(1) Receive briefings on preliminary results of the Civil Tiltrotor Economic Analysis.

(2) Inspect the Dallas Vertiport.

(3) Review the Infrastructure Subcommittee work plans, schedule and assumptions.

(4) Review draft issues papers, report chapters, and other efforts.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–8759 or Ms. Deborah Ogunshakin on 202–267–9451. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton or Ms. Deborah Ogunshakin at least three days prior to the meeting.

Issued in Washington, DC, November 21, 1994.

**Paul S. Erway,**

*Acting Designated Federal Official, Civil Tiltrotor Development Advisory Committee.*

[FR Doc. 94–29477 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc. (Special Committee 184 Fifth Meeting); Minimum Performance and Installation Standards for Taxi-Hold Position Lights

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 184 meeting to be held December 15–16, 1994 starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Review and approve minutes of last meeting RTCA Paper No. 471–94/SC184–16; (5) Review status of action items; (6) Review of draft document inputs; (7) Work group drafting session; (8) Other business; (9) Set agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the appoval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 17, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–29478 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc., (Special Committee 173 Ad-Hoc Meeting); Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 173 meeting to be held January 17–18, 1995 starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's opening remarks; (2) Review of DO–220 for inclusion of required changes bring it into compliance with 5256v10 document; (3) Review of DO–220 for any requested changes; (4) Consideration of any further work thought necessary in light of limited operational experience; (5) Review of DO–213 for inclusion of required changes to bring it into compliance with 5256v10 document; (6) Review of DO–213 for any requested changes; (7) Other business; (8) Date and place of next meeting, if necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 18, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–29480 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

## RTCA, Inc.; New Document Releases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for information on the release of RTCA/DO–225, and Change 2 to RTCA/DO–210.

Information is as follows:

RTCA DO–225—VHF air ground communications system improvements alternatives study and selection of proposals for future action—This report represents a broad study of very high frequency (VHF) air-ground communications system improvements. The study includes: (1) Gaining an understanding of the present VHF air-ground communications system, (2) developing future Air Traffic Service (ATS) and Aeronautical Operational Control (AOC) communications functional requirements and desirable features, (3) studying present system improvements, (4) selecting a future system candidate to pursue towards implementation, and (5) developing recommendations resulting from this study. Seven candidate future system alternatives were evaluated against future system requirements and desirable features and as a result of this study, six recommendations to pursue present and future system improvements were adopted.

US $60.00 for US/Canada/Mexico; US $75.00 for all other countries. Plus applicable shipping and handling.

Change to RTCA DO–210, parts A&B—Minimum operational performance standards for aeronautical mobile satellite services (AMSS)—To provide the user community with the most current and technically correct information available, Change 2 was developed to incorporate new data that applies to FANS implementation; to clarify the measurement procedure of Section 2.4.4.2.4, and to improve several diagrams by providing more detailed information. The change has also been designed to produce a clean "cut and paste" revision for document users.

US$20.00 for US/Canada/Mexico; US$30.00 for all countries. Plus applicable shipping and handling charges.

Persons wishing to obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on November 22, 1994.

**David W. Ford,**

*Designated Officer.*

[FR Doc. 94–29479 Filed 11–29–94; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

[Dept. Circ. 570, 1994—Rev., Supp. No. 3]

### Surety Companies Acceptable on Federal Bonds Change of Name; The Mountbatten Surety Company, Inc.

Mountbatten Environmental Insurance & Surety Company, Inc., a Pennsylvania corporation, has formally changed its name to The Mountbatten Surety Company, Inc., effective April 25, 1994. The Company was listed as an acceptable surety on Federal bonds at 59 FR 34166, July 1, 1994.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to The Mountbatten Surety Company, Inc., Bala Cynwyd, Pennsylvania. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $173,000 established for the Company as of July 1, 1994, remains unchanged until June 30, 1995.

Certifiates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1994 Revision, at page 34166 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Hyattsville, MD 20782, telephone (202) 874–6850.

Dated: November 18, 1994.

**Charles F. Schwan III,**

*Director Funds Management Division, Financial Management Service.*

[FR Doc. 94–29398 Filed 11–29–94; 8:45 am]

BILLING CODE 4810–35–M

federal register

Wednesday
November 30, 1994

Part II

# Department of Labor

Mine Safety and Health Administration

30 CFR Part 6, et al.

Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35

RIN 1219–AA87

## Testing and Evaluation by Nationally Recognized Testing Laboratories and Use of Equivalent Testing and Evaluation Requirements

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish new procedures and requirements for testing and evaluation of products MSHA approves for use in underground mines. It would require manufacturers of certain products who seek MSHA approval to use an independent laboratory recognized by the Occupational Safety and Health Administration (OSHA) as a Nationally Recognized Testing Laboratory (NRTL) to perform the necessary testing and evaluation for approval. The NRTL would conduct the product testing and evaluation currently done by the Agency according to the appropriate MSHA testing and evaluation requirements. The proposed rule would revise MSHA's testing and evaluation responsibilities and allow the Agency to expand its post-approval product audit program and pursue the evaluation of new and safer technology as applied to underground mining products. The proposal would also enable the Agency, upon an applicant's request, to approve products based upon testing and evaluation requirements other than MSHA's, provided that the alternative requirements are equivalent to MSHA's requirements and provide at least the same measure of protection for the miner. The proposed rule would increase the availability of a wider variety of mining products having enhanced safety components by reducing costs and broadening the market for mining equipment. Conforming amendments to some parts of MSHA's approval regulations are also being proposed as part of this rulemaking.

**DATES:** Written comments must be submitted by February 13, 1995.

**ADDRESSES:** Commenters are encouraged to send comments on a computer disk along with the hard copy. Send written comments and computer disks to the Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

**SUPPLEMENTARY INFORMATION:**

### I. Paperwork Reduction Act

This proposal contains information collection requirements in paragraphs (a), (e), and (f) of § 6.10. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Currently, when manufacturers seek to have MSHA test and evaluate a product they must supply MSHA with the necessary documentation. Under the proposed rule, manufacturers would still need to produce this documentation. Thus, the manufacturers' burden hours related to developing documentation needed to perform tests and evaluations would not change.

Under proposed § 6.10(a), in order for MSHA to issue an approval to a manufacturer, MSHA would need to review a copy of the NRTL's test and evaluation results along with the NRTL's statement of product compliance with MSHA requirements. MSHA anticipates that most manufacturers would request two copies of the test and evaluation results and statement of product compliance from the NRTL and forward one set to MSHA along with the application for approval of its product.

Currently, MSHA spends about 14,750 staff hours testing and evaluating products. The actual duration of the testing and evaluation varies significantly from product to product. MSHA expects that the NRTLs would spend about the same amount of time. Absent an MSHA regulation requiring approval of products for underground mines, MSHA estimates that at least 10 percent of manufacturers would still have their products tested and evaluated by an independent laboratory to make them more acceptable to the mining industry. Thus, MSHA estimates that about 13,275 paperwork burden hours per year would be associated with generating the NRTL test and evaluation records that would be required under the proposed rule.

Under proposed § 6.10(e), an NRTL would make available for MSHA review internal audits of the NRTL conducted as a part of its internal audit program to assure that the required procedures, controls, and practices are in place. NRTLs recognized by OSHA currently are required to do internal audits and verify that they were done and, as a result, already maintain the necessary records to verify that such audits are performed. Thus, there are no paperwork burden hours associated with § 6.10(e).

Also, under proposed § 6.10(f), NRTLs must make available for MSHA review the results of their field audit (follow-up) programs. This includes reports of factory inspections of manufacturers whose products the NRTL is testing and evaluating and any field audits of products to monitor and ensure the proper use of the NRTL's mark. In addition, the NRTL must notify MSHA expeditiously, for example by telephone or by fax, and send the Agency any necessary documentation when audits reveal nonconformities in products issued an MSHA approval. Because NRTLs currently maintain records of audits performed on products as a normal business practice, there are no paperwork burden hours related to maintaining such records. However, as a result of the proposed rule, the NRTLs would have to notify and send necessary documentation to MSHA when audits reveal nonconformities in approved products. MSHA estimated that NRTLs would find product nonconformities in about 12 percent of audits, and it would take an NRTL about 30 minutes to notify and send MSHA the necessary documentation. In FY 1993, MSHA audited 709 units of approved products. Thus, the associated burden hours are estimated to be about 43 hours.

Comments regarding the proposed paperwork provisions, estimates, or any other aspect of this collection of information, including suggestions for reducing these burdens, should be sent to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203, and directly to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk, Desk Officer for the Mine Safety and Health Administration, Room 3001, New Executive Office Building, Washington, DC 20503.

### II. Background

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, Department of the Interior (Bureau), was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and test requirements for certain products used in underground mines, and for testing

and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is scrutinized to determine whether the technical requirements of the applicable provisions of 30 CFR parts 15 through 36 have been met. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

About 10 years ago, the Agency reviewed its product approval program to determine if it could be restructured to provide improved safety to miners without increasing the level of resources expended. That review resulted in the promulgation in 1988 of 30 CFR part 7, Applicant or Third-Party Testing, which represented MSHA's first departure from its role of front-end prototype testing of products for approval by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency made this shift in emphasis to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any defective products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgment, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency observation or witnessing. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. Under this proposal, part 7 would not be changed.

In 1993, as part of President Clinton's National Performance Review, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency has decided to initiate rulemaking to modify MSHA's approval program in two ways. First, applicants seeking MSHA product approval would be required to use independent laboratories for the required testing and evaluation. This would be in lieu of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would continue to verify that approval requirements were met and would retain full responsibility for issuing the product approval. Thus, this proposed modified approach would not constitute a self-certification program. Second, MSHA or appropriately recognized independent laboratories would be permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provide an equal or greater degree of protection. This would allow MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in MSHA's regulations, provided that MSHA had determined previously that those requirements were equivalent or could be enhanced to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could take advantage of revisions to product approval standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would permit the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advance or improvement in product safety, capability, and performance.

## III. Discussion of Proposed Rule

### *Section 6.10 Use of Independent Laboratories*

The proposed rule, which would require applicants to use independent laboratories to perform the product testing and evaluation necessary for issuance of MSHA's product approval, is intended to form the foundation of a modified approval program providing

enhanced product user protection and more rapid introduction of new technology into the mining industry. This modified approval program would require applicants for product approval to submit to MSHA, along with their application and product drawings and specifications, the test and evaluation data and results developed by a qualified independent laboratory in addition to the laboratory's statement of product conformance with MSHA testing and evaluation requirements.

In deciding to propose such a modification to its approval program, the Agency concluded that it was essential for the laboratories performing testing and evaluation to be recognized under some type of accreditation program. The existence of three accreditation programs administered by the U.S. Government led MSHA to decide to use one of these programs rather than establish its own program and duplicate the work of others. The three programs considered were:

(1) The National Institute of Standards and Technology's (NIST) National Voluntary Conformity Assessment System Evaluation (NV CASE) program, 15 CFR part 286;

(2) NIST's National Voluntary Laboratory Accreditation Program (NV LAP), 15 CFR part 285; and

(3) The Occupational Safety and Health Administration's (OSHA) Nationally Recognized Testing Laboratory Program (NRTL), 29 CFR 1910.7.

The NV CASE program became effective on May 23, 1994. As of July 1994, NIST had received only one letter expressing possible interest in establishing a specific program under NV CASE. Therefore, no organization which determines the conformity of products to technical regulations based on testing and evaluation; i.e., a conformity assessment body, has yet been accredited by NIST under the NV CASE program. Moreover, as indicated by NIST in the preamble to the final rule for NV CASE, the program was intended to assist U.S. manufacturers in demonstrating that their products meet other countries' technical requirements for export purposes. Accrediting an organization to determine the conformity of products with domestic regulatory requirements, such as MSHA's product approval regulations, was specifically stated to be outside the scope of the NV CASE program. Therefore, NV CASE is not suitable for MSHA's purposes in this rulemaking.

After comparing the other two programs, NIST's NV LAP and OSHA's NRTL, MSHA has selected the OSHA Nationally Recognized Testing Laboratory program as the appropriate platform by which private sector, independent laboratories could provide prototype testing and evaluation of products for use in mines. The Agency has chosen the OSHA program over the NIST NV LAP program for several reasons.

First, in order for a laboratory to become recognized or accredited as an NRTL under OSHA's program, the laboratory must be independent; i.e., free from influence by manufacturers whose products it tests and evaluates, by vendors and suppliers, and by employers using approved products. This independence does not exist under NIST's NV LAP program to accredit calibration and testing laboratories because manufacturers' in-house laboratories are eligible to receive accreditation. Independence of the testing laboratory from the manufacturer is essential for MSHA and the public to have confidence in testing and evaluation conducted outside its Approval and Certification Center.

Second, the OSHA NRTL accreditation signifies that the independent laboratory has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and evaluation of products to determine compliance with specified design, construction, or test requirements. An NRTL does more than just test products. One key feature distinguishing an NRTL from a testing house, such as one accredited by NIST under NV LAP, is its ability to evaluate products during production to ensure that the products conform to technical standards. The term "evaluation" means the systematic examination of the extent to which a product fulfills specified requirements. Thus, an NRTL must be qualified both to test products to specific standards and to certify, after evaluation, that the products meet applicable requirements.

Finally, an important factor in MSHA's decision to use laboratories accredited by OSHA is the requirement that NRTLs maintain oversight of products they test, evaluate, and certify and which carry the NRTL's marking. One of the goals of MSHA's modified approval proposal is to provide greater assurance that products actually in service in underground mines are manufactured as approved. OSHA's program, which mandates organized product "follow-up," would provide this assurance. This "follow-up" program serves three functions. It (1) implements control procedures for identifying listed or labeled products; (2) to the extent necessary, conducts production line inspections to ensure conformance with test and evaluation standards; and (3) to the extent necessary, initiates post-marketing field inspections to ensure that the product continues to meet the test standards and requirements. Laboratories accredited under the NV LAP program, because they only test and do not evaluate product compliance, are not required to conduct product auditing functions such as those an NRTL must perform.

The OSHA procedures for recognizing Nationally Recognized Testing Laboratories are set forth in Appendix A to 29 CFR 1910.7. (See 53 FR 12123, April 12, 1988.) This appendix provides requirements and criteria which OSHA uses to evaluate and recognize an NRTL.

Under Appendix A, each applicant for accreditation as an NRTL must list the specific test standards it intends to use. OSHA then evaluates the laboratory's capabilities based on the list and an on-site review by an assessment team. As a part of the accreditation process, the assessment team visits the applicant laboratory to verify its capabilities, including facilities, test equipment, calibration program, product handling procedures, product evaluation procedures, test procedures, technical reports, technical records, test standards, quality assurance program, internal audits, complaint resolution procedures, follow-up program for manufacturers, personnel programs, and other procedures for producing credible findings and objective, unbiased reports. Since the inception of the OSHA program in 1988, MSHA has assisted OSHA in assessing the capability of applicant laboratories to fulfill the requirements of the NRTL program. In this cooperative effort, MSHA personnel brought to the OSHA program broad experience in test procedures and conformity assessment of products to technical requirements.

After reviewing a laboratory's application and capabilities, OSHA makes a preliminary decision to grant or deny the application. This decision is published in the **Federal Register** for comment. After the comment period, which must be at least 60 days, the validity of any comments received is evaluated. These evaluations are used to help determine whether the applicant has met the criteria for accreditation. Upon approval, a final announcement is published in the **Federal Register** outlining the scope of the recognition and any conditions that apply to the newly-recognized NRTL.

Each recognition lasts for 5 years. During that time, OSHA exercises oversight to assess conformance of the

NRTL with the terms of its accreditation. Unresolved issues or discrepancies could result in withdrawal of the NRTL recognition. At the present time, twelve laboratories are accredited by OSHA under its NRTL program.

Foreign laboratories also may apply for NRTL accreditation. In determining eligibility for a foreign-based testing agency or organization, however, OSHA takes into consideration the policy of the foreign government regarding both the acceptance in that country of testing, data, equipment acceptances, and listings and labeling, which are provided through nationally recognized testing laboratories recognized by the Assistant Secretary for OSHA, and the accessibility to government recognition or a similar system in that country by U.S.-based, safety-related testing agencies, whether recognized by the Assistant Secretary or not, if such recognition or a similar system is required by that country. Presently, one foreign laboratory has been recognized by OSHA as an NRTL. That laboratory is the Canadian Standards Association (CSA).

*B. Section-by-Section Discussion*

Section 6.1 Purpose and Effective Date

Under the proposal, this part would establish the procedures and requirements for independent laboratories to perform testing and evaluation for MSHA product approval. It also would authorize MSHA, when requested by an applicant for product approval, to approve a product based on testing and evaluation requirements other than those set forth in MSHA product approval regulations if the other requirements are equivalent to MSHA's or can be enhanced to provide at least the same degree of protection as MSHA's requirements.

The provisions of this part would apply to all applications for approval and extensions of approval except those filed under 30 CFR parts 7, 31, 32, and 36 received by MSHA after [insert the effective date of this rule]. However, MSHA recognizes that it may take some time before there are NRTLs accredited by OSHA to perform testing and evaluation to all the various MSHA product approval regulations. Until such time as an NRTL has been recognized to perform the necessary testing and evaluation for a particular product, MSHA would continue to perform the required testing and evaluation for that product for approval purposes. Once an NRTL is recognized to perform the required tests and evaluations for a given product, however, the manufacturer would be required to have the necessary testing and evaluation conducted by an NRTL recognized by OSHA to perform those specific tests and evaluations and to submit the testing and evaluation results and the statement of product compliance along with its application for approval or extension of approval. Thus, for example, if an NRTL had been recognized by OSHA to perform the testing and evaluation of hose conduit for approval under 30 CFR part 18, then the manufacturer would be required to use an NRTL to perform those tests and evaluations for an approval or extension of approval and submit the results to MSHA as part of its application. On the other hand, if no NRTL had been accredited to perform the hose conduit testing and evaluation, MSHA would continue to perform the testing and evaluation required for product approval.

If only one NRTL is accredited to perform the necessary testing and evaluation for a particular product, the manufacturer would have to use that NRTL to conduct the requisite testing and evaluation work. Where more than one NRTL has been recognized, manufacturers would have a choice as to which NRTL would perform the work.

Section 6.2 Definitions

The following definitions would apply to the provisions of this part.

*Approval.* This term would be used to describe a written document issued by MSHA which states that a product has met the requirements of part 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35. It would not apply to the provisions of 30 CFR part 7. The definition would be based on the existing definitions of "approval" in the parts specified above. It would be expanded to include "certification" and "acceptance" because these terms also are used to denote MSHA approval.

*Evaluation.* This term would mean the systematic examination of the extent to which a product fulfills the specified requirements for MSHA product approval.

