country and almost all of these commentors represent one State in that region. While recognizing the concerns raised by these commentors, the Department continues to believe that the BLS data represents a reliable national database. As described in the preamble to the proposed rule, the BLS database represents a virtual census of private and public employment and wage data in the United States.

Given the influence of salary costs on WIC administrative and program services and the access to a reliable national database, the Department concludes that it would be incongruous to exclude from the formula a factor which recognizes the differential salary costs of State agencies. Therefore, the formula contained in this final rule includes a factor which recognizes the different salary costs among State agencies. The most recent data available from BLS will be used for the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. The proposed use of a salary level for Indian State agencies which equals the salary of a grade 9, step 1 in the Federal government's general schedule pay scale will be retained. The salary level used for Guam will equal the BLS salary level used for Hawaii. For most years, these salary levels will reflect average salaries paid two years prior to the applicable fiscal year for which funds are allocated.

• *Rurality and Geographic Considerations as Cost Factors*

A total of 24 commentors addressed issues related to rurality and geographical considerations as affecting administrative and program services costs. Almost all of these commentors stated the new funding formula should include both factors because of the significiant impact on the costs of serving WIC participants. Commentors did not, however, suggest any national database to be explored in determining an objective and verifiable method of accounting for costs associated with these factors. Because the Department was unable to allocate objectives and verifiable data on these factors which could be meaningfully applied to WIC costs, these factors were not included in the final rule.

Discretionary Funding

Sixty-four commentors addressed the discretionary funding provision of the proposed funding formula. Although almost all of these commentors supported the continuation of discretionary funding by FNS regional offices, a majority of the commentors criticized the proposed methodology for determining each State agency's contributions to its respective regional discretionary "pot." A substantial number of commentors who opposed the proposed methodology expressed concern that a 10 percent contribution of each State agency's total grant level to the regional discretionary fund could result in a final guaranteed grant level for some State agencies equalling only 90 percent of the previous year's grant level. Other commentors representing large State agencies stated that discretionary funding perpetuates funding inequities and penalizes large State agencies whose contributions to the discretionary pots are used to provide additional funding to smaller State agencies. The most frequent suggestion for improving this provision of the proposed funding formula was to provide guidelines for discretionary allocations by regional offices. While most commentors suggested the establishment of broad guidelines, some commentors recommended the use of specific factors in the guidelines. Examples of suggested factors included funding for movement toward parity grant levels, service to high risk participants, rurality and geographic considerations, and breast-feeding initiatives. Many commentors also suggested that the amount of funds made avaliable for discretionary funding should be reduced from 10 percent to 5 percent or less of State agencies' total funding levels.

The Department has adopted the suggestion to provide guidelines to regional offices in the allocation of discretionary funds. Guidelines will be established prior to each fiscal year's funding allocation. The establishment of annual guidelines through normal policy communication channels with the regional offices rather than through the regulations is intended to permit a greater responsiveness to national program goals which may change over time.

The Department considered reducing the amount of funds available for discretionary funding in response to comments received. However, the Department has retained the proposed provision to allocate 10 percent of the total amount of administrative and program services funds available for allocation. This provision already represents a reduction in discretionary funding amounts used under the current funding formula. In fiscal year 1987, 17 percent of the total administrative and program services funds were allocated to State agencies as discretionary funding.

Summary of Revisions Made in the Final Rule

A summary of revisions made to the proposed rule which have been incorporated into the final rule is provided below.

PROVISION OF NEW WIC ADMINISTRATIVE AND PROGRAM SERVICES FUNDING FORMULA—

Provision	Proposed rule	Final rule
Stability Funding......	Previous year grant level adjusted for projected participation decreases.	Previous year grant level.
Parity Grant Component.	Option A basd on a grant per person; or Option B based on a constructed salary budget.	Option A modified to include salary and targeting factors.
Discretionary funding:	Ten percent of final grant level subtracted and allocated by FNS regional offices based on State agency needs.	Same ten percent level used. Allocations will be based on national guidelines established annually and on State agency need.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition,

Nutrition education, Public assistance programs, WIC, Women.

For the reason set forth in the preamble, 7 CFR 246.16, is amended by revising paragraph (c) to read as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation from Part 246 continues to read as follows:

Authority: Sec. 341-353, Pub. L. 99-500 and 99-591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 96-499, 94 Stat. 2599; Sec. 815, Pub. L. 95-37, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.16, paragraphs (c)(3)(i) and (c)(3)(ii) are revised, and new paragraph (c)(3)(iii) is added to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(3) * * *

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(3)(iii) of this section, each State agency shall receive an amount equal to the final amount of funds received for administrative and program services in the preceding fiscal year.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(3)(iii) of this section, any funds remaining available for allocation for administrative and program services after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds.