Section 6.10 Use of Independent Laboratories

Proposed § 6.10(a) would require the applicant seeking MSHA product approval under part 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 to provide, as a part of its application, documentation of the testing and evaluation necessary to ensure compliance with MSHA requirements. Such testing and evaluation would be performed by an independent laboratory that has been accredited by OSHA as a Nationally Recognized Testing Laboratory and has demonstrated its capability to perform the specific testing and evaluation required by MSHA for the product for which approval is sought.

To implement this proposed rule, MSHA and OSHA intend to expand by a subagreement the 1979 Interagency Agreement between MSHA and OSHA which provides for interagency coordination to develop compatible safety and health standards, regulations, and policies with respect to the mutual goals of the two organizations. That subagreement would include specific provisions for detailing the coordination between the two agencies with respect to the NRTL program.

In order to become accredited under OSHA's NRTL program to perform MSHA testing and evaluation, a laboratory would have to submit an application to OSHA which provides sufficient information and detail demonstrating that it meets the requirements set forth in 29 CFR 1910.7. As part of its application, the laboratory also would identify the scope of the NRTL-related activity for which it seeks recognition. This would include identifying those specific testing and evaluation methods set forth in MSHA product approval regulations that the laboratory would use to test and evaluate the product being submitted for MSHA approval. Based on pre-rulemaking discussions between MSHA and OSHA, the Assistant Secretary for OSHA would consider MSHA testing and evaluation requirements set out in 30 CFR parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35, or other testing and evaluation requirements which MSHA determines under 30 CFR 6.20 are equivalent to the requirements in those approval parts, to be "alternative test standards" as defined in 29 CFR 1910.7(d), which provide an "adequate level of safety" for products to be used in gassy underground mines. However, unless otherwise specifically indicated by OSHA, the MSHA testing and evaluation requirements considered as "alternative test standards" shall not be used to test and evaluate products for use in workplaces other than gassy underground mines subject to MSHA jurisdiction under the Mine Act.

Under OSHA's Appendix A to § 1910.7, an on-site assessment of the testing facilities of the applicant laboratory, as well as its administrative and technical practices, would then be conducted by OSHA. The assessment team selected to evaluate the capabilities of the laboratory desiring to test to MSHA approval requirements would be a joint OSHA/MSHA group, including MSHA personnel skilled in

the details of MSHA testing and evaluation requirements. Although under its regulation OSHA has the authority to contract with outside personnel to perform the on-site assessment, OSHA has agreed that this critical responsibility would not be contracted out to private sector personnel for evaluating applicant laboratories seeking recognition to perform MSHA testing and evaluation. The subagreement to the Interagency Agreement between MSHA and OSHA would specifically eliminate this option for the MSHA program.

It is the Assistant Secretary for OSHA who has the authority to grant recognition to an NRTL or to expand, renew, or revoke such recognition. However, MSHA staff would participate in all aspects of the process for determining whether an application for recognition of an NRTL to perform testing and evaluation for MSHA product approval should be approved. This would include preparation of written reports of on-site assessment, review of any public comments received regarding the laboratory's application for accreditation, and participation in any special review or informal hearing ordered by the Assistant Secretary for OSHA to address public objection to an applicant's request for recognition by OSHA. MSHA personnel also would participate fully in any action to expand, renew, or revoke recognition of an NRTL to perform the testing and evaluation necessary under MSHA's product approval regulations. In this manner, MSHA would be assured that the applicant laboratory is capable and has complete understanding of the testing and evaluation requirements, procedures, and protocol specified in MSHA's product approval regulations. All these areas of MSHA participation in the OSHA process to accredit an NRTL to perform MSHA testing and evaluation would be delineated in the subagreement between the agencies.

As required under this paragraph (a) of the proposed rule, once an NRTL has been recognized by OSHA to perform testing and evaluation for MSHA approval of a particular product, the manufacturer seeking approval of that product must submit to MSHA, as part of its application, the NRTL testing and evaluation results along with a statement of product compliance with the applicable MSHA approval requirements. It is at this point that the MSHA review process would begin.

MSHA would initiate an administrative review of the application package upon receipt to ensure that the applicant had included all of the necessary information to process the application. This information would include, among other things, a complete description of the product, product drawings and specifications, the NRTL product testing and evaluation results, the NRTL statement of product compliance with the applicable MSHA approval requirements, and payment of the nonrefundable MSHA application fee. If the manufacturer has submitted an incomplete application package without all the information required, MSHA immediately would notify the applicant of the deficiency by mail. MSHA would then hold the deficient application for a reasonable period of time, without further processing, while awaiting a response from the manufacturer. If the applicant fails to respond to the MSHA request for additional information to complete the application package within a reasonable time, MSHA would cancel the application and the applicant would forfeit the application fee. Applications submitted without the required application fee would be considered invalid.

After determining that an application package is complete, MSHA would initiate a technical review to ensure that the NRTL testing and evaluation results were both reasonable and appropriate for the particular product. If technical review of the package indicates deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant would be notified of the discrepancy and given a reasonable period of time to provide the needed information and/or explain the apparent deficiency. Failure to respond to the MSHA notification of a discrepant application with the required information and/or satisfactory explanations within a reasonable period would result in cancellation of the application and forfeiture of the application fee.

Following the administrative and technical review of the product application package, MSHA would issue an approval, or notice denying approval, to the applicant. A notice denying approval would state the reasons upon which the denial was based. If an approval is issued, the approval holder is authorized and required to place an MSHA marking on the product which signifies to the user of the product that the product is approved for use in gassy underground mines. The product drawings and specifications, the NRTL testing and evaluation results, and the NRTL statement of product compliance with the applicable approval requirements would be retained in an approval file. The MSHA approval constitutes a license which authorizes the approval holder to manufacture, distribute, and sell the product constructed in exact accordance with the approval documentation on file with MSHA.

Proposed § 6.10(b) would require that NRTL testing and evaluation of products for MSHA approval be performed only by NRTLs accredited by OSHA to perform the specific MSHA tests and evaluations. Because of the critical nature of the testing and evaluation of products to be used in the underground mining environment, where hazards such as flammable methane gas may exist, the proposal would not permit the NRTL to contract out any portion of the testing and evaluation conducted for applicants seeking MSHA approval. Additionally, the proposed rule would require the testing and evaluation to be performed in-house at the facilities of the NRTL specifically accredited by OSHA to perform the MSHA tests and evaluations required. In this way, MSHA could continue to ensure that the NRTL accredited by OSHA as having the capability, including the necessary equipment and trained personnel, to perform the specific MSHA tests and evaluations is, in fact, the laboratory conducting the testing and evaluation work.

Under the proposal, the specific NRTL receiving recognition to perform MSHA testing and evaluation would be required to perform all tests and evaluations in strict accordance with MSHA regulations, including the procedures and protocol used by MSHA in conducting such testing and evaluation. The proposed rule would not permit an NRTL to change a testing standard or any elements incorporated in the standard. Therefore, the provisions of "II. Supplementary Procedures, A. Test Standard Changes" of Appendix A to 29 CFR 1910.7 would not be a part of the MSHA program.

Proposed § 6.10(c) would reserve the right of MSHA to observe or verify the testing and evaluation conducted for products approved by MSHA. This is to ensure that the OSHA-recognized NRTLs continue to perform tests and evaluations to MSHA requirements in an appropriate manner. This safeguard would supplement the existing NRTL quality control program which includes the performance of internal audits as required by the OSHA recognition.

Proposed § 6.10(d) would require that the manufacturer of the MSHA-approved product affix a durable NRTL mark as well as a durable MSHA mark to the product. The test standard used in testing and evaluating the product for MSHA approval also would be required

to be referenced on the NRTL's marking. This would allow the role of the NRTL participating in the MSHA approval program to be clearly identified in the field, both to the user of the approved product and to MSHA inspection personnel. In addition, this inclusion would protect the product user from unknowingly using a product bearing the MSHA and NRTL's marks in an environment for which the product has not been tested, evaluated, and approved. In this way, product defects discovered in the field by users or reported to and confirmed by MSHA could be addressed without delay. MSHA would promptly notify the manufacturer and associated NRTL of product defects identified or confirmed by MSHA, so that coordinated corrective action could be initiated to protect the safety of the miners and ensure the integrity of the MSHA and NRTL's marks.

Under proposed § 6.10(e), internal audits performed by an NRTL as part of the quality control program required by the OSHA accreditation would have to be made available for review by MSHA. This provision would not require NRTLs to submit copies of all internal audits to MSHA. Instead, it simply would require an NRTL to make such audits available to MSHA for review when requested by the Agency. These internal audits provide documented verification that the OSHA-recognized NRTL continues to satisfy the requirements of 29 CFR 1910.7(b)(4), is performing within its "letter of recognition" and its quality control program, and has not misrepresented the scope or conditions of its accreditation. Internal audits under the OSHA NRTL program are done at appropriate intervals by trained and qualified persons. Guidelines for the establishment of quality control programs for laboratories are available in ISO guides 25, 28, and 38.

Under proposed § 6.10(f), NRTLs recognized by OSHA to perform MSHA testing and evaluation would be required to formulate and implement a "follow-up" program in accordance with the OSHA requirements of 29 CFR 1910.7(b)(2). In addition, the proposal would mandate that NRTLs make available to MSHA for review any information gathered by an NRTL during manufacturing site inspections or field audits of manufactured products approved by the MSHA. As indicated in the discussion of paragraph (d) on internal audits, NRTLs would not be required to submit copies to MSHA of "follow-up" reports of manufacturing site inspections and products audits. They would need only to provide MSHA with copies upon MSHA's request.

Further, NRTLs would be required to notify MSHA immediately of product defects discovered so that appropriate corrective action could be initiated to protect the safety and health of the miners. Because product defects can create hazards underground, immediate notification should be by expeditious means, such as by telephone or fax. Telephone or other contact should then be confirmed in writing. The oral and written notification should include a description of the nature and extent of the problem.

The prompt sharing of NRTL product audit information would enhance the MSHA post-approval product audit program, permit rapid response to safety problems caused by product defects, and ensure the integrity of the MSHA and NRTL marks.

Proposed § 6.10(g) would provide that approved products tested and evaluated by NRTLs recognized by OSHA to perform MSHA testing and evaluation would be subject to periodic audit by MSHA to determine conformity with the technical requirements upon which the approval was based. This aspect of the proposal would complement the "follow-up" program required by the OSHA recognition and provide a mechanism for independent evaluation by MSHA of approved products.

Proposed paragraph (g) would require an approval holder, upon MSHA's request, to make an approved product available to MSHA for audit, at no cost to MSHA. MSHA would make such a request no more than once a year, except for cause. This would be in addition to MSHA's ongoing quality assurance program through which the Agency can obtain products for audit at any time at MSHA's expense, and the field audit program conducted by the specific NRTL upon whose testing and evaluation MSHA bases its approval action.

Approved products to be audited by MSHA would be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency would arrange to examine and evaluate it at a mutually-agreed-upon time and location and would permit the approval holder to observe any audit-related tests conducted. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder would be able to obtain any final report resulting from such audits.

The proposed rule would allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, would select the product and MSHA also would continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are "one of a kind" or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they would be difficult to locate without the assistance of the approval holder.

In determining which approved products would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations may include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which it would request at no cost more than one approved product from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approval product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder would have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the approval holder is meeting the obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval holder's recalling or retrofitting the approved product

involved and issuing user notices. Revocation of the approval by MSHA could result when discrepancies in approved products are not successfully corrected.

Proposed § 6.10(h) would require all proposed changes to approved products to be submitted to MSHA for an extension of approval prior to implementation of the change to ensure that product changes do not result in hazardous conditions or violations of MSHA requirements when approved products are used underground. It is important that MSHA be aware of and approve any changes to the approved product that may impact on the approval requirements. Such changes would be tested and evaluated, as necessary, to determine compliance with MSHA approval requirements. In keeping with the philosophy and intent of this proposed regulation, testing and evaluation of changes to approved products would be carried out by an NRTL specifically recognized by OSHA to perform the necessary tests and evaluations for MSHA product approval.

Proposed § 6.10(i) would establish the bases and procedures for revocation of NRTL recognition. The Assistant Secretary for OSHA has the authority to revoke for cause the recognition of any NRTL accredited under OSHA's NRTL program, and this would include the authority to revoke the recognition of an NRTL accredited to perform testing and evaluation to MSHA approval requirements. Under the proposal, action to revoke recognition of an NRTL to perform MSHA testing and evaluation would be taken if the NRTL: (1) Has failed to continue to substantially satisfy the requirements of 29 CFR 1910.7 or Appendix A to 1910.7; (2) has failed to reasonably perform the NRTL testing requirements encompassed within its letter of recognition; (3) has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition; or (4) has failed to comply with the requirements set forth in this proposed rule for recognition as an NRTL to perform testing and evaluation to MSHA approval requirements.

In initiating action to revoke the recognition of an NRTL to perform testing and evaluation to MSHA requirements, the proposed rule would require that the procedures for revocation established in Appendix A to 1910.7 be followed. Under those procedures, OSHA is required to provide the recognized NRTL notice in writing of the alleged deficiencies, giving the NRTL the opportunity to rebut or correct the alleged deficiencies within a reasonable period. If the deficiencies are not corrected or reconciled within the time period provided, OSHA would propose, in writing, to revoke the recognition. The revocation would be effective in 60 days unless within that period the recognized NRTL corrects the deficiencies or requests a hearing in writing. If a hearing is requested, it would be held before an administrative law judge (ALJ) of the Department of Labor according to the rules specified in 29 CFR part 1905, subpart C. In the hearing, the burden of proof would be on OSHA to demonstrate by a preponderance of the evidence that the recognition should be revoked based on the causes alleged in the proposed notice of revocation.

Under paragraph E.3., Final Decision, of Appendix A, the ALJ would issue a decision based on the entirety of the record as to whether the recognition should be revoked. Exceptions to the ALJ decision would be accepted for 20 days. If no exceptions were filed, this would become the final decision of the Assistant Secretary of OSHA. If exceptions are filed, the ALJ decision, the exceptions filed, and the entire file would be forwarded to the Assistant Secretary for OSHA for final decision. A copy of the Assistant Secretary's final decision on the revocation would be provided to the NRTL and a notification would be published in the **Federal Register** announcing the decision.

Section 6.20 Use of Equivalent Testing and Evaluation Requirements

Proposed § 6.20 (a) and (b) would permit MSHA, and appropriately recognized NRTLs, when requested by the applicant for product approval, to use international, consensus, or other recognized approval requirements that differ from those set forth in existing MSHA regulations to test and evaluate certain mining equipment after MSHA has determined that such requirements are "equivalent" or can be enhanced to provide equivalency. Part 7 would not be affected by this proposed provision.

The Agency believes that this proposal would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to "equivalent" requirements, that provide the same or a greater degree of protection to miners as those set forth in the various MSHA product approval regulations, would stimulate metric conversion, lead to greater compatibility with international standards, and provide a more competitive posture for U.S. products in the international market.

Implementation of this provision would enable manufacturers of U.S. mining equipment or products to obtain MSHA's certification that their equipment meets both the MSHA regulatory requirements and the equivalent international, consensus, or other recognized requirements.

MSHA would decide which alternative requirements for product approval it would evaluate for "equivalency." This decision would be based on factors such as the potential to provide enhanced safety, the extent of usage of the alternative requirements, the needs of the U.S. mining industry, the complexity of the candidate requirements, the difficulty in ensuring equivalency, and the Agency resources available to address the determination. The evaluation would be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

Under this proposal, once MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be enhanced to provide equivalency, the applicant would be given the option of requesting that MSHA accept testing and evaluation of the applicant's product using the "equivalent" requirements rather than those found in the applicable product approval regulations. This option would permit the manufacturer to design a machine or product to a single set of requirements acceptable to both MSHA and other market areas, rather than designing separate machines to comply with the separate requirements of each market place in which business is sought.

Because this proposal would permit approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design would incorporate the highest level of safety required by any of the intended market areas. For example, if the target markets include the United States and another nation that has more stringent approval requirements for a specific product, MSHA would have the authority, at the request of the applicant, to issue an approval based on testing and evaluation to the more stringent requirements. The approval documentation would state that the product had fulfilled the more stringent requirements in addition to those of MSHA. In this case, the approved product sold in the U.S. would have a higher degree of safety than that specified by MSHA under existing requirements. Should the targeted foreign market area have product approval requirements which are, in

some aspects, less stringent than those of MSHA, the applicant would be required to fulfill the foreign target area's requirements and, in addition, any other tests, evaluations, or enhancements necessary to ensure that the product is at least as safe as that demanded by the MSHA approval requirements. In this situation, the approved product would exceed the safety requirements of the foreign target area and be no less safe than required by MSHA.

As previously indicated, MSHA approval documentation would show that the product had fulfilled the requirements of the foreign target market area and those of MSHA. In the first instance, the product marketed in the United States would embody a higher level of safety, while in the second instance it would embody equivalent safety. In no case would the product be less safe than mandated by MSHA approval requirements.

The following example illustrates how this concept would work. In testing and evaluating electrical circuits for intrinsic safety under 30 CFR 18.68, MSHA uses spark test apparatus meeting the requirements of the International Electrotechnical Commission (IEC), IEC 79–3 (1990). With this apparatus, each rotation of a four-wire electrode holder produces at least six make-break sparks on a slotted cadmium disk in the presence of the explosive test gas mixture. The MSHA procedure requires that the test duration be 1000 rotations of the four-wire electrode holder and that the polarity of the test circuit be reversed after 500 rotations. This same apparatus is used to test intrinsically safe circuits in partial fulfillment of the requirements of the IEC test, IEC 79–11 (1991), for intrinsic safety. However, the IEC procedure specifies a test duration of 400 rotations of the four-wire electrode holder for DC circuits and 1000 rotations for AC circuits.

With all other factors equal, MSHA could consider the spark test specified by IEC 79–11 (1991) to be equivalent to the spark-test procedure followed by MSHA in fulfillment of 30 CFR 18.68, by increasing the number of rotations of the four-wire electrode holder used in the IEC DC circuit test by 100 rotations and adding 500 rotations with reversed circuit polarity. For AC circuits, in addition to the 1000 rotations of the four-wire electrode holder required by IEC, 500 rotations with reversed polarity tests would be required to meet the MSHA requirements. The resulting test would exceed some aspects of both the MSHA and IEC procedures and would fulfill the requirements of both. In this manner a single test could verify conformity to the test requirements of both parties with no reduction of safety in either case. In like fashion, other MSHA and IEC requirements for the approval of intrinsically safe electrical circuits could be reconciled to obtain equivalency without adverse impact on safety.

MSHA anticipates that savings from use of this option would reduce the manufacturer's unit cost by permitting more standardized construction and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. Because of the potential for a more global market area, MSHA also expects an improved availability of specialized mining equipment adapted to more safely address unique mining conditions for which equipment could not be developed without significant market demand. In general, this proposal should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

As is the case with existing MSHA approval regulations, this proposed rule would be nondiscriminatory as between U.S. and foreign manufacturers. Any manufacturer, either domestic or foreign, wishing to acquire an MSHA product approval would be able to take advantage of this "equivalency" program.

Further, the proposal would be consistent with the North American Free Trade Agreement and the newly negotiated Agreement on Technical Barriers to Trade (TBT) which will become effective when the Uruguay Round Agreements enter into force for the United States.

Proposed § 6.20(c) would require that, after a determination of "equivalency" is made, the industry be notified of the determination through publication of a notice in the **Federal Register**. The notice would clearly identify the alternative requirements evaluated and either indicate that they are "equivalent" or specify how they would need to be enhanced to provide equivalency to the corresponding MSHA product approval requirements. Following publication in the **Federal Register** of the alternative requirements determined by MSHA to be equivalent, MSHA, as well as NRTLs recognized by OSHA to perform the equivalent testing and evaluation requirements, would be able to conduct the equivalent testing and evaluation when so requested by an applicant seeking product approval. The MSHA **Federal Register** notice of equivalent requirements also would specify whether an NRTL recognized by OSHA to perform testing and evaluation to the original MSHA approval requirements would have to obtain an expansion of its OSHA recognition to perform testing and evaluation to the "equivalent" alternative requirements.

*Conforming Amendments*

The changes to MSHA's procedures and requirements for testing and evaluation of products MSHA approves for use in gassy, underground mines set forth in this new proposed part 6 also would necessitate certain conforming amendments to the Agency's approval regulations in 30 CFR parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35. These approval regulations contain application provisions for approval and extension of approval of products which manufacturers seeking MSHA approval must follow. Therefore, appropriate revisions to these application provisions to reference proposed part 6 are being included as part of this proposed rule.

## IV. Fees

The Agency's effort in the initial issuance of the approval would be reduced significantly because MSHA's role would change from that of testing and evaluating prototype products to that of oversight, auditing, and addressing new technology. Thus, MSHA fees charged to manufacturers would be reduced significantly. Because the Agency no longer would provide certain kinds of testing and evaluation, its hourly and flat rate charges for such services would be eliminated. However, in order to issue a manufacturer an MSHA approval, the Agency still would have to review the manufacturer's documents. As a result of the proposed rule, the manufacturer's documents would now include the NRTL's testing and evaluation results. MSHA estimates that due to the increased technical and administrative time needed to review the NRTL testing and evaluation data, its application fee would increase from $100 to $400. The $400 estimate is based upon a per-hour fee of $50 and an 8-hour average for technical and administrative review, which account for the fact that applications vary in complexity and, therefore, differ in their review time.

## V. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs

and benefits of proposed regulations. MSHA has determined that this proposed rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

*Benefits*

Under this proposed rule, Nationally Recognized Testing Laboratories (NRTLs), rather than MSHA, would test and evaluate most mining products requiring Federal approval. Having more than one entity available to conduct tests and evaluations would facilitate a more efficient process of providing the required services and, thus, expedite the introduction of new and innovative equipment into the Nation's mines. Moreover, the proposed rule would maintain the existing level of workplace safety provided by Federal testing and evaluation because the NRTLs must be recognized by the Department of Labor's Occupational Safety and Health Administration as being qualified to perform specific testing and evaluation for MSHA product approval. More importantly, MSHA still would be fully responsible for approving any equipment tested and evaluated before it could be used in a mine.

Reducing the number of tests and evaluations it conducts would allow MSHA to direct its resources more to auditing products actually used in mines. In addition, NRTLs recognized by OSHA must conduct field audits as part of their follow-up programs, and under MSHA's proposed rule any reports of such audits would have to be made available to MSHA. These field audits would ensure that products in use continue to meet the specifications of the approval. MSHA believes that increasing such field audits would enhance safety. Also, shifting resources from routine testing and evaluation would permit MSHA to direct more attention to evaluating new technology which may be safer than existing technology, potentially accelerating the entry of such equipment into mines.

Further, the proposed rule would permit MSHA to accept product testing and evaluation based upon approval requirements other than its own, so long as the alternative requirements provide at least the same level of safety as MSHA's requirements. In some instances these requirements may be more stringent than MSHA's. Because products approved using the more stringent requirements would have to be built to those requirements, safety would be enhanced. In addition, acceptance of equivalent or enhanced requirements should allow a wider spectrum of safe and improved equipment to be used in mining. This also would eliminate the need for manufacturers to design separate products to meet the demands of different approval requirements, MSHA's approval requirements and, for example, an international requirement, where a single design could provide the necessary level of safety. MSHA expects that this proposed rule also would facilitate the use of metrification in the construction of equipment.

*Costs*

MSHA estimates that the costs of testing, evaluation, and approval for any particular product would increase under the proposal. However, these costs would be offset by savings. Charges for testing and evaluating by NRTLs are often greater than the fees charged by the Federal Government. NRTLs' operating costs tend to be higher than the Government's and include a profit component that is not present in the Government's fees. NRTLs also charge manufacturers for providing follow-up services with respect to products they have already tested and evaluated. MSHA expects the costs of testing and evaluating any particular product to approximately double under the proposal. Further, although the NRTL, rather than MSHA, would test and evaluate certain products, time would still be required for MSHA to review approval applications that, under this proposal, would include the testing and evaluation data and results prepared by the NRTL and submitted with the application package. Therefore, MSHA estimates that its application fee would increase from $100 to $400.

The proposed rule, however, has the potential to provide substantial cost savings to manufacturers as the program grows to maturity, which MSHA expects would outweigh any cost increases. In particular, manufacturers would realize savings from the ability to design and manufacture a single product to serve multiple markets. Currently, MSHA may not approve products meeting requirements that are different from the Agency's own. Therefore, some companies must alter their products, which currently meet MSHA requirements, to meet the approval requirements of a foreign market area.

Under the proposed rule, MSHA could approve a product based upon approval requirements other than its own, provided that the alternative approval requirements have been determined by MSHA to be equivalent, or can be enhanced to provide equivalency, by affording the same or a greater level of safety as MSHA's. Thus, by not having to design equipment to meet two different approval requirements, manufacturers could have a more standardized product line, reduce unit costs, and improve quality control. Most manufacturers, whether large or small, also should experience cost savings by being able to market their products sooner because more entities would be providing the services that MSHA alone currently supplies. The ability to decrease the amount of time for developing and introducing a product into the market can cut overall costs for manufacturers. Due to the absence of information concerning individual manufacturers' product lines, management objectives, and marketing strategies, MSHA was not able to quantify these cost savings.

Finally, Executive Order 12866 also requires that regulatory agencies assess the impact on the Government for any regulation determined to be a significant regulatory action. MSHA does not believe that the proposed rule would create any significant cost impacts on the Government. Rather, this proposed regulation would allow MSHA to improve its existing post-approval audit program by reallocating its resources from testing and evaluation to audit responsibilities. The proposed rule can be implemented under existing Government practices without any substantial equipment or facility expenditures by the Government.

MSHA solicits comments on the costs and benefits of this proposed rule to all manufacturers who produce products requiring MSHA approval.

**List of Subjects in 30 CFR Parts 6, 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35**

Laboratory, Mine safety and health, Reporting and recordkeeping requirements, Safety, Testing.

Dated: November 17, 1994.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Accordingly, subchapter B, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended as follows:

1. A new part 6 is added to read as follows:

## PART 6—TESTING AND EVALUATION BY NATIONALLY RECOGNIZED TESTING LABORATORIES AND USE OF EQUIVALENT APPROVAL REQUIREMENTS

Sec.
6.1 Purpose and effective date.
6.2 Definitions.
6.10 Use of independent laboratories.
6.20 Use of equivalent test and evaluation requirements.

Authority: 30 U.S.C. 957.

### § 6.1 Purpose and effective date.

This part sets forth the procedures and requirements for independent laboratories to perform testing and evaluation for MSHA product approval. It also authorizes MSHA, when requested by an applicant for product approval, to approve a product based on testing and evaluation requirements other than those in MSHA product approval regulations, if they are equivalent to MSHA's requirements or can be enhanced to provide at least the same degree of protection as MSHA's requirements. The provisions of this part shall apply to all applications for approval and extensions of approval received after [effective date of the final rule].

### § 6.2 Definitions.

The following definitions apply in this part.

*Approval.* A document issued by MSHA which states that a product has met the requirements of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter and which authorizes an approval mark identifying the product as approved. The term includes "certification" and "acceptance."

*Evaluation.* The systematic examination of the extent to which a product fulfills the specified requirements for MSHA product approval.

### § 6.10 Use of independent laboratories.

(a) After [effective date of the final rule], to fulfill the approval requirements of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, and 35 of this chapter, the testing and evaluation of products submitted for MSHA approval shall be performed by an independent laboratory. The independent laboratory must be a Nationally Recognized Testing Laboratory (NRTL) under the provisions of 29 CFR 1910.7 recognized by the Occupational Safety and Health Administration to perform the specific tests and evaluations required by the pertinent approval part or such equivalent requirements accepted by MSHA under the provisions of § 6.20. The applicant for product approval shall submit the NRTL testing and evaluation results and statement of product compliance with its application.

(b) Product testing and evaluation performed by NRTLs shall be conducted on-site (in-house) by NRTL personnel in accordance with the specific MSHA testing and evaluation requirements for the product or such equivalent requirements accepted by MSHA under the provisions of § 6.20. The provisions of II. Supplementary Procedures, A. Test Standard Changes of Appendix A to 29 CFR 1910.7 do not apply to NRTL testing and evaluation for MSHA product approval.

(c) MSHA reserves the right to observe and verify testing and evaluation conducted by NRTLs for products approved by MSHA.

(d) Products approved by MSHA based on NRTL testing and evaluation shall bear a durable NRTL identification mark indicating the test standards used and the MSHA marking required by the appropriate product approval part.

(e) As a part of the quality control program required by 29 CFR 1910.7(b), NRTLs shall make available to MSHA any internal audits conducted as a part of their internal audit program to ensure that the required procedures, controls, and practices are in place.

(f) As a part of the follow-up program required by 29 CFR 1910.7(b)(2), NRTLs shall make available to MSHA any reports of follow-up inspections of manufacturing sites and any reports of product or laboratory audits of products carrying the MSHA and NRTL labels. NRTLS shall notify MSHA immediately of any product defects discovered.

(g) Upon request by MSHA, but not more than once a year, except for cause, the approval holder shall make products whose approval is based on testing and evaluation by NRTLs available for audit at a mutually agreeable site at no cost to MSHA.

(h) Any change to an approved product from the documentation on file at MSHA that affects the technical requirements of the applicable product approval part shall be submitted to MSHA by the approval holder for an extension of approval prior to implementing the change. The NRTL test and evaluation results addressing the change shall be submitted for consideration with the application for extension of approval.

(i)(1) The recognition of an NRTL to perform testing and evaluation to MSHA requirements for product approval may be revoked at any time for cause if an NRTL—

(i) Has failed to continue to substantially satisfy the requirements of the OSHA NRTL recognition program set forth in 29 CFR 1910.7 or Appendix A to 1910.7—"OSHA Recognition Process for Nationally Recognized Testing Laboratories";

(ii) Has not been reasonably performing the NRTL testing requirements encompassed within its letter of recognition to perform testing and evaluation to MSHA requirements for product approval;

(iii) Has materially misrepresented itself in its applications or misrepresented the scope or conditions of its recognition to perform testing and evaluation to MSHA requirements for product approval; or

(iv) Has failed to comply with any of the requirements for testing and evaluation by independent laboratories set forth in § 6.10 of this part.

(2) In revoking recognition of an NRTL to perform testing and evaluation to MSHA requirements for product approval, the provisions established in "Appendix A, II. Supplementary Procedures, E. Revocation of Recognition to 29 CFR 1910.7, shall be followed.

### § 6.20 Use of equivalent testing and evaluation requirements.

(a) After [effective date of the final rule], upon determination by MSHA and notification to the industry that testing and evaluation requirements other than those of parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter are available or can be enhanced to fulfill the objectives of these parts, the equivalent requirements, as set forth by MSHA, may be used when requested by applicants seeking product approval.

(b) Testing and evaluation requirements for product approval are equivalent when MSHA determines that, in their original or enhanced form, they provide the same or a greater degree of protection as those set forth for the product in parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, or 35 of this chapter.

(c) After a determination of equivalency is made by MSHA, interested parties shall be notified through publication of a notice in the **Federal Register**. The notice shall either indicate that the alternative testing and evaluation requirements are equivalent in their original form, or shall specify the enhancements necessary to make the alternative testing and evaluation requirements equivalent to those required by the applicable MSHA product approval requirements.

2. The authority citation for parts 18, 19, 20, 21, 22, 23, 26, 27, 29, 33, 35 continues to read as follows:

**Authority:** 30 U.S.C. 957, 961.

## PART 18—[AMENDED]

3. Section 18.6 is amended by revising paragraph (a) to read as follows:

**§ 18.6 Applications.**

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

(4) The application, all related matters, and all correspondence concerning it shall be addressed to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

* * * * *

4. Section 18.15 is amended by revising paragraph (a) to read as follows:

**§ 18.15 Changes after approval or certification.**

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 19—[AMENDED]

5. Section 19.3 is revised to read as follows;

**§ 19.3 Applications.**

(a) Before MSHA will undertake the active investigation leading to approval of any lamp the manufacturer shall make application by letter for an investigation leading to approval of his lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawing, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

6. Section 19.13 is amended by revising paragraph (a) to read as follows:

**§ 19.13 Instructions for handling future changes in lamp design.**

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 20—[AMENDED]

7. Section 20.3 is revised to read as follows:

**§ 20.3 Applications.**

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

8. Section 20.14 is amended by revising paragraph (a) to read as follows:

**§ 20.14 Instructions for handling future changes in lamp design.**

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 21—[AMENDED]

9. Section 21.4 is revised to read as follows:

### § 21.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

10. Section 21.10 is amended by revising paragraph (a) to read as follows:

### § 21.10 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail and one of each of the changed lamp parts.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 22—[AMENDED]

11. Section 22.4 is revised to read as follows:

### § 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

12. Section 22.11 is amended by revising paragraph (a) to read as follows:

### § 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer should write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 23—[AMENDED]

13. Section 23.3 is revised to read as follows:

### § 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine and Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(c) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

14. Section 23.14 is amended by revising paragraph (a) to read as follows:

### § 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the applicant shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 26—[AMENDED]

15. Section 26.8 is amended by revising paragraph (a) to read as follows:

**§ 26.8 Applications.**

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees, and all prescribed drawings, specifications, and related material. The application and all related matters and all correspondence concerning it shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

16. Section 26.19 is amended by revising paragraph (a) to read as follows:

**§ 26.19 Changes after certification.**

* * * * *

(a)(1) Application shall be made, as for an original certification, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by drawings and specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 27—[AMENDED]

17. Section 27.4 is amended by revising paragraph (a) to read as follows:

**§ 27.4 Applications.**

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL)) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

18. Section 27.11 is amended by revising paragraph (a) to read as follows:

**§ 27.11 Extension of certification.**

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 29—[AMENDED]

19. Section 29.11 is amended by revising paragraph (a) to read as follows:

**§ 29.11 Contents of application.**

(a)(1) Each application for approval shall contain a complete written description, including operating instructions, of the analyzer or detector for which approval is requested together with a set of drawings and specifications showing full details of construction of the instrument and of the materials used. Drawings and specifications (and lists thereof) shall be submitted in duplicate.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

20. Section 29.35 is amended by revising paragraph (a) to read as follows:

**§ 29.35 Changes or modification of approved analyzers and detectors; issuance of modification of certificate of approval.**

(a)(1) To change any feature of an approved analyzer or detector an applicant may request a modification of the original certificate of approval issued by MSHA by filing an application for such modification in accordance with the provisions of this section.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 33—[AMENDED]

21. Section 33.6 is amended by revising paragraph (a) to read as follows.

**§ 33.6 Applications.**

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate (except as otherwise provided in paragraph (e) of this section), accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health

Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

22. Section 33.12 is amended by revising paragraph (a) to read as follows:

**§ 33.12 Changes after certification.**

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

* * * * *

## PART 35—[AMENDED]

23. Section 35.6 is amended by revising paragraph (a) to read as follows:

**§ 35.6 Applications.**

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

* * * * *

24. Section 35.12 is amended by revising paragraph (a) to read as follows:

**§ 35.12 Changes after certification.**

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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November 30, 1994

Part III

# Department of Education

34 CFR Part 674, et al.
Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840 AB71

## Federal Perkins Loan Program, Federal Work-Study Programs, and Federal Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA). These regulations also seek to improve the efficiency of the campus-based programs, to reduce the administrative burden for institutions where possible, and to enhance opportunities for postsecondary education.

EFFECTIVE DATE: These regulations take effect on July 1, 1995 and apply to the 1995–96 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in § 674.34(e) until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan Program: Sylvia R. Ross, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202–5447. Telephone: (202) 708–8242; or

2. For the FWS and FSEOG Programs: Kathy S. Cause, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202–5447. Telephone: (202) 708–4690.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments revise the existing campus-based program regulations. The campus-based programs are authorized as follows: Federal Perkins Loan—20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429; FWS—42 U.S.C. 2751–2756b; FSEOG—20 U.S.C. 1070b–1070b–3. These regulations implement the provisions of the National and Community Service Act of 1990 (Pub. L. 101–610), enacted November 16, 1990, the Crime Control Act of 1990 (Pub. L. 101–647), enacted November 29, 1990, the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992 (Amendments), the Higher Education Technical Amendments of 1993 (Pub. L. 103–208), enacted December 20, 1993 (Technical Amendments), the Improving America's Schools Act of 1994 (Pub. L. 103–382), enacted October 20, 1994, and the Bankruptcy Reform Act of 1994 (Pub. L. 103–394), enacted October 22, 1994.

On June 22, 1994, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 32264–32287). The NPRM included a discussion of major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found.

### Campus-Based Programs

The Secretary proposed to amend the definition of "undergraduate student" to remove the restriction that did not allow an undergraduate student to receive Federal Perkins Loan or FWS assistance if he or she has already earned a baccalaureate or first professional degree. The proposal provided that a student is not ineligible for assistance under the Federal Perkins Loan or FWS programs because he or she has previously received a baccalaureate or professional degree (page 32264).

The Secretary proposed to amend the allocation and reallocation procedures for the campus-based programs to provide that if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the next fiscal year for that program reduced by the dollar amount returned (pages 32264–32265).

The Secretary proposed to amend the criteria for selection of students for campus-based assistance to ensure that independent students and students attending an institution on a less-than-full-time basis would be equitably provided financial assistance (page 32265).

The Secretary proposed to amend the overaward threshold provisions for the campus-based programs (page 32265).

To reduce burden for both the student and the institution, the Secretary proposed to allow an institution to disburse funds under the Federal Perkins Loan and FSEOG programs to a student when he or she is no longer enrolled if the assistance was awarded while the student was still an eligible student (page 32265).

### Federal Perkins Loan Program

The Secretary proposed to remove the definitions of "Default rate", "Defaulted principal amount outstanding", and "Matured loans", and add the definitions of "Disposable income", "Enter repayment", "Making of a loan", and "Satisfactory arrangements to repay the loan" (pages 32265–32266).

The Secretary proposed to amend the reallocation formula for the Federal Perkins Loan Program, and to establish an appeals process by which the anticipated collections requirement may be waived for institutions with "low default rates" (page 32266).

The Secretary proposed to add a new section to the regulations to establish the Federal Perkins Loan cohort default rate and penalties for an institution with a high cohort default rate for the 1994–95 award year and subsequent award years (page 32266).

The Secretary proposed to add a new section to the regulations to describe the measures that institutions with high default rates must use to establish a default reduction plan (page 32266).

The Secretary proposed establishment of the Expanded Lending Option as necessary to implement statutory provisions under the Amendments and the Technical Amendments (page 32266).

The Secretary proposed to amend the Program Participation Agreement to implement the increase in the capital contribution requirements as required by the Amendments, and to include new reporting requirements containing information for determining an institution's cohort default rate (pages 32266–32267).

The Secretary proposed to amend the student eligibility requirements to implement statutory provisions under the Amendments (page 32267).

The Secretary proposed to amend the maximum loan limits to reflect statutory changes (page 32267).

The Secretary proposed to remove all references to the term "endorser" to reflect the statutory change that provides that all Federal Perkins Loans are to be made without security or endorsement (page 32267).

The Secretary proposed to incorporate the new statutory requirement that an

institution report loan disbursements to a national credit bureau (page 32267).

In accordance with statutory changes, the Secretary proposed to provide for the transfer of up to 25 percent of an institution's Federal Capital Contribution (FCC) allotment for an award year to either or both the FSEOG and FWS programs (page 32267).

The Secretary proposed to delete the promissory note from the existing regulations and to provide the note in a "Dear Colleague" letter. In addition, the Secretary proposed to delete the defense of infancy provision (page 32267).

In accordance with statutory changes, the Secretary proposed to allow an institution to increase the minimum monthly repayment amount to $40. In addition, the Secretary proposed to establish forbearance of principal and interest where circumstances warrant it, and to authorize an institution to compromise on the repayment of a loan (page 32267).

The Secretary proposed to revise the regulations to reflect statutory changes in the deferment provisions (pages 32267–32268).

The Secretary proposed to amend the regulations to incorporate new statutory loan disclosure requirements that must be met during a borrower's exit interview (page 32268).

To reduce burden for both the borrower and the institution, the Secretary proposed to allow a borrower to elect to repay his loan by means of the electronic transfer of funds from the borrower's bank account (page 32268).

To reduce institutional burden, the Secretary proposed to eliminate skip-tracing as a required due diligence step (page 32268).

In accordance with statutory changes, the Secretary proposed to revise loan collection and litigation procedures to require institutions to report defaulted loans to any one of the credit bureaus with which the Secretary has an agreement. In addition, the Secretary proposed to amend the regulations to reflect the elimination of the statute of limitations on litigating to recover amounts owed on defaulted accounts (page 32268).

In accordance with statutory changes, the Secretary proposed to eliminate the 50-percent limitation on the number of Title 1 schools in a State that meet the eligibility criteria and provided that teaching in any Title 1 school that meets the eligibility criteria now qualifies a borrower for a loan cancellation. This change will increase the opportunities for receiving loan cancellations and encourage more teachers to teach in low-income schools (pages 32268–32269).

The Secretary proposed to expand the loan cancellation employment provisions (page 32269).

The Secretary proposed to amend the definition of permanent and total disability to include the inability of the borrower to attend an institution because of an impairment that is expected to continue indefinitely or result in death (page 32269).

**Federal Work-Study Programs**

In accordance with statutory amendments and consistent with the Secretary's desire to promote community service activities, the Secretary proposed to amend the purpose of the FWS program to include an encouragement to students receiving program assistance to participate in community service activities (page 32269).

The Secretary proposed to add a new definition of "low-income individual" for purposes of community services (page 32269).

The Secretary proposed to amend the program participation agreement to include assurances that (1) employment under the program may be used to support programs for supportive services to students with disabilities, and (2) institutions will inform all eligible students of the opportunity to perform community service and will consult with local nonprofit, governmental, and community-based organizations to identify community service opportunities. In identifying community service opportunities, the Secretary expects institutions to consult with their students (page 32269).

In accordance with statutory changes, the Secretary proposed to amend several provisions governing use of FWS funds. First, institutions participating in the Work-Colleges program would be allowed to use FWS funds for meeting costs of the Work-Colleges program. Second, the institutional administrative expense allowance for work-study for community service learning would be eliminated. Third, the amount of an institution's allocation under the FWS programs that may be transferred to the FSEOG program would be increased from 10 percent to 25 percent. Fourth, an institution would have additional carry-back authority to pay students who work during the summer. Fifth, an institution would be required to use 5 percent of the total FWS Federal funds granted to the institution to compensate students employed in community service activities for the 1994–95 award year and subsequent award years (page 32269).

In accordance with statutory changes, the Secretary proposed to provide that a student employed by a proprietary institution and performing community services is no longer also required to be furnishing student services (pages 32269–32270).

In accordance with statutory changes, the Secretary proposed to increase the Federal share of FWS compensation paid to a student employed other than by a for-profit organization to 75 percent (page 32270).

As a result of statutory changes the Secretary proposed to remove the "Community Service-Learning Program" from the regulations (page 32270).

**Job Location and Development (JLD) Program**

The Secretary proposed to combine the regular JLD program to expand off-campus job opportunities and the "Community Services" JLD program to locate and develop community services jobs for students into one program. The Secretary further proposed to expand the statement of purpose for the JLD program to include the encouragement of participation in community service activities. The Secretary also proposed to allow an institution to use the lesser of $50,000 or 10 percent of its FWS allocation to establish or expand a JLD program (page 32270).

The Secretary, in accordance with amended section 446(a) of the HEA, proposed to eliminate the authority for institutions to enter into agreements with nonprofit organizations and limit institutions to working with other institutions for the purpose of developing jobs (page 32270).

**Work-Colleges Program**

In accordance with the Amendments, the Secretary proposed to add the new "Work-Colleges program" to the regulations (page 32270).

**Federal Supplemental Educational Opportunity Grant Program**

The Secretary proposed to amend the allocation and reallocation provisions for unexpended FSEOG funds (page 32270–32271).

The Secretary proposed to eliminate an institution's authority to transfer FSEOG funds to the FWS program as necessary to implement statutory provisions (page 32271).

The Secretary proposed to increase the maximum FSEOG award that an institution may award a student per academic year from $4,000 to $4,400 for a student studying abroad (page 32271).

The Secretary proposed that the Federal share of FSEOG awards will not exceed 75 percent effective for award years beginning on or after July 1, 1993

as necessary to implement statutory changes (page 32271).

**Substantive Changes to the NPRM**

The following discussion describes the significant changes since publication of the NPRM and the manner in which certain critical provisions will be initially implemented. They are discussed in the order in which they appear in the text of the regulations. The changes that apply to more than one program are described first followed by descriptions of changes that pertain to only a specific program.

**Student Assistance General Provisions**

*Section 668.57 Acceptable Documentation*

In the June 22, 1994 NPRM, the Secretary proposed to amend § 668.57(c) to require the signature of one parent instead of both parents when verifying the number of family household members enrolled in postsecondary institutions for a dependent applicant. If only one parent's income is considered in the title IV, HEA aid awarding process, that is the parent who must sign. Otherwise, either parent may sign. This burden reduction provision will be addressed in the Student Assistance General Provisions final regulations governing verification of all title IV programs which will provide that either parent may sign, regardless of which parent's income is reported.

**Federal Perkins Loan, FWS, and FSEOG Programs**

*Sections 674.10, 675.10, and 676.10 Selection of Students*

In the June 22, 1994 NPRM the Secretary proposed to amend §§ 674.10, 675.10, and 676.10 to state that if an institution's FSEOG allocation, FWS grant, or Federal Perkins Loan FCC is directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeds 5 percent of the total need of all students at an institution, then at least 5 percent of that allotment for FSEOG, 5 percent of that grant for FWS, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program must be made available to these students. The Department previously had stated in various documents that "make available" meant that an institution was required to actually "expend" the dollars for these students. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is revising the final regulations to provide that the institution must "offer" the funds to less-than-full-time and independent students. The institution is not required to have actually disbursed the title IV funds to less-than-full-time and independent students.

*Sections 674.14, 675.14, and 676.14 Overaward*

A financial aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. If the student receives additional resources at any time during the award year that were not considered in determining the student's eligibility for aid, and these resources combined with the expected financial aid will exceed the student's need, the amount in excess of the student's need is considered an overaward. Statutory provisions under the Amendments provided for a $300 overaward threshold for FWS. In the June 22, 1994 NPRM, the Secretary proposed that, if a student has FWS, a $300 overaward threshold for the three campus-based programs would be in effect; however, if a student only has an FSEOG or Federal Perkins Loan, the current $200 overaward threshold would be the limit. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is providing a uniform $300 overaward threshold for all the campus-based programs regardless of whether the student has been awarded FWS funds.

**Federal Perkins Loan Program**

*Section 674.33 Repayment*

*Section 674.34 Deferment of Repayment*

In the June 22, 1994 NPRM, the Secretary made proposals for the implementation of the statutory provisions governing forbearance of a borrower's repayment of a Federal Perkins loan and the deferment of repayment due to economic hardship reasons. The provisions contained in the NPRM paralleled the same provisions in the FFEL Program, as detailed in the FFEL Program NPRM, published on March 24, 1994. In response to the comments received on the FFEL Program NPRM, the Secretary made significant changes to the forbearance and economic hardship provisions in the final FFEL Program regulation, published on June 29, 1994. Those same changes have been made to the forbearance and economic hardship provisions in the Federal Perkins Loan program, as part of the Secretary's ongoing effort to reduce the institutional burden of administering the title IV student aid programs. These changes include the revisions to the definition of "full-time employment" for purposes of granting an economic hardship deferment.

In accordance with amendments to the HEA made by the Improving America's Schools Act of 1994 (Pub. L. 103–382), the Secretary is revising the final regulations to include a new criterion under which a borrower may qualify for deferment of repayment due to economic hardship reasons.

*Section 674.52 Cancellation Procedures*

In accordance with amendments to the HEA made by the National and Community Service Act of 1990 (Pub.L. 101–610), the Secretary is revising the final regulations to include the provision that a borrower may not receive a benefit under subtitle D of title I of the National and Community Service Act of 1990 and a cancellation benefit under the Federal Perkins Loan program.

**Federal Work-Study Program**

*Section 675.2 Definitions*

Statutory provisions for community service under the Amendments provide that community service is designed to improve the quality of life for community residents, particularly low-income individuals. In the June 22, 1994 NPRM, the Secretary proposed to add a new definition of "low-income individual" for purposes of community service. In response to public comment and as part of the Secretary's efforts to reduce regulatory burden, the Secretary is not defining "low-income individual" in these regulations.

**Work-Colleges Program**

*Sections 675.41–675.50*

Section 448(f) of the HEA contains a separate authorization of appropriations for the Work-Colleges program. Therefore, a new § 675.42—*Allocation and Reallocation*, has been added to the regulations and all other sections of the Work-Colleges program regulations have been redesignated. Sections 675.46 and 675.47 contain paperwork requirements, and have been redesignated as § 675.47 and § 675.48.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 58 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are

discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

**Comments and Responses**

*Sections 674.4, 675.4, and 676.4 Allocation and Reallocation*

*Comments:* Three commenters suggested that the Secretary permit an institution, under certain circumstances, to appeal an allocation reduction because it returned more than 10 percent of its previous year's allocation. These commenters suggested that the Secretary allow an appeal during occurrences of natural disasters or situations in which enrollments are reduced because students are called to service in areas of hostility, such as the military mobilizations for "Operation Desert Storm."

*Discussion:* The Secretary believes that this provision of the proposed regulations adequately addresses situations in which these provisions may be waived. As stated in the preamble to the NPRM, the Secretary may waive these provisions in such circumstances as a natural disaster. Additionally, to assist institutions in their recovery from the effects of disasters, or to provide relief to students who have been called to military service in areas of hostility, the Secretary provides enforcement relief from regulatory requirements and provides guidance through "Dear Colleague" letters issued at the time of the natural disaster or the declaration of an area of hostility.

*Changes:* None.

*Comments:* One commenter stated that a literal interpretation of a reduction in an institution's allocation for the next fiscal year would require reductions in two award years. This commenter suggested that the term "fiscal year" be replaced by "award year" to make the provision easier to understand while still being in line with congressional intent.

*Discussion:* The Secretary agrees with the commenter that the use of the term "fiscal year" in this context is confusing.

*Changes:* The language of this provision is changed to incorporate the concept of an "award year" allocation rather than "fiscal year."

*Section 674.10, 675.10, and 676.10 Selection of Students*

*Comments:* Several commenters noted that while sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA require most institutions to "make available" to less-than-full-time and independent students at least 5 percent of the FWS allotment, 5 percent of the FSEOG allotment, and 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program, the NPRM did not define the term "make available." These commenters were concerned that while most students would accept FSEOG as part of their award packages because it is grant money, institutions have no control over whether students will accept Federal Perkins loans or work to earn FWS funds. They believe that it would be very difficult for some institutions to meet this requirement if independent and part-time students have to accept, or even earn, 5 percent of the FWS allocation. One commenter stated that most students attending less-than-full-time are doing so because they are already working and therefore those students are not interested in FWS. The majority of the commenters suggested that the Secretary should interpret the statute in its use of the term "make available" to mean "offer" FWS, FSEOG, and Federal Perkins loans to students rather than "disburse" these funds.

One commenter noted that the wording between the FWS section and the FSEOG section is slightly different and recommended that it be consistent.

*Discussion:* The Secretary agrees that in some circumstances it may be difficult for an institution to actually disburse to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program. Therefore, to accommodate these circumstances and prevent a burden on institutions to be responsible for what financial aid a student accepts, in interpreting amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA, the Secretary considers the words "make available" to mean that the institutions must "offer" to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program if the need of all of these students exceeds 5 percent of the total need of all students at an institution.

*Changes:* The wording of this provision in the campus-based sections is changed to reflect that institutions must "offer" these campus-based funds to less-than-full-time and independent students. Also, the wording was revised for consistency among the campus-based programs.

*Sections 674.14, 675.14 and 676.14 Overaward*

*Comments:* There were a number of comments on these sections, all in favor of the statutory provision that allows a student employed in the FWS program to earn up to $300 for need-based employment in excess of his or her financial need before employment in the FWS program must be discontinued.

Several commenters recommended that the Secretary provide a uniform overaward threshold of $300 for all recipients of campus-based aid to simplify the overaward calculation process and reduce administrative costs.

One commenter suggested that the proposed wording of these provisions is slightly ambiguous and subject to different interpretations. The commenter believed that the application of a uniform overaward threshold to all campus-based aid recipients will avoid any potential confusion.

*Discussion:* The Secretary has reevaluated his proposal in the June 22, 1994 NPRM. The statutory purpose of the FWS provision is to prevent aid administrators from being administratively burdened by having to make adjustments to financial aid packages when small amounts of overawards occur. The Secretary believes that the use of a uniform campus-based overaward threshold will further reduce the administrative burden for institutions without cost implications to the campus-based programs.

It is important to note that these provisions do not allow an institution to make campus-based awards in excess of the amount of the student's need. Although a threshold is allowed subsequent to the packaging of campus-based aid, the threshold does not allow an institution deliberately to award campus-based aid that, in combination with other resources, exceeds the student's financial need.

*Changes:* The Secretary has provided a uniform $300 overaward threshold for all recipients of campus-based aid.

**Federal Perkins Loan Program**

*Section 674.2 Definitions*

*Comments:* While most commenters believed that the new definition of "disposable income" was necessary in order to be consistent with the FFEL Program and to establish eligibility for an economic hardship deferment or forbearance of payments, others believed the definition was unclear and needed further clarification.

Commenters were particularly concerned that alimony payments, child support payments, wage garnishment, and other similar items be considered deductions "required by law to be withheld."

*Discussion:* The term "disposable income" was defined in the NPRM as part of the proposed rules for the forbearance and the economic hardship deferment provisions. Forbearance and economic hardship are provisions common to all title IV loan programs, including the Federal Perkins Loan program, and the Secretary made the identical proposal for these two provisions in the FFEL Program NPRM, published on March 24, 1994. The Secretary received a number of comments on the proposed definition of "disposable income" in the FFEL Program NPRM and, as a result, decided that "total monthly gross income" was a term more easily understood than "disposable income." Consequently, the Secretary replaced "disposable income" with "total monthly gross income" in the final FFEL Program regulation. For a complete discussion of the reasons for making this change, see comment number 18 on page 33584 of the **Federal Register** published on June 29, 1994.

As part of the Department's effort to simplify the regulations and reduce burden at the institution, provisions that are common to both the Federal Perkins Loan program and the FFEL Program will have the same regulatory provisions, to the extent practicable. Therefore, in this final rule, the proposed rules for the Federal Perkins Loan program have been modified to reflect the forbearance and economic hardship provisions contained in the final FFEL Program regulation, published on June 29, 1994.

*Changes:* The definition of "disposable income" is removed and replaced by the definition of "total monthly gross income."

*Comments:* Several commenters believed that the definition of "making of a loan" needed to be expanded and clarified. Some commenters stated that the Secretary should define when a disbursement has been made to the borrower as part of the definition of "making of a loan." The commenters believed that without this clarification there would be inconsistencies among institutions and additional tracking mechanisms would be required.

*Discussion:* The issue of when funds are considered to be disbursed applies to all of the title IV programs, not just to the Federal Perkins Loan program. The Secretary is aware that the current title IV disbursement policies are applied inconsistently by institutions and is preparing to issue final regulations on this and other "cash management" issues by December 1, 1994. The Secretary is making conforming changes to the Federal Perkins Loan program regulations in the "cash management" regulations to be issued by December 1, 1994.

*Changes:* None.

*Comments:* Several commenters believed that the Secretary should define when a promissory note should be signed by the borrower as part of the definition of "making of a loan." These commenters believed that Federal Perkins Loan borrowers should be able to sign the promissory note once, at the beginning of the academic year in which the award is made, and not each time a disbursement is made to the borrower.

*Discussion:* The Secretary is sensitive to the commenters' concerns and will evaluate situations in which an institution could require an annual signature on the promissory note. The Secretary is especially interested in evaluating the possibility of making this option available to those institutions that have demonstrated a high performance level and that have met the stricter cohort default rate requirements adopted for the Federal Perkins Loan program. The Secretary would like to note that an annual signature on the promissory note would necessitate the elimination of the "open-ended" Federal Perkins Loan promissory note. The "open-ended" promissory note, currently available only in the Federal Perkins Loan program, significantly reduces burden at the institution, by allowing an institution to make loans on the same promissory note for as long as the statutory provisions remain the same. Allowing only a "closed-ended" promissory note, as is done in the FFEL and FDSL programs, would result in a major increase in the number of promissory notes an institution would be required to maintain.

*Changes:* None.

*Comments:* A number of commenters felt strongly that the term "satisfactory arrangements to repay the loan" should be defined in terms of the impact on the borrower and the institution. Commenters believed that the requirement of 6 months of consecutive payments in this definition is too stringent, particularly when this definition is used to determine when to exclude loans from the cohort default rate calculation. Because of the window of time in the cohort default rate tracking period, one commenter believed it would be more equitable to consider the fact that the institution was able to establish a new repayment plan with the borrower as meeting the criteria for satisfactory arrangements to repay the loans. Other commenters suggested a minimum of three consecutive monthly payments as the basis for excluding the loan from the cohort default rate. These commenters further stated that institutions do not have enough time to locate and contact the delinquent borrower, obtain the written agreement, and have 6 months of payments made prior to June 30. One commenter suggested that once the new written repayment agreement has been signed and all payments due by June 30 have been properly made by the borrower, institutions should be allowed to exclude that account from their cohort default rate.

*Discussion:* While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that six consecutive months of payment is too stringent. In order to reduce the administrative burden at the institution, the Secretary is seeking ways to make the Federal Perkins Loan program consistent with the other title IV loan programs. Including six consecutive monthly payments in the definition of satisfactory arrangements to repay the loan is consistent with provisions in these programs.

*Changes:* None

*Section 674.5 Cohort Default Rate and Penalties*

*Comments:* Several commenters stated that while the definition of "loan rehabilitation" in § 674.5(e)(1) has limited benefit to the school in reducing a school's cohort default rate, it will be a benefit to the borrower whose loan is no longer considered to be in default. These commenters noted that a loan rehabilitated because the borrower has made 12 consecutive monthly payments is not removed from the school's cohort default rate. The commenters recommended that the definition be revised to allow for lump sum payments or up to a three-month payment plan. One commenter also invited the Secretary's consideration of allowing a quarterly repayment option and a reduction in the minimum payments required to consider the loan rehabilitated.

*Discussion:* While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that the definition of a rehabilitated loan is too restrictive. Rehabilitating a loan gets the borrower out of default. Consequently, the borrower must establish a significant repayment history. Again, in order to reduce administrative burden at the institution, the provision is parallel to

similar provisions in the FFEL and FDSL programs.

*Changes:* None.

*Comments:* Several commenters were concerned that the credit bureau reporting requirement for rehabilitated defaulted loans in § 674.5(e)(2) was unclear. One commenter recommended including in the definition a requirement to report to the national credit bureau the date of the last payment, the unpaid principal balance, amount past due and date and amount of the last payment. Some commenters recommended that the phrase "no longer in default" should be clarified to mean that the record is not deleted from the borrower's credit history, when in fact it is only reported as a status change. One commenter also stated that the impact of "rehabilitated and no longer in default" affects the future disbursement of title IV aid and that the Secretary should not force the credit bureau to use unique, special definitions.

*Discussion:* The Secretary understands the concerns of these commenters and agrees that the requirements of this provision are unclear. In drafting the provision the Secretary intended that institutions report to one of the national credit bureaus the change in status of the defaulted loans. The Secretary did not intend that the default be eliminated from the credit bureau records. A default on any loan is an important component of an individual's credit history and credit bureaus are required to maintain such information on an individual's account for 7 years. The Secretary is concerned that a borrower who has made such a serious attempt to take care of his or her defaulted loan have as up-to-date and accurate record at the credit bureau as possible. Therefore, the status of the loan should be accurate on the credit bureau record. In response to the suggestion that additional data be provided to the credit bureau, the Secretary does not want to increase the burden at the institution by imposing additional reporting requirements on the institution. However, it should be noted that these national credit bureaus have standards that have been established by Associated Credit Bureaus (ACB), the industry's trade group. The Department has no regulatory authority over these bureaus' standards. Some of these national credit bureaus might require more than the Department requires, such as follow-up reporting of the borrower's declining balance as it is paid down or paid off. Further, some of their procedures are specifically for credit bureau purposes and more closely in line with common U.S. business practice than with Federal regulations. For example, business practice considers a customer's account to be current up to 30 days past the due date of an invoice; whereas in the Federal Perkins Loan program, a borrower is considered to be in default when he or she fails to make an installment payment when due.

*Changes:* The language of this provision is changed to require an institution to report to a national credit bureau that a defaulted loan has been rehabilitated, rather than that a rehabilitated loan is no longer in default.

*Section 674.6 Default Reduction Plan*

*Comments:* One commenter argued that the Federal Perkins Loan program operates differently from the FFEL Program, and there is no statutory requirement that requires the Federal Perkins Loan program default reduction plan to parallel that of the FFEL Program. The commenter believed that institutions would have to install costly and burdensome tracking mechanisms in order to implement this provision.

*Discussion:* The Secretary agrees with the commenter that there is no statutory requirement that mandates similar default reduction plans for the Federal Perkins Loan Program and the FFEL Program. However, in the interest of minimizing increases to burden at the institution, it is the Secretary's intent to mirror similar provisions that have existed in other title IV programs for a number of years, such as the FFEL Program. The default reduction plan, as outlined in these provisions, has been in effect in the FFEL Program for many years and, thus, has been thoroughly tested. Since most institutions are already participating in the FFEL Program, the Secretary does not believe that this provision increases burden; rather, he believes it streamlines and improves the delivery of student aid. The Secretary reminds commenters that there is no requirement for a high default institution to implement this specific plan. Each institution has the option of developing its own plan, subject to approval by the Secretary.

*Changes:* None.

*Comments:* A few commenters suggested that the Secretary not include a provision in the default reduction plan that would require first-time borrowers to endorse their check and to "pick up" any remaining proceeds at the institution. Instead, because many institutions have Federal Perkins loan disbursement systems that do not involve the issuance of a check, they recommended that the borrower's loan amount be credited directly to his or her student account and that any remaining proceeds also be credited to his or her student account, with one commenter recommending that the borrower be notified as to how he or she will receive his or her funds and that the loan funds will be disbursed 30 days after enrollment. One commenter objected to the requirement that the disbursement to a first-time borrower be delayed until 30 days after enrollment.

*Discussion:* The Secretary is sympathetic to the concerns of these commenters but does not agree with the comments to remove the delayed disbursement provision from the default reduction plan. The Secretary reminds the commenters that the purpose of the default reduction plan is to help institutions that have large numbers of their Federal Perkins loan borrowers in default to set up procedures and mechanisms to help keep their borrowers out of default. One aspect of keeping a borrower out of default is to require a face-to-face contact in order to finalize the processing of loan proceeds. This will help ensure that the borrower understands that he or she is receiving a loan and ensures to the institution that the borrower is really enrolling. In addition, delayed disbursement of loan proceeds ensures that the borrower is actually enrolled and continuing his or her studies before disbursing a loan, thus avoiding the situation in which a borrower drops out with a large debt that the borrower cannot repay.

*Changes:* None.

*Comments:* One commenter was particularly concerned about the intrusive nature of some of the requirements of the default reduction plan. This commenter felt that the ability to benefit provisions in the general provisions regulations should be sufficient to ensure that students "have a reasonable expectation of succeeding in their programs of study." This commenter wonders whether institutions with "open door" admissions policies would be required to revise these policies, and what an institution is to do if admissions policies are set by a Board of Trustees. This commenter also asserts that there is no evidence that monthly reviews of in-school status will improve an institution's default rate.

*Discussion:* In general, the Secretary does not agree with this commenter. The ability-to-benefit provisions in the Student Assistance General Provisions affords some protection but not all the needed protection. When an institution has a high cohort default rate, one of the first places to look for the cause is to look at who is being admitted to the

institution and into what program of study. Students should not be admitted if there is not a reasonable expectation of success. Moreover, it seems only logical that another procedure to follow for eliminating a potential cause of a high cohort default rate is to follow up on enrollment status to ensure that a student is still enrolled and, if not enrolled, to provide exit counselling to the student as soon as possible. The Secretary reminds the commenter that these provisions have been in effect in the FFEL Program for several years and have not had the intrusive effect on admissions policies or the burden of the increased reviews of enrollment status that the commenter fears.

*Changes:* None.

*Section 674.7 Expanded Lending Option*

*Comments:* One commenter stated that the phrase "in any academic year" as it relates to aggregate loan limits is confusing and should be deleted if it suggests that a student who does not borrow in his or her first year can borrow $8,000 in his or her second year.

*Discussion:* The Secretary agrees.

*Changes:* This provision is revised to clarify the distinction between annual and aggregate loan limits.

*Section 674.9 Student Eligibility*

*Comments:* While several commenters supported the requirement to "reaffirm" a Federal Perkins loan debt previously canceled due to total and permanent disability, discharge in bankruptcy, or write-off, some of these commenters believed the term "reaffirmation" was a legal term requiring the reopening of the bankruptcy case, and the borrower should "agree" rather than "reaffirm" to repay any loan discharged in bankruptcy.

*Discussion:* "Reaffirmation," as it relates to this provision, would be the borrower's signature on a new repayment agreement. However, the Secretary has removed the provision in proposed section 674.9(g) that would have required the reaffirmation of Federal Perkins, Direct, or Defense loan amounts that had been discharged in bankruptcy as a prerequisite to further eligibility for additional Federal Perkins Loans. This phrase has been omitted from the final rules because it is no longer permissible by operation of law pursuant to the Bankruptcy Reform Act of 1994, P.L. 103–394.

Section 313 of the Bankruptcy Reform Act of 1994 added a new subsection (c) to 11 U.S.C. Section 525, to provide that the Department and other governmental units may no longer deny a loan, loan guarantee, or loan insurance to a person solely because that person has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been judicially determined to be dischargeable in bankruptcy. The Secretary interprets this provision to mean that once a debtor has filed for bankruptcy relief, or had a Federal Perkins Loan, or other student loan, discharged or determined to be dischargeable by a Bankruptcy Court, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of future participation in the Federal Perkins Loan, or other student loan programs. Conforming changes will be made to 34 CFR 668.7(e).

Section 674.9(e) of the current regulations states that a student's failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan. Because the Secretary is concerned that section 674.9(e) might be used to deny a student's eligibility for a Federal Perkins Loan based solely on the student's having had a prior loan discharged in bankruptcy, the Secretary is removing the phrase regarding a bankruptcy discharge from the regulations. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay the loan.

*Changes:* The Secretary is deleting the requirement that a borrower must reaffirm a loan discharged in bankruptcy before regaining eligibility for further title IV loans. Also, the Secretary is removing the phrase regarding a bankruptcy discharge from the "willingness to repay" provision.

*Comments:* Another commenter objected to the provision that disabled individuals should have to reaffirm past loans to reestablish eligibility. The commenter believed that disabled individuals should be judged solely on a "snapshot" of their present condition and circumstances; requiring reaffirmation would place yet another obstacle in the way of disabled individuals who wish to further their education. The commenter went further to say he thought this requirement would violate the spirit of the Americans With Disabilities Act.

*Discussion:* The Secretary is sensitive to this commenter's concerns. The Secretary, as part of the Department's ongoing effort to reduce the administrative burden in the loan programs, will no longer require reaffirmation of a title IV loan as a student eligibility requirement for a borrower whose loan was canceled due to permanent and total disability. However, a borrower who has had a loan canceled for this reason will still be required to obtain a physician's statement attesting that his or her condition has improved, and agree that any new loans may not be canceled for this reason, unless the condition substantially deteriorates.

*Changes:* The Secretary is eliminating the requirement that a borrower reaffirm a Federal Perkins loan canceled due to total and permanent disability in order for the borrower to be eligible for further Federal Perkins loans.

*Section 674.16 Making and Disbursing Loans*

*Comments:* Several commenters objected to the requirement that the borrower must sign for each advance of funds on the promissory note. Instead, the commenters felt that the borrower should sign for the advance of funds on the promissory note at the beginning of each academic year.

*Discussion:* Due to the legally binding nature of the promissory note and the potential for loan defaults requiring the enforcement of loans in court, the Secretary will continue to require the borrower to sign for each advance of funds for the Federal Perkins Loan program. The Secretary asks the commenters to refer to the previous discussion of this issue in response to the comments on the definition of "making of a loan" in § 674.2.

*Changes:* None.

*Comments:* One commenter supported the study abroad provisions, but three commenters felt clarification was needed to indicate that a borrower may sign his or her note in advance, but not be required to sign for each loan disbursement while enrolled in a study abroad program. One commenter suggested deleting this provision.

*Discussion:* The Secretary intended that this provision allow an institution the option of obtaining from a borrower enrolled in a study abroad program his or her signature on the promissory note in advance for each disbursement of a Federal Perkins. The Secretary made this exception as part of his ongoing effort to reduce administrative burden at the institution. The Secretary does not agree that the regulations are unclear or that clarification is needed regarding loan disbursements made to borrowers who are studying abroad. As stated in the proposed language, "* * * the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution."

*Changes:* None.

*Comments:* One commenter pointed out that small institutions are having difficulty reporting small volumes of loans to a national credit bureau, because these credit bureaus do not want to deal with small volumes. This commenter suggested that the Department demand procedures for reporting small volumes as part of any agreement between the Department and the national credit bureaus.

*Discussion:* The Secretary will look into what administrative steps he can take to address this situation. In the interim, small schools may want to consider joining together and report their loans cooperatively.

*Changes:* None.

*Section 674.18 Use of funds*

*Comments:* One commenter stated that § 674.18 should reference the allowable transfer by an institution participating in the Work-Colleges program of any portion of its FCC allocation for an award year to the Work-Colleges program. Another commenter indicated that the proposed § 674.18(c) provided for the new transfer of up to 25 percent of the FCC allocation for the FWS program or FSEOG program, or both. However, the commenter believed that the section should include the type of restrictions that appear in § 675.18(f) of the FWS regulations.

*Discussion:* The Secretary agrees that for clarity and consistency, the regulations should note all the transfers allowed and the restrictions on those transfers of funds.

*Changes:* The Secretary is including in the Federal Perkins Loan program under § 674.18 the authority for participating institutions to transfer FCC funds to the Work-Colleges program and the restrictions on the FCC funds transferred to other programs.

*Section 674.19 Fiscal Procedures and Records*

*Comments:* A few commenters felt that the provision of the proposed rule that describes the types of records to be included in the repayment history of the borrower should include "copies of computer records."

*Discussion:* The Secretary does not agree with the commenters. The current regulations already provide, in § 674.19(e)(4)(v), that an institution may keep its records in computer format, which would include the computer records held by an institution's servicer. Source documents supporting records in computer format must also be maintained. The Secretary recognizes the predominance of computer servicing, but, in order for computer records to substitute for hard copies of these records, the Secretary would need to develop specifications, for example, regarding electronic signatures, which he is not doing at this time. Because of the need to enforce Federal Perkins loans through the judicial system, the Secretary requires the hard copy supporting documentation.

*Changes:* None.

*Section 674.31 Promissory Note*

*Comments:* One commenter objected to the proposal that institutions be required to use the promissory note developed by the Secretary with no changes, saying that the proposal was in direct violation of the statute. Many commenters supported the provision but felt that some discretion should be retained with the format of the promissory note, as long as they retain the text provided by the Department. Another commenter recommended including language in this provision that would clarify that "stated options" (such as the minimum repayment) are not considered modifications for the purposes of this subsection. One of these commenters pointed out that it could use an NCR form by putting the signatures on the front of the form with all the text on the back, thereby allowing the borrower to pull one copy off the back for his or her records. Another of these commenters wondered whether the institution could still add the provision telling borrowers that their academic transcript would be withheld in the event of a default.

*Discussion:* The promissory note is a key document in any legal action and serves as a permanent record for reaffirmation of any loans and, therefore, must remain as developed by the Secretary. Optional elements, such as the minimum monthly repayments, have been provided for institutions to use at their own discretion and will continue to be provided as options in the text of the promissory note. As such, the Secretary does not need to provide regulatory language to support the continuation of the optional language. The Secretary intends the text of the Department's Federal Perkins loan promissory note to remain unchanged. The "text" includes the order of the provisions and the placement of the signatures. These may not be changed. The current regulations have provided that the note approved by the Secretary may not have substantive changes made to it. Withholding the official academic transcript is in violation of the Family Educational Rights and Privacy Act (FERPA), regardless of whether the borrower has signed such a provision in his or her promissory note. Such a provision may not be included in the promissory note. The institution may change only the format of the note, e.g., the type, style, and paper size.

*Changes:* None.

*Section 674.33 Repayment*

*Comments:* Many commenters supported the forbearance provision. Several commenters felt that the proposed wording in section 674.33(d)(2) indicates that the minimum period of forbearance is 12 months and should be modified to read "at intervals of up to 12 months." One commenter requested clarification of "disposable income" and "poverty line." Another commenter suggested additional documentation to the Federal tax return for the purposes of documenting "disposable income." Another commenter felt this provision should make reference to the national service award.

*Discussion:* For a discussion of these issues as they relate to making provisions in the Federal Perkins Loan program comparable to similar provisions in the FFEL Program, the Secretary asks the commenters to refer to the discussion of the definition of "disposable income" under § 674.2. The "poverty line" is determined in accordance with section 673(2) of the Community Service Block Grant Act, and information on the poverty line may be obtained by calling the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, (202) 690–6141. The Secretary does not have the statutory authority to extend forbearance to borrowers serving in National Community Service jobs. However, the Secretary strongly encourages institutions to use their discretion, allowed under these regulatory provisions, to grant forbearance to borrowers serving in National Community Service jobs.

*Changes:* The forbearance provision is amended to match the final FFEL Program regulatory provisions for forbearance, where appropriate.

*Section 674.34 Deferment of Repayment*

*Comments:* Many commenters disagreed with the Secretary's proposal that if an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify. The commenters argued that the borrower's eligibility should not be affected by circumstances that are beyond the borrower's control. The unanticipated cessation of a deferment would also

pose an undue hardship on the borrower. One commenter suggested that to expect a borrower or an institution and its third party servicer to monitor another institution's qualification as an institution of higher education throughout the borrower's deferment period would be unduly burdensome for the institution and the servicer.

One commenter agreed that borrowers who attend institutions that do not qualify as institutions of higher education should not receive deferments; however, this requirement should be eased for borrowers who begin an academic year at an eligible institution that subsequently loses its eligibility sometime during that academic year. The commenters suggested that, at a minimum, the borrowers should be granted a continuation of their deferment to the end of the academic year in which they are enrolled. A few commenters suggested that a borrower should continue to be eligible for a deferment for the remainder of the deferment period.

*Discussion:* While the Secretary understands these concerns, the Secretary does not agree with the commenters. The statute is clear that a student must be attending an institution of higher education (IHE). The Secretary feels that very few borrowers would be in the situation in which an initially-eligible IHE would lose its eligibility. However, the Secretary is not requiring the deferment-granting institution to closely monitor this situation. Rather, in order to not unduly increase burden at the institution, the Secretary requires that if the deferment-granting institution becomes aware that an institution is no longer an IHE, the borrower's deferment must be terminated. This borrower then qualifies for a 6-month post-deferment grace period, which effectively reduces the impact on the borrowers.

*Changes:* None.

*Comments:* One commenter was concerned that dental residents would be ineligible for a "student" deferment because medical interns and residents are no longer eligible for deferments. This commenter noted that dental residents often receive little or no stipends, and a significant number pay tuition. This commenter suggested that § 674.34(b)(2) be changed to include dental residents as eligible borrowers for a "student" deferment, as has been done in the FFEL and FDSL programs regulations.

*Discussion:* The Secretary agrees with the commenters.

*Changes:* A change has been made to include dental residents as eligible for a "student" deferment.

*Comments:* One commenter recommended that the Secretary include in this section the same hardship deferment provisions as are included in redesignated § 674.35(i), § 674.36(e), and § 674.37(e). The commenter believes that this would provide the opportunity for institutions to maintain their maximum flexibility in working with borrowers.

*Discussion:* The Secretary feels that any benefits that accrued to borrowers under the "old" hardship deferment are now available under forbearance. Also, there is no statutory authorization for such a deferment in the Federal Perkins Loan program.

*Changes:* None.

*Comments:* One commenter recommended that the regulations include a definition for the minimum period during which a borrower must be enrolled in school in order to qualify for the 6-month post-deferment grace period after ceasing to be enrolled. This commenter suggested that the borrower be required to complete the enrollment period.

*Discussion:* The Secretary is quite interested in this issue and understands that there is a wide variety of interpretations of the applicability of the 6-month post-deferment grace period. As the Secretary understands it, institutions are granting the 6-month post-deferment grace period in one of four ways: (1) granting a 6-month post-deferment grace period regardless of the period of time the borrower is enrolled, even if it is only for one day; (2) granting a 6-month post-deferment grace period (and also a "student" deferment) only after the enrollment records are finalized, usually 5 or 6 weeks into the term; (3) granting the 6-month post-deferment grace period only if the borrower is enrolled longer than the borrower's repayment billing period; or (4) requiring the borrower to complete the enrollment period.

The statute requires granting the post-deferment grace period for "any period" the borrower qualifies for a deferment, and a borrower qualifies for a "student" deferment for "any period" of enrollment as at least a half-time student. Therefore, any institution that is granting post-deferment grace periods under the first condition is in compliance with the Federal Perkins Loan program regulations. All other institutions need to modify the procedures used for determining eligibility for post-deferment grace periods and also student deferments. While the statute allows an institution much discretion in administering the Federal Perkins Loan program, the granting of deferments and post-deferment grace periods to qualified non-defaulted borrowers and the granting of cancellation benefits to qualified borrowers are not at the institution's discretion. These provisions are an entitlement to the borrower once the borrower has provided a written request and acceptable documentation to the institution. The Secretary expects to revisit this issue, should the Secretary find that there is widespread abuse by borrowers of this benefit.

*Changes:* None.

*Comments:* A few commenters suggested that the language in § 674.34 should read "interest should not accrue" instead of "interest does not accrue" for consistency with other sections.

*Discussion:* The Secretary does not agree. Each provision in the current regulations governing the 6-month post-deferment grace period contains the language, "interest does not accrue."

*Changes:* None.

*Section 674.38 Deferment Procedures*

*Comments:* Several commenters felt the proposal to require defaulted borrowers to make "satisfactory arrangements" to repay the loan as one of the conditions to be met in order to be granted a deferment would be unfair to the borrowers and impossible to accomplish in many cases because a borrower is in "default" the first day a payment is missed. Several commenters felt the provisions in the current regulations should be maintained.

*Discussion:* The Secretary agrees that implementation of this provision as written in the proposed rule is unfair to borrowers and agrees that the current regulatory provision should be maintained. The Secretary reminds the commenters that § 674.37(a)(2) provides the *option* to an institution to declare a borrower in default if the borrower fails to supply a deferment request and documentation. The fact that a borrower is in "default" the first day after a payment is missed is more significant for the cohort default rate calculation. The borrower still has the opportunity to respond to the demand letters before being reported to a national credit bureau, for example, even though this borrower would be counted as a default for purposes of the cohort default rate calculation.

*Changes:* The Secretary is withdrawing the proposed language in favor of the current language of § 674.37(b).

*Section 674.39 Postponement of Loan Repayment*

*Comments:* A few commenters felt that postponement of loan repayment in anticipation of cancellation should reflect loans made before "July 23, 1992" not before "July 1, 1992."

*Discussion:* There is a typographical error in this section. The date should be "July 1, 1993." The Secretary has included this date to provide for those borrowers who are eligible for cancellation benefits but are not eligible for the new deferment provisions (borrowers whose loans were made on or after July 23, 1992, but before July 1, 1993).

*Changes:* The Secretary will change this section to reflect "July 1, 1993."

*Section 674.43(a)(3) Billing Procedures*

*Comments:* While several commenters supported the Secretary's proposal to amend section 674.43 to allow a borrower to elect to repay his or her Federal Perkins loan by means of the electronic transfer of funds from the borrower's bank account, they felt the Secretary should modify this proposal even further to allow for annual notification to the borrower regardless of the repayment frequency. These commenters felt that this requirement was too burdensome.

*Discussion:* The Secretary agrees. Using the electronic method of repaying a loan is quite similar to the coupons system, and no statement of account is required under this system. However, the borrower has the remaining coupons to demonstrate the amount still due on the loan. This does not exist under the electronic system, and the borrower needs to be kept apprised of the status of his or her account. This statement of account needs to be no more frequent than annually. As part of the Secretary's effort to be mindful of the burden imposed by regulations on the institution, the Secretary is reducing burden in this provision by requiring only an annual statement of account.

*Changes:* The Secretary is amending this provision to allow for an annual statement of account.

*Section 674.45 Collection Procedures*

*Comments:* While a few commenters strongly supported the provision in this section that preempts state collection laws as they relate to allowing a collection agency to collect a Federal Perkins loan if the collection agency is not physically located in the state, they also recommended that the Secretary apply similar language to billing procedures, § 674.43.

*Discussion:* The Secretary is not aware of any state law that prohibits a collection agency from billing a borrower if that collection agency does not have residence in that particular state. Moreover, the Secretary has not been informed of any problem with a state that is prohibiting the billing of borrowers in this circumstance. Until such time as a problem develops, the Secretary sees no reason to add this provision.

*Changes:* None.

*Section 674.47 Costs Chargeable to the Fund*

*Comments:* There were a number of comments on this section, and they all recommended that institutions should be allowed to write-off non-defaulted small balances, in amounts of less than $25. The commenters felt that collecting on small balance loans is not cost-effective and this change would ease the paperwork and administrative burdens.

*Discussion:* While it has been a longstanding policy, and, more recently, a regulatory provision, at the Department to allow institutions to write off defaulted accounts with balances of less than $25.00, it is not the policy to allow, nor do the current regulations allow, the write-off of non-defaulted loans, regardless of the size of the balance. This issue cannot be addressed in this final regulation, because the Secretary is required to provide the public an opportunity to make proposals and to provide comments in this area. However, the Secretary is sensitive to the issue raised by these commenters and will revisit this issue at a later date.

*Changes:* The Secretary is making a minor modification to the language of this provision to incorporate the word "defaulted."

*Section 674.51 Special Definitions*

*Comments:* A large number of commenters objected to the definition of medical technician, because it excluded physical therapists, who are an integral component in providing health care services. One commenter also suggested that the Secretary provide the institutions with job titles for positions that qualify such as medical technicians.

*Discussion:* The Secretary regrets any confusion that this section might have caused the commenters. The NPRM used the term "allied health professional" which became confused with the American Medical Association's *Twenty-Eight Allied Health Careers.* These twenty-eight careers are those areas in which the American Medical Association (AMA) accredits programs and only comprise a small proportion of "allied health professions." "Allied health professional" is a generic term used to designate a large group of health-related personnel who assist, facilitate, or complement the work of physicians and other specialists in the health care system. "Allied health professionals" range from therapists and counselors to health care assistants. The Secretary intends "allied health professional" to be interpreted in its generic sense. The Secretary's intent was to include those health care professionals who might be working full-time except that the employment takes the form of part-time employment at more than one facility as well as those health care professionals who might be providing health care services in an environment that would not qualify as a health care facility (such as a school), or who might be working in a private facility. The Secretary believes that Congress did not intend to exclude any qualified nurses or medical technicians, as long as they are working full-time and providing health care services. The Secretary will not provide a list of "allied health professions" because the list of professions is too lengthy and does not remain static. The Secretary provides further clarification of issues such as this in the *Student Financial Aid Handbook.*

*Changes:* The Secretary is revising sections 674.51(i), 674.51(m), 674.52(b), and 674.56(a) for clarity to ensure that all qualifying nurses and medical technicians will receive cancellation benefits.

**Federal Work-Study Programs**

*Section 675.2 Definitions*

Low-Income Individual

*Comments:* Four commenters responded to the Secretary's proposal to define "low-income individual" for the purpose of community service under the FWS program. The commenters wanted either clarification or elimination of the definition.

One commenter acknowledged that the Secretary had been asked to clarify the meaning of low-income clientele in reference to individuals served through a community service program; however, the commenter believed that the proposed language adds another layer of eligibility to FWS program administration. This commenter also believed that the proposed definition of "low-income individual" unduly encumbers the FWS community service concept and strongly suggested that a much more simplified approach be considered.

Another commenter suggested that efforts to increase participation in community service activities through

the FWS program might be hampered if institutions were required to verify the income levels of clientele served by various community organizations.

*Discussion:* The Secretary has taken these comments under consideration and has determined that at this time there is no need to burden institutions with a formal definition of "low-income individual" for purposes of providing community service under the FWS program. There is no requirement under the statute that a particular number or proportion of the individuals must be low-income persons. However, the Secretary reminds institutions of the statutory emphasis placed on the human, educational, environmental, and public safety needs of low-income individuals.

*Changes:* The Secretary has deleted this definition from the final regulations for the FWS program.

Community Services

*Comments:* One commenter requested that more clarity be provided on whether the service has to be "direct" under the community service component of the FWS program. Several commenters were concerned that the Secretary's interpretation of the meaning of providing community service as being "hands-on" or "direct contact" will do a great disservice to student workers by eliminating many behind-the-scene jobs. In general, commenters believed that a successful community services agency requires all types of jobs to operate efficiently and that clerical jobs serve an important function in any organization.

*Discussion:* The Secretary did not propose in the NPRM a change to the definition of "community services." The Secretary reminds the commenters that the current definition of "community services" in § 675.2 does not require that the service provided by the FWS student must be "direct" to be considered community service. The job duties must include providing services that are designed to improve the quality of life for community residents or solve particular problems related to their needs. In determining whether the service is community service, the institution must always consider whether the service provided by the FWS student primarily benefits the community as opposed to the agency or institution.

The Secretary at this time is leaving flexibility to the institutions in determining what jobs provide service to the community. This approach is adopted to minimize the burden on institutions in administering the community service component of the FWS program.

The Secretary encourages institutions to develop jobs that instill a sense of social responsibility in the students and touch the lives of community residents in a meaningful and lasting way. The Secretary believes that the best way to provide "community services" is for the students' jobs to put them in "direct" contact where possible with the recipients of the services or involve some type of "hands on" service in the community. However, the Secretary does not intend to indicate that certain activities are more important than others or that only jobs that have "direct" contact with community members are acceptable. For example, an FWS student working for a "meals on wheels" program for the elderly may prepare those meals without any "direct" contact with the community recipients, yet the service is very important in meeting the needs of the elderly.

*Changes:* None.

*Section 675.4 Allocation and Reallocation*

*Comments:* Three commenters discussed the proposal required by section 442(e) of the HEA that only an institution that uses at least 10 percent of its total amount of FWS Federal funds granted to compensate students employed in community service are eligible for reallocated FWS funds and that all the reallocated FWS funds must be used for community service. One of these commenters suggested that the Secretary should clarify this proposal in the regulations. The other two commenters expressed the concern that the provision that requires institutions to have a fair-share shortfall in order to receive these reallocated supplemental FWS funds presents a disincentive to institutions, with no shortfall, to strive for the 10 percent figure.

The commenters suggested that the Secretary consider an alternative to the current process of awarding unexpended funds. They would like to see the fair-share requirement changed to consider also those institutions that meet or exceed the 10 percent rule, but do not have a shortfall. In addition, one of these commenters further noted that the use of the reallocated funds should not be restricted to community service wages. Instead, since the institution had already done 100 percent above the requirement, it should be allowed to use reallocated funds in any FWS program or for administrative costs.

*Discussion:* Under current FWS regulations in § 675.4, the Secretary allocates and reallocates funds to institutions participating in the FWS program in accordance with section 442 of the HEA. Therefore, this provision will not be codified in the regulations. Under section 442 of the HEA, the Secretary reallocates funds on a *pro rata* basis, *i.e.*, the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FWS request. The Secretary continues to believe this position to be the most equitable formula for awarding unexpended funds. The statutory provision that mandates this new rule for receipt of unexpended FWS funds, section 442(e)(1) of the HEA, provides that these funds will only go to institutions that expend at least 10 percent of their total amount of FWS funds (initial and supplemental) to employ students in community service jobs, and that the reallocated FWS funds must also be used only for that purpose. Congress amended this section to encourage students to participate in community service activities.

*Changes:* None.

*Section 675.8 Program Participation Agreement*

*Comments:* Several commenters believed that the jobs performed by an institution's FWS students that provide support services solely to the institution's own students with disabilities should be counted toward meeting the community service requirements under the FWS program. Many commenters believed that not to do this would cause an undue hardship for the institution. One commenter questioned why under the FWS program it is permissible to develop programs that support services to an institution's own students with disabilities yet under the community service component this is not allowed. Two commenters asked for consistency between the program participation agreement and the community service definition concerning the meaning of support services to students with disabilities.

*Discussion:* Section 441(c) of the HEA under the definition of community service states that an institution may include as part of its community service component support services to students with disabilities. Section 443(b)(9) of the HEA requires institutions under the program participation agreement to assure that employment under the FWS program may be used to support programs for supportive services to students with disabilities.

The Secretary believes the intention of the community service requirement in the statute is for an institution's FWS students to work with elementary and

secondary school students as well as students attending other postsecondary institutions, and provide services to the disabled, and not just for an institution to provide services solely to its own students with disabilities. As allowed by section 443(b)(9) of the HEA, an institution may use FWS funds to provide support services to its own institutional students with disabilities. However, to be providing community service in accordance with section 441(c) of the HEA, the FWS students providing the service must be providing the service to students with disabilities in the community. The fact that the FWS students also provide the services to the institution's own students with disabilities would not necessarily prevent the job from being considered community service.

*Changes:* The definition of "community services" in § 675.2 has been revised to emphasize that the support services must be provided to students other than an institution's own students to satisfy the community service component of the FWS program. No changes have been made to § 675.8.

*Section 675.18 Use of Funds*

Community Service Waiver

*Comments:* Section 443(b)(2)(A) of the HEA provides that for the 1994–95 award year and succeeding award years, an institution shall use at least 5 percent of the total amount of FWS Federal funds granted to such institution to compensate students employed in community service, except that the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at an institution.

In the NPRM, the Secretary requested comments regarding the conditions under which the Secretary should grant waivers of this provision. Some commenters believed that means and costs of transportation are major issues the Secretary needs to consider in granting a waiver. The commenters believed that students from low-income backgrounds do not have cars, and some institutions are located in areas that have no public transportation. One commenter believed that there are many institutions located in rural areas and that community service jobs may not be accessible. Some commenters believed it would be a hardship on institutions that could only locate community service jobs with agencies that could not afford to pay a portion of the non-Federal share. Other commenters wanted the Department to regulate the criteria that the Secretary would use to determine this waiver. One commenter expressed concern for the safety of students providing community service in some locations. This same commenter noted that performance of community service might conflict with student class schedules. One commenter believed that private technical universities have very few degree programs offered that are geared toward community service and that placements in this area are somewhat rare.

*Discussion:* Section 443(b)(2)(A) of the amended HEA mandates that at least 5 percent of an institution's total amount of Federal FWS funds granted must be used to compensate students employed in community service jobs, unless the Secretary waives the requirement.

Based on public comment, the Secretary does not foresee many instances in which a waiver would be granted. However, to allow flexibility to consider factors that are valid reasons for a waiver, the Secretary is not specifying the specific circumstances that would receive a waiver. The fact that it may be difficult for the institution to comply with this provision is not a basis for granting a waiver. The Secretary will consider providing more specific regulatory guidance on this issue as he gains more experience in processing these kinds of waiver requests.

*Changes:* The language in § 675.18(h) has been revised to emphasize that to receive a waiver, an institution must demonstrate that the 5 percent requirement would cause a hardship for students at the institution.

Administrative Cost Allowance

*Comments:* Two commenters requested that the additional Administrative Cost Allowance (ACA) available for the expired Community Service Learning program be continued for the community service component under the FWS program. These commenters believed that the regular campus-based ACA provided institutions was already fully utilized and the additional expenses incurred for the new community service mandate will have to be absorbed by the institutions. One commenter believed that the statute should be interpreted to allow use of up to 10 percent of the entire campus-based ACA for the purpose of paying the costs for community service, but no more than the portion of the ACA attributable to the FWS program. The commenter wanted the flexibility to be given to the institutions in using the ACA at no additional cost to the Federal government.

*Discussion:* The Amendments changed sections 447 and 489(a) of the HEA to eliminate the special ACA for work-study for community service learning. In accordance with the requirements of the HEA, the Secretary removed the special ACA from § 675.18(b)(5). However, the Amendments did amend section 447 of the HEA to permit an institution to use up to 10 percent of the funds available for the institution's regular campus-based ACA and attributable to the institution's FWS program expenditures to cover expenses incurred for its program of community service. The Secretary, in accordance with the requirements of the HEA, further amended § 675.18(b)(5) to provide an institution with this authority.

*Changes:* None.

*Subpart C—Work-Colleges Program*

Authorization of Appropriations

*Comments:* One commenter suggested that under the Work-Colleges subpart of the regulations the Department should provide for the allocation and reallocation of funds as it does under § 675.4 of the FWS program regulations even though no funds are appropriated.

*Discussion:* The Secretary will implement the allocation and reallocation process for the Work-Colleges program based on the institutions' requests. The funds will be allocated and reallocated based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

*Changes:* This section is amended to add an allocation and reallocation process.

**Executive Order 12866**

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not

unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Paperwork Reduction Act of 1980**

Section 674.34(e) contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the U.S. Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

**Waiver of Proposed Rulemaking**

In addition to the changes made to these regulations based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include changes made by the Improving America's Schools Act of 1994 (Pub. L. 103–382), and the Bankruptcy Reform Act of 1994 (Pub. L. 103–394), enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 5532(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

**Assessment of Educational Impact**

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 674*

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

*34 CFR Part 675*

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

*34 CFR Part 676*

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; and 84.038 Federal Perkins Loan Program)

Dated: November 21, 1994.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

## PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2(b) is amended by removing the definitions of *Default rate, Defaulted principal amount outstanding,* and *Matured loans*; by revising the definition of *Undergraduate student*; and by adding, in alphabetical order, the definitions of *Enter repayment, Making of a loan, National credit bureau, Satisfactory arrangements to repay the loan, Total monthly gross income* and *Undergraduate student* to read as follows:

**§ 674.2 Definitions.**

* * * * *

(b) * * *

*Enter repayment:* The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

* * * * *

*Making of a loan:* When the borrower signs for an advance of loan funds and those funds are disbursed.

* * * * *

*National credit bureau:* Any one of the national credit bureaus with which the Secretary has an agreement.

* * * * *

*Satisfactory arrangements to repay the loan:* The establishment of a new written repayment agreement and the making of one payment each month for six consecutive months.

* * * * *

*Total monthly gross income:* The gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

*Undergraduate student:* A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

* * * * *

3. Section 674.4 is amended by revising paragraph (b) and by adding new paragraphs (e) and (f) to read as follows:

**§ 674.4 Allocation and reallocation.**

* * * * *

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan program by—

(1) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(2) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan program.

* * * * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(f) *Anticipated collections.* (1) For the purposes of calculating an institution's share of any excess allocation, an institution's anticipated collections are equal to the amount that was collected during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

4. A new § 674.5 is added to read as follows:

**§ 674.5 Federal Perkins Loan program cohort default rate and penalties.**

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with § 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Loan rehabilitation.* (1) A loan is considered rehabilitated only after the borrower has executed a new written repayment agreement and has made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to the same national credit bureau to which it originally reported this defaulted loan.

(Authority: 20 U.S.C. 1087bb)

5. A new § 674.6 is added to read as follows:

**§ 674.6 Default reduction plan.**

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated—

(1) A written description of the default reduction plan;

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section; or

(3) For an institution that is participating in the Federal Family Education Loan Program and has in place a default reduction plan for that program, a statement indicating that the institution agrees to apply that plan to the Federal Perkins Loan program.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that

students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including—

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by—

(i) (A) Increasing contacts with local employers, counseling students in job search skills, and

(B) Exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and employer's address as part of the contacts with the borrower under § 674.42(b).

(7) Obtain from the borrower at the time of a borrower's admission to the institution information regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in §§ 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower—

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 20 U.S.C. 1087bb)

6. A new § 674.7 is added to read as follows:

**§ 674.7 Expanded lending option (ELO).**

(a) To participate in the expanded lending option in any award year, an eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall—

(1) Deposit ICC equal to 100 percent of the FCC described in § 674.8(a)(1) for that award year into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is—

(1) $4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow is—

(1) $8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) $20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) $40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1087cc, 1087dd)

7. Section 674.8 is amended by revising paragraph (a)(2); by

redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(4) through (a)(7) respectively; by adding a new paragraph (a)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

**§ 674.8 Program participation agreement.**

* * * * *

(a) * * *

(2) Except as provided in paragraph (a)(1) of § 674.7—

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

* * * * *

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes—

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

8. Section 674.9 is amended by revising paragraph (b); by removing the word "and" after the semicolon in paragraph (d)(2); by removing the phrase ", including a loan discharged in bankruptcy," from paragraph (e); by removing the period at the end of paragraph (e) and adding, in its place, a semicolon; and by adding new paragraphs (f), (g), (h), and (i) to read as follows:

**§ 674.9 Student eligibility.**

* * * * *

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

* * * * *

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was written off (if the amount of the write-off exceeded $25); and

(h)(1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

9. Section 674.10 is amended by revising paragraph (b); and by republishing the OMB control number to read as follows:

**§ 674.10 Selection of students for loans.**

* * * * *

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of the dollar amount of those loans made under this part.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

10. Section 674.12 is revised to read as follows:

**§ 674.12 Loan maximums.**

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow in any academic year is—

(1) $3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is—

(1) $15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) $30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

**§ 674.13 [Amended]**

11. Section 674.13 is amended by removing the words "or endorser" after the word "borrower" in paragraph (b)(1)(ii).

12. Section 674.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); and by revising paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) to read as follows:

**§ 674.14 Overaward.**

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the

following steps if it learns that a student has received additional resources not included in the calculation of Direct or Federal Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

* * * * *

13. Section 674.16 is amended by revising paragraph (a)(1)(ii); by revising paragraph (a)(1)(x); by revising paragraph (d); by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) respectively; by adding a new paragraph (g); by adding the word "Federal" before the words "Perkins Loan program" in redesignated paragraph (h); by adding a new paragraph (j); and by republishing the OMB control number to read as follows:

**§ 674.16 Making and disbursing loans.**

(a)(1) * * *

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

* * * * *

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

* * * * *

(d)(1) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive and of how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

* * * * *

(g)(1) An institution may disburse Federal Perkins Loan funds in accordance with paragraphs (g)(2) and (3) of this section after the student has ceased to be enrolled.

(2) A disbursement described in paragraph (g)(1) of this section may be made—

(i) Only if the loan is awarded to the student while he or she is still an eligible student; and

(ii) Only if the loan funds are used to cover documented educational costs to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for the payment period for which the loan was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

(j) An institution shall report to any one national credit bureau—

(1) The amount of each disbursement;

(2) The date the disbursement was made; and

(3) Information as specified in section 430A of the Act.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

14. Section 674.18 is amended by adding a new paragraph (c) to read as follows:

**§ 674.18 Use of funds.**

* * * * *

(c) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under § 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

* * * * *

15. Section 674.19 is amended by revising paragraph (e)(2)(ii) to read as follows:

**§ 674.19 Fiscal procedures and records.**

* * * * *

(e) * * *

(2) * * *

(ii) The history must also show the date, nature, and result of each contact with the borrower in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower, except bills, routine overdue notices, and routine form letters.

* * * * *

16. Section 674.31 is amended by removing paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(2); by revising redesignated paragraph (a)(2)(ii)(A); by adding a new paragraph (a)(2)(iii); by revising paragraphs (b)(6) and (b)(10); and by republishing the OMB control number to read as follows:

**§ 674.31 Promissory note.**

(a) * * *

(2) * * *

(ii) * * *

(A) The note requires the signature of the borrower on each page; or

* * * * *

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) * * *

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

* * * * *

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution shall disclose to any one national credit bureau the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

17. Section 674.33 is amended by redesignating paragraph (a)(3) as paragraph (a)(4); by adding a new paragraph (a)(3); by revising paragraph (b); by revising paragraph (c)(1); and by adding new paragraphs (d) and (e) to read as follows:

**§ 674.33 Repayment.**

(a) * * *

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

* * * * *

(b) *Minimum monthly repayment*—(1) *Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) $15 for a Defense loan;

(ii) $30 for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) $40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

* * * * *

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a written request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(3) Before granting a forbearance to a borrower under paragraph (d)(2)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(4) Interest accrues during any period of forbearance.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

* * * * *

**§§ 674.34 through 674.39 [Redesignated as §§ 674.35 through 674.40]**

18. Sections 674.34 through 674.39 are redesignated as §§ 674.35 through 674.40 respectively and a new § 674.34 is added to read as follows:

**§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.**

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is—

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must provide documentation satisfactory to the institution showing that the borrower—

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan;

(2) Is receiving payment under a federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance;

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(8) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section; or

(5) Is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the borrower's adjusted gross income and the difference between the borrower's adjusted gross income minus such burden is less than 220 percent of the greater of—

(i) The annual earnings of an individual earning the minimum wage under section 6 of the Fair Labor Standards Act of 1938; or

(ii) the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of two.

(6) For a deferment granted under paragraph (e)(4) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment—

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(8) of this section.

(7) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e) (3) or (4) of this section, the institution shall require the borrower to submit a copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(8) For purposes of paragraphs (e)(3) and (e)(5) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(9) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) of this section, the institution shall count only the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(f) To qualify for a deferment for study as part of a graduate fellowship program

pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f) and (g) of this section when determining the 10-year repayment period.

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(Authority: 20 U.S.C. 1087dd)

19. Redesignated § 674.35 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan" in paragraph (b)(2); by revising paragraph (c)(5)(iii); and by republishing the OMB control number to read as follows:

**§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.**

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(5) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(Approved by the Office of Management and Budget under control number 1940–0535)

* * * * *

20. Redesignated § 674.36 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan program" in paragraph (b)(2); and by revising paragraph (c)(4)(iii) to read as follows:

**§ 674.36 Deferment of repayment—Direct loans made on or after October 1, 1980, but before July 1, 1993.**

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(4) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

* * * * *

21. Redesignated § 674.38 is amended by adding a new paragraph (d) to read as follows:

**§ 674.38 Deferment procedures.**

* * * * *

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

22. Redesignated § 674.39 is amended by adding the word "Federal" before the word "Perkins" in paragraph (b) and by revising the heading of the section to read as follows:

**§ 674.39 Postponement of loan repayments in anticipation of cancellation—loans made before July 1, 1993.**

* * * * *

**§ 674.41 [Amended]**

23. Section 674.41 is amended by removing the words "or any endorser" after the words "the borrower" in paragraph (a)(2); by removing paragraph (b); and by redesignating paragraph (c) as (b).

24. Section 674.42 is amended by revising paragraph (a)(1)(ii); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by adding a new paragraph (a)(3); and by republishing the OMB control number to read as follows:

**§ 674.42 Contact with the borrower.**

(a) * * *

(1) * * *

(ii) The borrower's rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits.

* * * * *

(3) The institution shall require the borrower to provide to the institution during the exit interview—

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

* * * * *

(Approved under the Office of Management and Budget under control number 1840–0581)

25. Section 674.43 is amended by adding a new paragraph (a)(3) to read as follows:

**§ 674.43 Billing procedures.**

(a) * * *

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

* * * * *

26. Section 674.44 is amended by revising paragraph (a)(3) and by revising paragraph (d)(1) to read as follows:

**§ 674.44 Address searches.**

(a) * * *

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

* * * * * *

(d) * * *

(1) The loan is recovered through litigation;

* * * * *

27. Section 674.45 is amended by revising paragraph (a)(1); by revising paragraph (b); by revising paragraph (d); by adding a new paragraph (g); and by republishing the OMB control number to read as follows:

**§ 674.45 Collection procedures.**

(a) * * *

(1) Report the defaulted account to any one national credit bureau; and

* * * * *

(b) An institution shall report to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the national credit bureau, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

* * * * *

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

* * * * *

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

28. Section 674.46 is amended by revising paragraph (a)(1) introductory text to read as follows:

**§ 674.46 Litigation procedures.**

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether—

* * * * *

29. Section 674.47(g) is amended by revising paragraph (g) to read as follows:

**§ 674.47 Costs Chargeable to the Fund.**

* * * * *

(g) *Write-offs of defaulted accounts.* (1) An institution may write off a defaulted account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off a defaulted account under this paragraph may no longer include the amount of the account as an asset of the Fund.

30. Section 674.48 is amended by revising paragraph (c)(4)(iii); by revising paragraph (d)(1)(iii); and by republishing the OMB control number to read as follows:

**§ 674.48 Use of contractors to perform billing and collection or other program activities.**

* * * * *

(c) * * *

(4) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

* * * * *

(d) * * *

(1) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

31. Section 674.49 is amended by revising paragraph (a); by removing paragraph (g); by redesignating paragraph (h) as paragraph (g); by removing redesignated paragraph (g)(3); by revising redesignated paragraph (g)(1) introductory text; and by republishing the OMB control number to read as follows:

**§ 674.49 Bankruptcy of borrower.**

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

* * * * *

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives—

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

32. Section 674.50 is amended by revising paragraph (c)(10), and the OMB control number to read as follows:

**§ 674.50 Assignment of defaulted loans to the United States.**

* * * * *

(c) * * *

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

33. Section 674.51 is amended by revising paragraph (c); by redesignating paragraphs (g), (h), and (i) as paragraphs (o), (p), and (q) respectively; by redesignating paragraph (f) as paragraph (j); by redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively; by revising redesignated paragraphs (q)(3)(i), (ii), (iii), and (iv); and by adding new paragraphs (d), (e), (h), (i), (k), (l), (m), (n), (q)(3)(v) and (r) to read as follows:

**§ 674.51 Special definitions.**

* * * * *

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services.* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

* * * * *

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

* * * * *

(k) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(l) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(m) *Nurse:* A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(n) *Qualified professional provider of early intervention services:* A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

* * * * *

(q) * * *

(3) * * *

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

* * * * *

34. Section 674.52 is amended by adding a heading to paragraph (b); by redesignating paragraph (b)(1) as (b)(1)(i); by adding new paragraph (b)(1)(ii); by adding a heading to paragraph (c); by revising paragraph (d); and by adding new paragraph (e) to read as follows:

**§ 674.52 Cancellation procedures.**

* * * * *

(b) *Part-time employment.* (1)(i) * * *

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Cancellation of a defaulted loan.* (1) * * *

* * * * *

(d) *Concurrent deferment period.* (1) For loans made prior to July 1, 1993, the Secretary considers a borrower's loan deferment under §§ 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, or 674.57 is granted.

(e) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

**§§ 674.53 and 674.54 [Redesignated as §§ 674.54 and 674.55]**

**§§ 674.55 through 674.60 [Redesignated as §§ 674.58 through 674.63]**

35. Sections 674.55 through 674.60 are redesignated as §§ 674.58 through 674.63 respectively; §§ 674.53 and 674.54 are redesignated as §§ 674.54 and 674.55 respectively; and a new § 674.53 is added to read as follows:

**§ 674.53 Teacher cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.**

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended, and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

(2) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section

(3) (i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(6) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the

State education agency determines that there is a shortage of qualified teachers.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower shall teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

36. Redesignated § 674.54 is amended by revising the heading of the section; by revising paragraph (a)(1); by removing paragraph (a)(2); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3) respectively; by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (a)(2); by adding new paragraphs (a)(4) and (a)(5); by revising paragraph (b)(1); and by revising the authority citation to read as follows:

**§ 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992.**

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

* * * * *

(4) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(5) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

* * * * *

(Authority: 20 U.S.C. 1087ee)

37. Redesignated section 674.55 is amended by revising paragraph (b)(1)(i); by removing paragraph (b)(2); by redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4), and (b)(5), respectively; and by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (b)(2)(ii) to read as follows:

(b) * * *

(1) * * *

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

* * * * *

38. A new § 674.56 is added to read as follows:

**§ 674.56 Employment cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.**

(a) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

39. A new § 674.57 is added to read as follows:

**§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.**

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 465)

40. Redesignated § 674.58 is amended by adding the word "Federal" before the words "Perkins loan" in paragraph (a) introductory text.

41. Redesignated § 674.61 is amended by revising paragraph (b)(2) to read as follows:

**§ 674.61 Cancellation for death or disability.**

* * * * *

(b) * * *

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an impairment that is expected to continue indefinitely or result in death.

* * * * *

42. Redesignated § 674.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

**§ 674.63 Reimbursement to institutions for loan cancellation.**

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under §§ 674.55 and 674.59(a).

* * * * *

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

* * * * *

**Appendices A through D [Removed]**

43. Appendix A to Part 674—Promissory Note—Perkins Loan is removed.

44. Appendix B to Part 674—Promissory Note—Direct Loan is removed.

45. Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower is removed.

46. Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower is removed.

47. In 34 CFR part 674 add the word "Federal" before the word "Perkins" in the following places:

**§ 674.1 [Amended]**

(a) Section 674.1 (a) and (b)(1).

**§ 674.2 [Amended]**

(b) Section 674.2(a) (two times) and in the definitions of "Fund", "Initial grace period", and "Student loan" in paragraph (b).

**§ 674.3 [Amended]**

(c) Section 674.3 (a) and (b).

**§ 674.4 [Amended]**

(d) Section 674.4(a).

**§ 674.8 [Amended]**

(e) Section 674.8 introductory text.

**§ 674.9 [Amended]**

(f) Section 674.9 introductory text.

**§ 674.14 [Amended]**

(g) Section 674.14 (a)(1), (a)(2) introductory text, (b)(1)(x).

**§ 674.17 [Amended]**

(h) Section 674.17 (a) and (b)(1) introductory text.

**§ 674.18 [Amended]**

(i) Section 674.18 (a), (b)(1) (two times), (b)(2)(i), (b)(3), and (b)(4).

**§ 674.19 [Amended]**

(j) Section 674.19 (a)(1), (a)(3)(i), (b) heading, (b)(1) introductory text, (b)(1)(ii), (b)(3), (b)(4) introductory text, (d)(4), and (e)(4)(iv).

**§ 674.20 [Amended]**

(k) Section 674.20(b).

**§ 674.31 [Amended]**

(l) Section 674.31 (b)(2)(i)(B), (b)(5)(ii)(A), and (b)(7)(ii).

**§ 674.42 [Amended]**

(m) Section 674.42(b)(1)(i).

**§ 674.46 [Amended]**

(n) Section 674.46(a)(1)(i).

**§ 674.2 [Amended]**

48. In § 674.2(a), remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

49. In 34 CFR part 674, remove the term "CWS" and add, in its place, the term "FWS" in the following places:

**§ 674.18 [Amended]**

(a) Section 674.18 (b)(2)(i), (b)(3), and (b)(4).

**§ 674.19 [Amended]**

(b) Section 674.19(d)(4).

**§ 674.2 [Amended]**

50. In § 674.2(a), remove the term "Supplemental Educational Opportunity Grant (SEOG) Program" and add the term "Federal Supplemental Educational Opportunity Grant (FSEOG) Program" in alphabetical order.