(A) FNS shall allocate residual funds to each State agency according to a method that determines the *higher* of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(3)(i) of this section *plus* an amount commensurate with the projected increase in participation from the preceding year as determined by FNS *or* the amount of funds generated by the formula set forth in paragraph (c)(3)(ii)(B) of this section.

(B) The formula shall calculate the amount of funds each State agency would receive if *all* available administrative and program services funds were allocated on the basis of the average monthly participation levels, as projected by FNS. Each State agency's projected participation level shall be adjusted to account for the higher costs associated with small participation levels, differential salary levels relative to a national average salary level, and service to Priority I participants relative to the national average service to Priority I participants. The formula shall be adjusted to account for these costs factors in the following manner: 80 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by FNS, and 20 percent of available funds shall provide compensation based on differential salary levels and service to Priority I participants, as determined by FNS.

(iii) *Discretionary funds.* Each State agency's final administrative and program services grants shall be reduced by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. FNS shall distribute these funds according to guidelines which shall be established nationally each year and which shall consider the varying needs of State agencies within the region.

* * * * *

Dated: January 22, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88-1655 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-186]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle because of brucellosis by setting forth the criteria used for classifying a state as two different brucellosis areas and classifying the state of Virginia, except for Clarke County, as Class Free. We have determined that, with the exception of Clarke County, this state now meets the standards for Class Free status. Classifying the state of Virginia, except for Clarke County, as Class Free relieves certain restrictions on the interstate movement of cattle from all portions of the state except Clarke County. The criteria for classifying a state as two different brucellosis areas has been and is used to make these decisions under the regulations.

DATES: Interim rule effective: January 27, 1988. We will consider only comments postmarked or received on or before March 28, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket No. 87-186. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-5965.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying states or portions of states according to the rate of *brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis, with Class B and Class A in between. Restrictions are more stringent for the interstate movement of cattle from Class A than for Class Free states or areas; more stringent for interstate movement from Class B than from Class A states or areas, and so on.

The basic standards for the different classifications of states or areas entail maintaining: (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of burcellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

In most instances, brucellosis classification is by state. However, because rates of infection may vary widely in different parts of a state, we established, in a document published in the **Federal Register** on December 13, 1982 (47 FR 55636–55656), that a state may be divided into two areas for brucellosis classification, with movement between the two areas controlled by the state. To reflect current policy, we are including in the regulations the criteria for dividing one state into two brucellosis classification categories. These criteria require that a state have both legal authority and practical means (geographic, economic, and personnel) for enforcing intrastate movement of certain animals between the two areas. Also, each area must meet the standards for the classification being sought.

More specifically, the Administrator of the Animal and Plant Health Inspection Service may grant approval for two classification areas within a state in accordance with the following criteria: (1) The state must have legislative and regulatory authority for maintaining separate areas; (2) The state must have resources committed to enforcing the different requirements in each area; (3) The state must have an effective method for monitoring and controlling movement of cattle across the boundary between the two areas; (4) The state must define the boundary between the two areas by county lines or by recognizable geographic features, such as a river or a highway; and (5) Each area of the state must meet the standards for the brucellosis classification for which it is applying.

Virginia now meets the criteria set forth above. We are therefore reclassifying the state, with the exception of Clarke County, as Class Free.

Before the publication of this interim rule, the entire state of Virginia was classified as a Class A state because of the herd infection rate and the MCI reactor prevalence rate. However, a review of the brucellosis program establishes that, excluding Clarke County, Virginia should be reclassified as Class Free. Because of the presence of a quarantined herd in Clarke County, that county retains its Class A status.