51. In 34 CFR part 674, remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

**§ 674.18 [Amended]**

(a) Section 674.18 (b)(2)(i) and (b)(4).

**§ 674.19 [Amended]**

(b) Section 674.19(d)(4).

**§ 674.14 [Amended]**

52. In 34 CFR part 674, remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 674.14(b)(1)(iv).

**§ 674.2 [Amended]**

53. In § 674.2(a), remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

**§ 674.2 [Amended]**

54. In § 674.2(a), remove the term "Pell Grant" and add the term "Federal Pell Grant" in alphabetical order.

55. In 34 CFR part 674, add the term "Federal" before the term "Pell Grant" in the following places:

**§ 674.9 [Amended]**

(a) Section 674.9 (d)(1) and (d)(2).

**§ 674.14 [Amended]**

(b) Section 674.14(b)(1)(i) (two times).

**§ 674.15 [Amended]**

(c) Section 674.15(c)(2).

**§ 674.2 [Amended]**

56. In § 674.2(a), remove the term "Income Contingent Loan (ICL) Program".

**§ 674.2 [Amended]**

57. In § 674.2(a), remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

**§ 674.14 [Amended]**

58. In § 674.14(b)(3), add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

## PART 675—FEDERAL WORK-STUDY PROGRAMS

1. The authority citation for part 675 continues to read as follows:

**Authority:** 42 U.S.C. 2571–2756b, unless otherwise noted.

2. The title of part 675 is revised to read as follows:

3. The heading for subpart A is amended by removing the term "College Work-Study Program" and adding, in its place, the term "Federal Work-Study Program".

4. Section 675.1 is amended by revising paragraph (a) to read as follows:

**§ 675.1 Purpose and identification of common provisions.**

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

* * * * *

5. Section 675.2, paragraph (b) is amended by revising the definitions of *Community services* and *Undergraduate student* to read as follows:

**§ 675.2 Definitions.**

* * * * *

(b) * * *

*Community services:* Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support services to students (other than an institution's own students) with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

* * * * *

*Undergraduate student:* A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

6. Section 675.4 is amended by revising the introductory text of paragraph (d) and adding new paragraph (e) to read as follows:

**§ 675.4 Allocation and reallocation.**

* * * * *

(d) *Authority to expend funds.* Except as specifically provided in § 675.18, paragraphs (c), (d), and (g), an institution may not use funds allocated or reallocated for an award year—

* * * * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

7. Section 675.8 is amended by removing the word "and" after paragraph (d); by removing the period after paragraph (e) and adding, in its place, a semicolon; and adding new paragraphs (f) and (g) to read as follows:

**§ 675.8 Program participation agreement.**

* * * * *

(f) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(g) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

* * * * *

8. Section 675.10 is amended by revising the heading of the section; by revising paragraph (c); and by revising the OMB control number to read as follows:

**§ 675.10 Selection of students for FWS employment.**

* * * * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

9. Section 675.14 is amended by removing the words "Guaranteed Students Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words

"PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by removing the dollar figure "$200" and adding, in its place, the dollar figure "$300" in paragraphs (c) introductory text, (c)(1), and (c)(2); and by revising paragraph (d)(2) to read as follows:

**§ 675.14 Overaward.**

* * * * *

(d) * * *

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

* * * * *

10. Section 675.18 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by removing paragraph (f)(4); by adding a new paragraph (a)(3); by revising paragraphs (b)(3), (b)(5), and (f)(1); and by adding new paragraphs (g) and (h) to read as follows:

**§ 675.18 Use of funds.**

(a) * * *

(3) Meeting the cost of a Work-Colleges program under subpart C;

* * * * *

(b) * * *

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the amount of loans made under the Federal Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

* * * * *

(5) An institution may use up to 10 percent of the allowance in paragraph (b) of this section, that is attributable to the institution's expenditures under the FWS program, to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(i) Developing mechanisms to assure the academic quality of a student's experience;

(ii) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(iii) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990, in the planning, development, and administration of these programs.

* * * * *

(f) *Transfer funds to FSEOG.* (1) Beginning with the 1993–94 award year, an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

* * * * *

(g) *Carry back funds for summer employment.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year.

(h) *Community service.* (1) For the 1994–95 award year and subsequent award years, an institution shall use at least 5 percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities.

(2) An institution may request in writing from the Secretary a waiver of the requirement in paragraph (h)(1) of this section. The Secretary approves a waiver only if the Secretary determines that an institution has demonstrated that enforcing the requirement in paragraph (h)(1) of this section would cause a hardship for students at the institution.

11. Section 675.21 is amended by revising paragraph (b) to read as follows:

**§ 675.21 Institutional employment.**

* * * * *

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1) Are in community services as defined in § 675.2; or

(2) Are on campus and that—

(i) Involve the provision of student services as defined in § 675.2

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

12. Section 675.26 is amended by revising paragraphs (a)(1), (2), and (3) to read as follows:

**§ 675.26 FWS Federal share limitations.**

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent for the 1993–94 award year and subsequent award years unless the Secretary approves a higher share under paragraph (d) of this section.

(2) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(3) An institution may not use FWS funds to pay a student after he or she has, in addition to other resources, earned $300 or more over his or her financial need.

* * * * *

**§ 675.28 [Removed]**

13. Section 675.28 is removed.

14. The heading for subpart B is amended by removing the "s" from the word "Programs".

15. Section 675.31 is revised to read as follows:

**§ 675.31 Purpose.**

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

16. Section 675.32 is revised to read as follows:

**§ 675.32 Program description.**

An institution may expend up to the lesser of $50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

17. Section 675.34 is amended by revising the heading of the section; by revising paragraph (a); by revising paragraph (c); and by republishing the OMB control number to read as follows:

**§ 675.34 Multi-institutional job location and development programs.**

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

* * * * *

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

18. Section 675.35 is amended by adding the word "in" before the word "accordance" in paragraph (b)(1); by revising paragraphs (b)(3)(i) and (b)(3)(v); and by republishing the OMB control number to read as follows:

**§ 675.35 Agreement.**

* * * * *

(b) * * *

(3) * * *

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

* * * * *

(v) If the institution uses Federal funds to contract with another institution, suitable performance standards will be part of that contract.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

19. A new subpart C is added to part 675 to read as follows:

* * * * *

**Subpart C—Work-Colleges Program**

Sec.

675.41 Special definitions.
675.42 Allocation and reallocation.
675.43 Purpose.
675.44 Program description.
675.45 Allowable costs, Federal share, and institutional share.
675.46 Unallowable costs.
675.47 Multi-institutional work-colleges arrangements.
675.48 Agreement.
675.49 Procedures and records.
675.50 Termination and suspension.

* * * * *

## Subpart C—Work-Colleges Program

**§ 675.41 Special definitions.**

The following definitions apply to this subpart:

(a) *Work-college:* The term "work-college" means an eligible institution that—

(1) Is a public or private nonprofit institution with a commitment to community service;

(2) Has operated a comprehensive work-learning program for at least two years;

(3) Requires—

(i) All resident students who reside on campus to participate in a comprehensive work-learning program; and

(ii) The provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(4) Provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning program:* A student work/service program that—

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment, participation, and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

**§ 675.42 Allocation and reallocation.**

The Secretary allocates and reallocates funds based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

(Authority: 42 U.S.C. 2756b)

**§ 675.43 Purpose.**

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

**§ 675.44 Program description.**

(a) An institution that satisfies the definition of "work-college" in § 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated and reallocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

**§ 675.45 Allowable costs, Federal share, and institutional share.**

(a) *Allowable costs.* An institution participating in the Work-Colleges program may use its allocated and reallocated program funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work-learning program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning programs including—

(i) Community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(b) *Federal share of allowable costs.* An institution, in addition to the funds allocated and reallocated for this program, may use transferred funds provided under its Federal Perkins Loan or its FWS program to pay allowable costs.

(c) *Institutional share of allowable costs.* An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

**§ 675.46 Unallowable costs.**

An institution participating in the Work-Colleges program may not use its allocated and reallocated program funds and transferred funds provided under its Federal Perkins Loan or its FWS program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

**§ 675.47 Multi-institutional work-colleges arrangements.**

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

**§ 675.48 Agreement.**

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of "work-college" in § 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in § 675.45(c); and

(d) Assure that it will use funds only to carry out the activities in § 675.45(a).

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

**§ 675.49 Procedures and records.**

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of this part 675.

(Authority: 42 U.S.C. 2756b)

**§ 675.50 Termination and suspension.**

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

**§ 675.4 [Amended]**

20. In 34 CFR part 675 remove the term "College Work-Study" before the word "program" and add, in its place, the term "FWS" in § 675.4(a).

21. In 34 CFR part 675 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

**§ 675.3 [Amended]**

(a) Section 675.3(a) and (b).

**§ 675.4 [Amended]**

(b) Section 675.4(d)(1) (two times).

**§ 675.8 [Amended]**

(c) Section 675.8 introductory text, (b), (c), and (e).

**§ 675.9 [Amended]**

(d) Section 675.9 introductory text.

**§ 675.10 [Amended]**

(e) Section 675.10(a).

**§ 675.14 [Amended]**

(f) Section 675.14 (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), (c) introductory text, and (d)(1) (three times).

**§ 675.15 [Amended]**

(g) Section 675.15(a) introductory text.

**§ 675.16 [Amended]**

(h) Section 675.16(a)(3), (a)(4), (b)(1), (b)(2), and (b)(3).

**§ 675.17 [Amended]**

(i) Section 675.17.

**§ 675.18 [Amended]**

(j) Section 675.18(a) introductory text, (a)(1), redesignated (a)(5), (b)(1), (b)(2)(i), (b)(4), (c)(1) and (2), and (d).

**§ 675.19 [Amended]**

(k) Section 675.19(a)(1), (a)(3)(i) introductory text, (a)(3)(ii), and (b)(4) (two times).

**§ 675.20 [Amended]**

(l) Section 675.20(a) heading and introductory text, (b)(1), (c) heading, and (c)(2) introductory text.

**§ 675.22 [Amended]**

(m) Section 675.22(b) heading.

**§ 675.23 [Amended]**

(n) Section 675.23(a) (two times), and (b)(2)(ii).

**§ 675.24 [Amended]**

(o) Section 675.24 heading, (a)(1), and (b).

**§ 675.25 [Amended]**

(p) Section 675.25(a)(1) and (2), and (b).

**§ 675.26 [Amended]**

(q) Section 675.26 heading and (d)(2)(ii).

**§ 675.27 [Amended]**

(r) Section 675.27(a)(1) (two times), (a)(3), and (b).

**§ 675.33 [Amended]**

(s) Section 675.33(b).

**§ 675.35 [Amended]**

(t) Section 675.35(a).

**§ 675.37 [Amended]**

(u) Section 675.37(a).

**§ 675.14 [Amended]**

22. In 34 CFR part 675 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 675.14(b)(1)(iv).

23. In 34 CFR part 675 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

**§ 675.18 [Amended]**

(a) Section 675.18 redesignated (a)(5), (b)(2)(i), and (b)(4).

**§ 675.19 [Amended]**

(b) Section 675.19(b)(4).

**§ 675.2 [Amended]**

24. In § 675.2, paragraph (a) is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) program" and adding, the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in alphabetical order.

**Appendix B to Part 675 [Amended]**

25. Appendix B to 34 CFR part 675 is amended by removing the term "College Work-Study program" and adding, in its place, "Federal Work-Study program", and removing the term "CWS" and adding, in its place, the term "FWS" each place these terms appear.

**§ 675.2 [Amended]**

26. In § 675.2(a) remove the term "Perkins Loan Program", and add the term "Federal Perkins Loan Program" in alphabetical order.

27. In 34 CFR part 675 add the word "Federal" before the word "Perkins" in the following places:

**§ 675.14 [Amended]**

(a) Section 675.14(b)(1)(x).

**§ 675.18 [Amended]**

(b) Section 675.18(b)(2)(i) and (b)(4).

**§ 675.19 [Amended]**

(c) Section 675.19(b)(4).

**§ 675.2 [Amended]**

28. In § 675.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

29. In 34 CFR part 675 add the word "Federal" before the word "Pell" in the following places:

**§ 675.14 [Amended]**

(a) Section 675.14(b)(1)(i) (two times) and (c)(2).

**§ 675.15 [Amended]**

(b) Section 675.15(c)(2).

**§ 675.18 [Amended]**

(c) Section 675.18(b)(4).

**§ 675.2 [Amended]**

30. In § 675.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

**§ 675.2 [Amended]**

31. In § 675.2(a) remove the term "Income Contingent Loan Program".

**§ 675.2 [Amended]**

32. In § 675.2(a) add the term "Federal" before the terms "PLUS Program" and "SLS Program".

**§ 675.14 [Amended]**

33. In § 675.14(b)(3) add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

**§ 675.17 [Amended]**

34. In § 675.17 remove the term "Programs" after the term "Development" and add the term "Program".

## PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

**Authority:** 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

**§ 676.1 [Amended]**

2. Section 676.1 is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) Program" and replacing it with the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in paragraph (a).

3. Section 676.4 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) respectively; by adding the words "Except as specifically provided in § 676.16(f), an" before the word "institution" in the introductory text of redesignated paragraph (e); revising paragraph (a); and by adding new paragraphs (b) and (f) to read as follows:

**§ 676.4 Allocation and reallocation.**

(a) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(b) The Secretary reallocates funds to institutions participating in the FSEOG program in a manner that best carries out the purposes of the FSEOG program.

* * * * *

(f) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (f)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

* * * * *

4. Section 676.10 is amended by revising paragraph (b) to read as follows:

**§ 676.10 Selection of students for FSEOG awards.**

* * * * *

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

* * * * *

5. Section 676.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

**§ 676.14 Overaward.**

* * * * *

(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than $300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than $300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than $300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than $300 as an overpayment.

* * * * *

(Approved by the Office of Management and Budget under control 1840–0535)

6. Section 676.16 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively; by adding a new paragraph (f); and by republishing the OMB control number to read as follows:

**§ 676.16 Payment of an FSEOG.**

* * * * *

(f)(1) An institution may disburse FSEOG funds after the student has ceased to be enrolled in accordance with paragraphs (f)(2) and (3) of this section.

(2) A disbursement described in paragraph (f)(1) of this section may be made—

(i) Only if the FSEOG is awarded to the student while he or she is still an eligible student; and

(ii) Only if the FSEOG funds is used to cover documented educational costs to the student that are normally included in a student's cost of attendance under section 472 of the HEA for the payment period for which the FSEOG was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

7. Section 676.18 is amended by removing paragraph (a)(3); by adding the word "and" after the semicolon in paragraph (a)(1); by removing the word "and" after the semicolon in paragraph (a)(2); by removing the semicolon in paragraph (a)(2) and adding, in its place,

a period; and by revising paragraph (c) to read as follows:

**§ 676.18 Use of funds.**

* * * * *

(c) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

* * * * *

8. Section 676.20 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

**§ 676.20 Minimum and maximum FSEOG award.**

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

* * * * *

(c) The maximum amount of the FSEOG may be increased from $4,000 to as much as $4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

* * * * *

9. Section 676.21 is amended by removing the words "Beginning with the 1989–90 award year", by removing the comma before the words "the Secretary", and by capitalizing the letter "t" in the word "the" before the word "Secretary" in paragraph (b) introductory text and by revising paragraph (a) to read as follows:

**§ 676.21 FSEOG Federal share limitations.**

(a) Except as provided in paragraph (b) of this section, for the 1993–94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

* * * * *

10. In 34 CFR part 676 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

**§ 676.3 [Amended]**

(a) Section 676.3(a) and (b).

**§ 676.4 [Amended]**

(b) Section 676.4 redesignated (e)(1).

**§ 676.8 [Amended]**

(c) Section 676.8 introductory text and (b).

**§ 676.9 [Amended]**

(d) Section 676.9 introductory text.

**§ 676.10 [Amended]**

(e) Section 676.10 heading, (a)(1), and (a)(2) (three times).

**§ 676.14 [Amended]**

(f) Section 676.14(a)(1) (two times), (a)(2) introductory text, (a)(2)(i), (a)(3) (two times), and (d)(1) and (2).

**§ 676.15 [Amended]**

(g) Section 676.15(a) introductory text.

**§ 676.16 [Amended]**

(h) Section 676.16 heading, paragraph (a)(1), (a)(2) (three times), (b), (d)(1), (e)(1) introductory text, redesignated paragraphs (g) and (h).

**§ 676.17 [Amended]**

(i) Section 676.17.

**§ 676.18 [Amended]**

(j) Section 676.18(a) introductory text, (b)(1), (b)(2)(i), and (b)(4).

**§ 676.19 [Amended]**

(k) Section 676.19(a)(1), (a)(2)(i) introductory text and (ii), and (b)(3).

**§ 676.20 [Amended]**

(l) Section 676.20 heading and (b).

**§ 676.21 [Amended]**

(m) Section 676.21 heading, (b)(2), and (c).

11. In 34 CFR part 676 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in the following places:

**§ 676.14 [Amended]**

(a) Section 676.14 (b)(1)(iv).

**§ 676.21 [Amended]**

(b) Section 676.21(b) introductory text.

**§ 676.2 [Amended]**

12. In § 676.2(a) remove the term "Perkins Loan Program" and add the term "Federal Perkins Loan Program" in alphabetical order.

13. In 34 CFR part 676 add the term "Federal" before the term "Perkins" in the following places:

**§ 676.14 [Amended]**

(a) Section 676.14(b)(1)(x).

**§ 676.18 [Amended]**

(b) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

**§ 676.19 [Amended]**

(c) Section 676.19(b)(3).

**§ 676.2 [Amended]**

14. In § 676.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

15. In 34 CFR part 676 add the term "Federal" before the term "Pell" in the following places:

**§ 676.10 [Amended]**

(a) Section 676.10(a)(1) and (2).

**§ 676.14 [Amended]**

(b) Section 676.14(b)(1)(i).

**§ 676.15 [Amended]**

(c) Section 676.15(c)(2).

**§ 676.18 [Amended]**

(d) Section 676.18(b)(4).

16. In 34 CFR part 676 remove the "CWS" and add, in its place, "FWS" in the following places:

**§ 676.18 [Amended]**

(a) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

**§ 676.19 [Amended]**

(b) Section 676.19(b)(3).

**§ 676.2 [Amended]**

17. In § 676.2(a) remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

18. In § 676.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

19. In § 676.2(a) remove the term "Income Contingent Loan Program".

20. In § 676.2(a) remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

**§ 676.14 [Amended]**

21. In § 676.14(b)(3) add the word "Federal" before the term "Supplemental Loan for Students (SLS)".

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