To attain and maintain Class Free status, a state or area must: (1) Remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer and; (2) must maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent). With the exception of Clarke County, which remains classified as Class A, the state of Virginia now meets the criteria for classification as Class Free.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Virginia, except for Clarke County, reduces certain testing and other requirements governing the interstate movement of cattle from all portions of Virginia, except for Clarke County. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change. We have determined that the change in brucellosis status effected in this interim rule will not significantly affect market patterns and will not have a significant economic impact on the small cattle operations for which certain restrictions are being relieved.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

James Glosser, Acting Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from the state of Virginia, excluding Clarke County.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.40 [Amended]

2. In § 78.40, the term "Deputy Administrator" is changed to read "Administrator" each time it appears.

3. Section 78.40 is amended by adding a sentence after the first sentence to read as follows: "The Administrator may approve the division of a state into two brucellosis classification areas upon finding that: (a) The state has legislative and regulatory authority for maintaining separate areas; (b) The state has committed resources to enforcing the different requirements in each area; (c) The state has an effective method for monitoring and controlling movement of

cattle across the intrastate boundary; (d) The state has defined the intrastate boundary by county lines or by recognizable geographic features, such as rivers and highways; and (e) Each area of the state meets the standards for the brucellosis classification requested."

§ 78.41 [Amended]

4. Section 78.41, paragraph (a), is amended by adding "Virginia (except Clarke County)," after "Virgin Islands".

5. Section 78.41, paragraph (b) is amended by adding "(Clarke County)" after "Virginia".

Done in Washington, DC, this 22nd day of January, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-1651 Filed 1-26-88; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects five of the cross references appearing in § 337.4(h), as published on page 47387 of the December 14, 1987 edition of the Federal Register (52 FR 47387).

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 898-3730, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Accordingly:

§ 337.4 [Corrected]

1. In the first column, in paragraph (h)(1), in the fourth line from the bottom of the page, "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

2. In the second column:

a. In the next to the last line of paragraph (h)(1), "paragraphs (h)(1)(ii) and (h)(1)(iii)" should read "paragraphs (h)(2) and (h)(3)."

b. In paragraph (h)(2), fifth line, "paragraph (h)(1)(i)" should read "paragraph (h)(1);"

c. In paragraph (h)(3), fourth and fifth lines, "paragraph (h)(1)(i)" and "paragraph (h)(2)(ii)" should read "paragraph (h)(1)" and "paragraph (h)(2)" respectively.

Dated: January 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-1621 Filed 1-26-88; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108 and 129

[Docket 25502; Amdt. Nos. 108-5 and 129-16]

Airplane Operator and Foreign Air Carrier Security Rules; Correction

January 21, 1988.

AGENCY: Federal Aviation Administration.

ACTION: Final rule; request for comments; correction.

SUMMARY: FAA is correcting errors in Amendment Number 129-15, Airplane Operator and Foreign Air Carrier Security Rule. In FR Doc. 87-29424, published Tuesday December 22, 1987, on page 48508, please correct the amendment number "129-15" to read "129-16".

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, 202-267-8058.

Debbie King,

Acting Manager, Program Management Staff.

[FR Doc. 88-1565 Filed 1-26-88; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3064]

Albertson's, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a 1981 consent order with Albertson's, Inc., thus removing the Commission's prior approval requirement because there no longer appears to be a trend toward concentration in the relevant market.

DATES: Consent Order issued April 21, 1981. Set Aside Order issued July 1, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/S-3302, Eugene Kaplan, Washington, DC 20580. (202) 326-2636.

SUPPLEMENTARY INFORMATION: In the Matter of Albertson's, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth at 46 FR 25289, are deleted.

List of Subjects in 16 CFR Part 13

Retail grocery stores, 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)

Before Federal Trade Commission

Order Reopening and Setting Aside Order Issued on April 21, 1981

[Docket No. C-3064]

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Albertson's, Inc., a corporation.

On March 3, 1987, Albertson's, Inc. ("Albertson's") filed a "Petition To Reopen And Set Aside Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and set aside the consent order issued on April 21, 1981 ("the order"). Albertson's Request was placed on the public record for thirty days, pursuant to § 2.51 of the Commission's Rules. No comments were received.

The complaint in this case was issued under section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act and alleged anticompetitive effects arising from Albertson's acquisition of Fazio's, the California Division of Fisher Foods, Inc., in July 1978. According to the complaint, the relevant product line in which to assess the acquisition was retail sales by retail grocery stores and the relevant geographic market was Los Angeles County and Orange County, California. The order prohibits Albertson's for a ten-year period from acquiring, without prior Commission approval, five or more retail grocery stores in fifteen designated states and certain other geographic areas. *Albertson's, Inc.*, 97 F.T.C. 343, 345, 347-348 (1981).

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be altered, modified, or set aside, in whole or in part, if the respondent makes a satisfactory showing that changed conditions of law or fact require the order to be modified or set aside. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows