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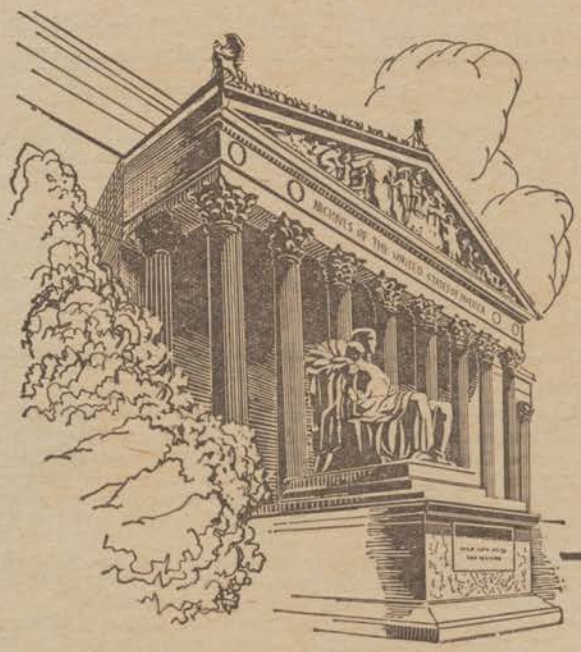
Agencies in this issue—

Detailed list of Contents appears inside.



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Contents

(*Continued on next page*)

List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

5 CFR

213 (5 documents)---- 1087

7 CFR

909---- 1087
930---- 1088
1804---- 1095
1831---- 1099
1871---- 1110
1890k---- 1131
1890l ---- 1131

9 CFR

2---- 1132
201---- 1132

14 CFR

39 (2 documents)---- 1135
208---- 1135
224---- 1135

21 CFR

148e---- 1137
148o---- 1136

PROPOSED RULES:

19---- 1153

23 CFR

204---- 1137

26 CFR

PROPOSED RULES:

1 (2 documents)---- 1149, 1151

31 CFR

605---- 1138

32 CFR

564---- 1138
865---- 1138

39 CFR

169---- 1141
958---- 1142

42 CFR

458---- 1143

47 CFR

1---- 1147

PROPOSED RULES:

73---- 1160

49 CFR

551---- 1147
553---- 1147
555---- 1148
567---- 1148
571---- 1148
575---- 1148

PROPOSED RULES:

173---- 1153
571 (2 documents)---- 1156, 1160

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show that one additional position of Confidential Assistant to the Special Assistant to the Secretary for Policy Development is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER (1–23–71), subparagraph (22) is amended under paragraph (a) of § 213.3314 as set out below.

§ 213.3314 Department of Commerce.

(a) *Office of the Secretary.* * * *

(22) Two Confidential Assistants to the Special Assistant to the Secretary for Policy Development.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-981 Filed 1-22-71;8:48 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is amended to show that the positions of one Special Assistant and one Secretary to the Assistant Administrator (for Standards and Enforcement) and General Counsel, one Secretary to the Assistant Administrator for Research and Monitoring, and one Secretary to the Assistant Administrator for Planning and Management are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER (1–23–71), paragraphs (d), (e), (f), and (g) are added to § 213.3318 as set out below.

§ 213.3318 Environmental Protection Agency.

* * * * *

(d) One Special Assistant to the Assistant Administrator (for Standards and Enforcement) and General Counsel.

(e) One Secretary to the Assistant Administrator (for Standards and Enforcement) and General Counsel.

(f) One Secretary to the Assistant Administrator for Research and Monitoring.

(g) One Secretary to the Assistant Administrator for Planning and Management.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-982 Filed 1-22-71;8:48 am]

PART 213—EXCEPTED SERVICE

Department of Justice

Section 213.3310 is amended to show that one position of Special Assistant to the Assistant Attorney General for Civil Rights is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER (1–23–71), subparagraph (2) is added to paragraph (q) of § 213.3310 as set out below.

§ 213.3310 Department of Justice.

* * * * *

(q) *Civil Rights Division.* * * *

(2) One Special Assistant to the Assistant Attorney General.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-983 Filed 1-22-71;8:48 am]

PART 213—EXCEPTED SERVICE

National Labor Relations Board

Section 213.3341 is amended to show that one position of Chief Counsel to a Board Member is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER (1–23–71), paragraph (g) of § 213.3341 is added as set out below.

§ 213.3341 National Labor Relations Board.

* * * * *

(g) One Chief Counsel to a Board Member.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58, Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-984 Filed 1-22-71;8:48 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that the position of Secretary to the Deputy Administrator, Urban Mass Transportation Administration, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER (1–23–71), subparagraph (4) is added to paragraph (f) of §213.3394 as set out below.

§ 213.3394 Department of Transportation.

* * * * *

(f) *Urban Mass Transportation Administration.* * * *

(4) One Secretary to the Deputy Administrator.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.71-985 Filed 1-22-71;8:48 am]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Grapefruit Reg. 37, Amdt. 1]

PART 909—GRAPEFRUIT GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Shipments

Findings. (1) Pursuant to marketing Order No. 909, as amended (7 CFR Part 909; 35 F.R. 13875), regulating the handling of grapefruit grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Administrative Committee (established under the aforesaid amended marketing order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation of the Administrative Committee reflects its appraisal of the current grapefruit crop and the current and prospective market conditions. This amendment relaxes the requirement so as to provide access to a

larger quantity of marketable grapefruit due to freeze damage encountered in the production area.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an assembled meeting on January 14, 1971, to consider recommendation for regulation; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such assembled meeting; necessary supplemental economic and statistical information upon which this recommended amendment is based were received January 18, 1971; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid; this amendment, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this amendment effective on the date hereinafter set forth; and, compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed on or before the effective date hereof, and this amendment relieves restrictions on the handling of grapefruit.

Order. In § 909.337 (Grapefruit Regulation 37; 35 F.R. 15980) the provisions of paragraph (a) are amended to read as follows:

§ 909.337 Grapefruit Regulation 37.

(a) *Order.* (1) Except as otherwise provided in subparagraph (2) of this paragraph, during the period January 24, 1971 through August 31, 1971, no handler shall handle from the State of California or the State of Arizona to any point outside thereof:

(i) Any grapefruit which do not meet the requirements of the U.S. No. 2 grade which for purpose of this regulation shall include the requirement that as a part of the fairly well formed requirement the requirement that the fruit be free from peel that is more than one inch in thickness at the stem end (measured from the flesh to the highest point of the peel): *Provided,* That the tolerances prescribed for the U.S. No. 2 grade shall be the tolerances applicable to the requirements of this subparagraph except that an additional tolerance of 25 percent shall be allowed for scarring of which not more than 5 percent shall be allowed for deep and dark scars, and except that included in the tolerance for defects, not more than 5 percent shall be allowed for fruit having more than 1-inch peel at the stem end, measured from the flesh to the highest point of the peel; or

(ii) Any grapefruit which measure less than 3$^{9}/_{16}$ inches in diameter, except that a tolerance of 5 percent, by count, for grapefruit smaller than 3$^{9}/_{16}$ inches shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the revised U.S. Standards for Grapefruit (California-Arizona), §§ 51.925–51.955 of this title: *Provided,* That in determining the percentage of grapefruit in any lot which are smaller than 3$^{9}/_{16}$ inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size 3$^{13}/_{16}$ inches in diameter and smaller.

(2) Subject to the requirements of subparagraph (1) (i) of this paragraph, any handler may, but only as the initial handler thereof, handle grapefruit smaller than 3$^{9}/_{16}$ inches in diameter directly to a destination in Zone 5 or Zone 6.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: January 21, 1971.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–1065 Filed 1–22–71;8:50 am]

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA AND MARYLAND

Order Regulating Handling

Sec.

AUTHORITY: The provisions of this Part 930 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 930.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Grand Rapids, Mich., June 2–4, 1970, and continued at Sturgeon Bay, Wis., on June 5, 1970, at Rochester, N.Y., on June 9, 1970, and at Gettysburg, Pa., on June 11, 1970, upon a proposed marketing agreement and a proposed marketing order regulating the handling of cherries grown in the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) This order, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) This order regulates the handling of cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) This order is limited in application to the smallest regional production

area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of cherries grown in the production area which make necessary different terms applicable to different parts of such area; and

(5) All handling of cherries grown in the production area, as defined in this order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is hereby found on the basis hereinafter indicated that good cause exists for making the provisions of this order effective on publication in the FEDERAL REGISTER, and that it would be contrary to the public interest to postpone such effective date until 30 days after publication (5 U.S.C. 553). As soon as practicable after such effective time it will be necessary to establish the Cherry Administrative Board, the agency charged with the administration of the program. Subsequently, and prior to the imposition of regulations, it will be necessary for the Board and the Secretary to initiate and complete various actions of both organizational and regulatory natures, including the formulation and promulgation of rules and regulations to govern operations under the program. If regulations are to be recommended by the Board, such recommendation must be submitted not later than June 25. Hence, for the program to be of maximum benefit during the 1971–72 fiscal period, the order should be made effective upon publication in the FEDERAL REGISTER. The provisions of the order are well known to handlers of red tart cherries since the public hearing in connection with the order was held in June 1970, and the recommended decision and the final decision were published in the FEDERAL REGISTER on October 8, 1970 (35 F.R. 15817) and November 18, 1970 (35 F.R. 17726), respectively. Copies of the regulatory provisions of this order were made available to all known interested parties; such provisions do not place any restrictions on handlers until regulations are issued thereunder and until cherries are handled; and therefore, compliance with such provisions will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective date of regulations pursuant thereto.

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping cherries covered by this order) of more than 50 percent of the volume of such cherries covered by this order refused or failed to sign a proposed marketing agreement regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign the proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of the order is the only practical means pursuant to the declared policy of the act of advancing the interests of the producers of such cherries;

(3) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (May 1, 1969, through Nov. 1, 1970) were engaged, within the production area specified in this order, in the production for market of the commodity specified therein; such producers having also produced, within such production area, for market at least two-thirds of the volume of such commodity represented in such referendum; and

(b) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping cherries covered by this order) of more than 50 percent of the volume of such cherries covered by this order refused or failed to sign a proposed marketing agreement regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign the proposed marketing agreement tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of the order is the only practical means pursuant to the declared policy of the act of advancing the interests of the producers of such cherries;

(3) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the determined representative period (May 1, 1969, through Nov. 1, 1970) were engaged, within the production area specified in this order, in the production for market of the commodity specified therein; such producers having also produced, within such production area, for market at least two-thirds of the volume of such commodity represented in such referendum; and

(4) The issuance of the order is favored or approved by processors who, during the aforesaid determined representative period, were engaged within the said production area in the canning or freezing of red tart cherries, and, who canned or froze within the production area more than 50 percent of the volume of such cherries that was so canned or frozen during such representative period.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of cherries grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of this order; and such terms and conditions are as follows:

Sections 930.1 to 930.80, inclusive, of the recommended marketing agreement and order, as published in the FEDERAL REGISTER (F.R. Doc. 70–13489; 35 F.R. 15817), as hereinafter changed, are hereby adopted and incorporated into this order as the terms and conditions thereof as if set forth in full herein:

35 F.R. 15833, paragraph (c) of § 930.51 is revised to read as follows:

(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose.

35 F.R. 15835, § 930.64 is revised to read as follows:

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handler premises and any and all records of such handlers with respect to matters within the purview of this part.

DEFINITIONS

§ 930.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 930.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 930.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 930.4 Production area.

"Production area" means the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, West Virginia, Virginia, and Maryland.

§ 930.5 Cherries.

"Cherries" means all cherries grown in the production area of the Meteor variety, and all cherries of any or all varieties of cherries, grown in the production area, classified botanically as Prunus cerasus.

§ 930.6 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on May 1 of one year and ending of the last day of April of the following year: *Provided,* That the

initial fiscal period shall begin on the effective date of this part.

§ 930.7 Board.

"Board" means the Cherry Administrative Board established pursuant to § 930.20.

§ 930.8 Grower.

"Grower" is synonymous with "producer" and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein.

§ 930.9 Handler.

"Handler" means any person who first handles cherries or causes cherries to be handled.

§ 930.10 Handle.

"Handle" means to pit, can, freeze, dehydrate, press, or brine cherries, or in any other way convert cherries commercially into a processed product: *Provided*, That the term "handle" shall not include the pitting, canning, freezing, dehydration, pressing, or brining or the converting, in any other way, (a) of cherries into a processed product for home use and not for resale; or (b) of cherries, which are diverted pursuant to § 930.56, into a processed product.

§ 930.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 930.30(e):

District 1—The State of New York and Erie County, Pa.

District 2—The States of Maryland, Pennsylvania except Erie County, Virginia, and West Virginia.

District 3—That portion of the State of Michigan which is north of a line drawn along the boundary of Mason and Manistee Counties and extended east to Lake Huron and the State of Wisconsin.

District 4—That portion of the State of Michigan which is south of District 3 and north of a line drawn along the boundary of Allegan and Ottawa Counties and extended east to the St. Clair River.

District 5—The State of Michigan not included in Districts 3 and 4, and the State of Ohio.

ADMINISTRATIVE BODY

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Administrative Board consisting of 12 members, each of whom shall have an alternate having the same qualifications as the member for whom he is an alternate. Six of the members and their alternates shall be growers or officers or employees of growers. Six of the members and their alternates shall be handlers or officers or employees of handlers. There shall be an individual who shall serve as nonvoting chairman of the Board, and an individual who shall serve as his alternate.

(b) District representation on the committee shall be as follows:

District	Grower members	Handler members
1	1	1
2	1	1
3	2	2
4	1	1
5	1	1

§ 930.21 Term of office.

The term of office of each member and alternate member of the Board shall be for 3 fiscal years: *Provided*, That one-third of the initial members and alternates shall serve only until April 30, 1971, and one-third of such members and alternates shall serve only until April 30, 1972 (Determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, and 3 fiscal years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to two 3-year terms. The nonvoting chairman of the Board and his alternate shall serve at the pleasure of the Secretary. The Secretary shall give consideration to any recommendation of the Board with respect to termination of the appointment of the chairman or his alternate.

§ 930.22 Nomination.

(a) Initial members: The Secretary shall hold, or cause to be held, meetings of growers and of handlers to nominate the initial members and alternate members of the Board. Such meetings shall be held as soon as practicable after the effective date of his part, and shall be conducted in the manner provided in paragraph (b) of this section.

(b) Successor members:

(1) Nominations for successor members of the Board, and their respective alternates, shall be made at separate meetings of growers and handlers. Such meetings shall be held at such times (on or before April 1 of each year) and places as the Board shall designate. One nominee shall be elected at nomination meetings for each member and one nominee for each alternate member position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than April 15 of each year. The Board shall prescribe such procedure for the conduct of the nomination meetings as shall be fair to all persons concerned.

(2) Only growers, including duly authorized officers or employees of growers, who are present and who are eligible to serve as grower members of the Board, shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the selection of nominees in more than one district during any fiscal period. If a producer produces cherries in more than one district, he shall select the district in which he will so participate and notify the Board of his choice.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present and who are eligible to serve as handler members of the Board, shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a person is both a grower and a handler of cherries, such person may vote either as a grower or handler, but not as both. However, if a person is a grower and a grower-handler, because he had some cherries custom packed but who does not own or lease and operate a processing facility, such person may vote only as a grower.

(c) The members of the Board appointed by the Secretary pursuant to § 930.23 shall, at the first meeting, and whenever necessary thereafter, by a majority vote of those present, nominate an individual to serve as nonvoting chairman of the Board, and an individual to serve as his alternate.

§ 930.23 Appointment.

From the nominations made pursuant to § 930.22, or from other qualified individuals, the Secertary shall appoint the chairman of the Board and his alternate and the members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20.

§ 930.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.22, the Secretary may, without regard to nominations, select the chairman and his alternate and select the members and alternate members of the Board on the basis of representation provided for in § 930.20.

§ 930.25 Acceptance.

Any person selected by the Secretary as the chairman or his alternate or as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary within 10 days after notified of such appointment.

§ 930.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and appointed in the manner specified in §§ 930.22 and 930.23. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 930.20.

§ 930.27 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and has qualified. In the event that a grower member and his alternate are unable to attend a Board meeting, the grower members present at such meeting may designate any other grower alternate to serve in such absent grower member's place and stead at that meeting. In the event that a handler member and his alternate are unable to attend a Board meeting, the handler members present at such meeting may designate any other handler alternate to serve in such absent handler member's place and stead at that meeting.

§ 930.28 Eligibility for membership on Cherry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

§ 930.29 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.30 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, other than the chairman, as may be necessary, and to define the duties of such officers, and the duties of the chairman and his alternate;

(b) To appoint such employees, agents, and representatives as it may deem necessary and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(i) To submit to the Secretary the same notice of meeting of the Board as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part; and

(l) With the approval of the Secretary, to re-define the districts into which the production area is divided, and to reapportion the representation of any district on the Board: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 930.31 Procedure.

(a) Eight members of the Board, including alternates acting for members, shall constitute a quorum and any action of the Board shall require a majority vote of those present.

(b) The Board may provide for simultaneous meetings of groups of its members at two or more designated places or may use a telephone conference call meeting: *Provided*, That such meetings shall be subject to the establishment of communications so that each member may participate in the discussions and other actions the same as if the Board were assembled in one place.

(c) The Board may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 930.32 Expenses and compensation.

The members of the Board, and alternates when acting as members, and the chairman of the Board, and his alternate when acting as chairman, or when either or any of them are performing other prescribed duties, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates, including the alternate to the nonvoting chairman, at any or all meetings, notwithstanding the expected or actual presence of the chairman or the respective member, and may pay expenses, as aforesaid.

EXPENSES AND ASSESSMENTS

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be paid to the Board by handlers in the manner prescribed in § 930.41.

§ 930.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board, upon demand, assessments on all cherries handled by him during such period as the handler thereof. The payment of assessments for the maintenance and functioning of the Board may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may also borrow money for such purposes. If a handler does not pay his assessment within the time prescribed by the Board, the unpaid assessment may be subject to an interest charge at a rate prescribed by the Board, with the approval of the Secretary.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as reserve: *Provided*, That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve funds may be used (1) to cover any expenses authorized by this part and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Sec-

retary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

REGULATIONS

§ 930.50 Marketing policy.

Each season prior to making any recommendations pursuant to § 930.51, the Board shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relating to:

(a) The estimated total production of cherries;

(b) The expected general quality of such cherry production;

(c) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(d) The expected demand conditions for cherries in different market outlets;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cherries; and

(h) The regulation expected to be recommended during the marketing season.

§ 930.51 Recommendations for volume regulation.

(a) Not later than June 25 of each year the Board, if it deems it advisable to regulate the handling of cherries in the manner provided in § 930.52, shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulations pursuant to paragraph (a) of this section, the Board shall give consideration to current information with respect to the factors affecting the supply of and demand for cherries during the then current fiscal period. With each such recommendation for regulation, the Board shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose.

§ 930.52 Issuance of volume regulations.

(a) The Secretary shall limit, in the manner specified in this section, the quantity of cherries which handlers may acquire and freely handle during the then current fiscal period, whenever he finds from the recommendations and information submitted by the Board, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation shall fix the free and restricted percentages, totaling 100 percent, which shall be applied in accordance with § 930.54 to cherries acquired by handlers during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

§ 930.53 Revision of percentages; release of reserve pool cherries.

(a) *Revision of percentages.* As soon as practicable after completion of the processing of the current crop of cherries, the Board shall determine the total quantity of free percentage cherries handled from the current crop. If the determination reveals that the total quantity of free percentage cherries handled is less than the quantity determined earlier by the Board as the quantity of cherries which should be available for handling, it shall recommend to the Secretary revision of the free and restricted percentages for the current fiscal year to become effective during the period September 15–25 of the fiscal year, or during such other 10-day period as may be recommended by the Board and approved by the Secretary. The additional amount of cherries so recommended referable to the revised free percentage shall be the amount required to make the total available supplies for use in normal commercial outlets equal, but not exceed, the amount, as estimated by the Board, needed to meet the demand in such outlets.

(b) *Release of reserve pool cherries.* (1) If the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand pursuant to paragraph (a) of this section, in such outlets, the Board shall recommend to the Secretary that during the period September 15–25 of the fiscal period or such other 10-day period as may be recommended by the Board and approved by the Secretary, that a portion or all of the reserve pool cherries of prior fiscal years be released to handlers for such use.

(2) On and after March 15 of each year and prior to June 1 of such year, the Board may recommend to the Secretary that a portion or all of the oldest reserve pool or pools be released for use in normal commercial channels to the extent that the total available supply in normal commercial outlets is less than needed to meet the demand in such outlets. Such reserve pool cherries shall be offered for sale to handlers for a period of 10 days: *Provided*, That only one period shall be authorized by the Secretary from March 15 to June 1 of each year.

(3) Whenever the Secretary finds, from the recommendation and information submitted by the Board pursuant to this paragraph, or from other available information, that a portion or all of the cherries in the reserve pools should be released, he shall authorize the Board to release such cherries as provided in § 930.59.

§ 930.54 Reserve pool.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 930.52(a), each handler shall set aside for the reserve pool for such period, at such time and in such manner and form, other than as canned cherries or canned cherry products, as the Board may prescribe, a portion of the cherries he acquires during such period. Except as otherwise permitted pursuant to §§ 930.56 and 930.61, such reserve pool portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided*, That in converting cherries in each lot to the form prescribed by the Board the reserve pool obligations shall be adjusted, in accordance with uniform rules adopted by the Board, to recognize shrinkage and loss resulting from processing.

(b) Reserve pool cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may prescribe. All such cherries shall be inspected by the Processed Standardization and Inspection Branch, U.S.D.A. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(c) Each handler shall hold his reserve pool for the account of the Board until relieved of such responsibility by the Board. Such reserve pool cherries shall be stored in accordance with good commercial practice and shall be separate and apart from any other cherries in possession of the handler. Each handler so holding reserve pool shall deliver to the Board, upon demand, such portion of the reserve pool held by him as the Board may specify.

(d) All matters dealing with reserve pools, including, but not being limited to, the costs to be borne and shared by equity holders and for which handlers are to be compensated and the distribution of proceeds from the disposition of reserve pools shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary, and shall be equitable to equity holders and handlers.

§ 930.55 Off-premise reserve pool.

No handler may transfer a reserve pool obligation but any handler may, upon notification to the Board, arrange to hold reserve pool, of his own production or which he has purchased, on the premises of another handler or in an approved commercial storage in the same manner as though the reserve pool were on his own premises.

§ 930.56 Diversion privilege.

As used in this section and in §§ 930.58 and 930.60, "producer" includes any person who purchased cherries from the grower and is reselling them to a handler. Any producer may voluntarily elect to divert, in accordance with provisions of this section, all or a portion of his cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting producer a diversion certificate which shall entitle such producer to deliver to a handler, and such handler to receive, the specified weight of cherries free from all reserve pool requirements.

(a) *Eligible diversion.* Diversion certificates shall be issued to producers only if the cherries are diverted in accordance with the following terms and conditions to such of the following outlets as the Board with the approval of the Secretary may designate: uses exempt under § 930.61; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(1) Application: The producer electing to so divert cherries shall first make application to the Board for permission to do so. Such application shall describe in detail the manner in which the applicant proposes to divert cherries including, if the diversion is to be by means of leaving the cherries unharvested, a detailed description of the location of the orchard and the ages of the trees therein. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant.

(2) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting producer a diversion certificate stating the weight of cherries which may be delivered to a handler free from all reserve pool requirements; the latter of which shall be in an amount having the same relationship to the weight of cherries diverted as that existing between the free and restricted percentages fixed pursuant to § 930.52 or § 930.53, as applicable. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule as the Board, with the approval of the Secretary, may prescribe.

(b) Any producer who diverts cherries pursuant to the provisions of this section shall be entitled to participate in proceeds from the disposition of reserve pool cherries only if he delivers cherries to handlers in excess of the quantity shown on his diversion certificate and then only to the extent of such excess delivery of cherries. The Board, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this section.

§ 930.57 Equity holders.

A grower's equity in the reserve pool may be transferred to another person upon notification to the Board. So that the Board may determine each producer's, or his successor's in interest, equity in the total reserve pool, each handler who receives cherries shall determine and certify to the Board the weight of cherries received, the name and address of the producer or successor in interest. Each weight and determination shall be made in accordance with uniform rules adopted by the Board and approved by the Secretary.

§ 930.58 Handler compensation.

Each handler shall be compensated for receiving, processing, storing and such other costs relating to the reserve pool as the Board may deem to be appropriate. The Board shall, as near the beginning of the fiscal year as may be practicable, with the approval of the Secretary, establish a schedule of charges for receiving, processing, storing and other costs related to the reserve pool. The payment of such costs shall be by the producers having an interest in the reserve pool, or their successors in interest, and may be deducted from any monies owed by handlers to such persons. A handler may request the Board to remove pool cherries from his premises upon expiration of prepaid storage charges or refund of unearned charges, and the Board shall comply within a reasonable time consistent with the availability of suitable storage. Upon any such removal the handler shall also pay one-half of the cost of such removal and shall forfeit to the extent of the removed volume, his pro rata share in any offer to sell reserve pool and such share shall be allocated to the successor storing handler.

§ 930.59 Disposition of reserve pool.

(a) The Board shall offer reserve pool cherries for purchase by handlers for disposition in accordance with § 930.53 (b). Reserve pool cherries shall be sold to handlers at prices and in a manner intended to maximize returns to equity holders and achieve complete disposition of such cherries.

(b) The Board shall offer each handler his share of each reserve pool to be sold by the Board. Each such share shall be determined by applying to the total quantity of cherries in such reserve pool, the percentage that the cherries in such reserve pool that were handled by such handler is of the total quantity of cherries in the reserve pool handled by all handlers. If any handler declines, or fails to purchase all or any part of his share, the share or remainder shall be offered in accordance with the terms and conditions of the offer to all handlers who have purchased their respective shares.

(c) The Board shall have the power and authority to dispose of, at any time throughout the year as it may deem appropriate, any or all reserve pool cherries for any experimental purposes and for any nonhuman use, including animal feed, or any use other than normal commercial outlets.

§ 930.60 Disposition of proceeds from sale of reserve pool.

The proceeds from the disposition of any reserve pool shall be distributed, after deduction of any expenses incurred by the Board in receiving, handling, holding, and disposing thereof, to the respective producers or their successors in interest, on the basis of the tonnage of their respective contributions to the reserve pool. The distribution of proceeds to producer members of cooperative associations, which are handlers and have reserve pool cherries pursuant to § 930.54, shall be made to the appropriate association.

§ 930.61 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.52 through 930.60 cherries used for experimental purposes or processed into products which used less than 5 percent of the preceding 5-year average production of cherries. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to insure that cherries handled under the provisions of this section are handled only as authorized.

REPORTS AND RECORDS

§ 930.62 Reports.

(a) *Inventory.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing such information as the Board shall specify with respect to any cherries or cherry products which were held on such date as the Board may designate.

(b) *Receipts.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing the name and address of each grower and the total weight of cherries delivered for the season.

(c) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

§ 930.63 Records.

Each handler shall maintain such records of all cherries acquired, handled, or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less

than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct.

§ 930.64 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.65 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board, who shall disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ 930.70 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.56(a).

§ 930.71 Right of the Secretary.

The chairman of the Board and his alternate, and members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the chairman and his alternate and of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the chairman and his alternate and of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.72 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 930.73.

§ 930.73 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cherries which were produced within the production area. Such termination shall become effective on the last day of April subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every fifth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and handlers. If it develops from said referenda that (1) more than 50 percent of the producers by number or volume of production represented in the referendum or (2) more than 50 percent of the handlers, who during the current fiscal period handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum favor termination of this part, the Secretary shall give consideration to terminating the provisions of this part in accordance with paragraph (c) of this section.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.74 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members f the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder, or (b) release or extinguish any violation of this part or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.77 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture to act as his agent or representative in connection with any provisions of this part.

§ 930.78 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.79 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board nor the chairman of the Board and his alternate shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, chairman alternate, employee, or agent, except for act of dishonesty, willful misconduct, or gross negligence.

§ 930.80 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

Issued at Washington, D.C., this 19th day of January 1971, to become effective upon publication in the FEDERAL REGISTER (1–23–71).

RICHARD E. LYNG,
Assistant Secretary.

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Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER A—GENERAL REGULATIONS

[FHA Instruction 424.2]

PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK

Subpart B—Associations—Planning and Performing Development

Subpart B, Part 1804, Title 7, Code of Federal Regulations (32 F.R. 8235) is revised to read as follows:

Subpart B—Associations—Planning and Performing Development

AUTHORITY: The provisions of this Subpart B issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650.

Subpart B—Associations—Planning and Performing Development

§ 1804.21 General.

This subpart is supplemented by Parts 1890b and 1890g of this chapter. This subpart prescribes the policies, methods, and responsibilities with respect to planning and performing development, including construction and land development, for loans and grants made as authorized by Subparts A, B, D, E, F, and H of Part 1823 of this chapter.

§ 1804.22 Design policies.

(a) *Community domestic water systems.* Community central water systems will be designed and installed so as to adequately serve the existing rural community and permit reasonable potential for growth. No plan for a water system shall be approved unless full debt repayment, operation and maintenance costs, and required reserves can be met by the initial existing water users with a reasonable water rate schedule.

(1) Water systems will be designed consistent with the requirements of the State Health Department and other State and local agencies having jurisdiction in such matters and a guide entitled "Guide for Engineers—Rural Community Water Systems," available at all FHA offices. The funds available for the project including the applicant's contribution and loan and grant funds available for the project from all sources will be carefully considered when the project is designed.

(2) If landowners or developers request the water system to be constructed to provide capacities in addition to those necessary to serve existing users plus reasonable allowances for growth and increased water use, they will be required to pay for such additional capacities in cash before approval of the loan. Subdivision developers must provide the distribution system for users in the subdivision and dedicate (donate) the distribution system to the FHA borrower. This is the method commonly followed by most municipalities.

(b) *Community waste disposal systems.* Community disposal systems will be designed and constructed to serve the present population of a rural community and permit reasonable potential for growth. No plan for a central waste disposal system will be approved unless full debt payment, operation, and maintenance costs, and required reserves can be met by the initial existing users with a reasonable rate schedule.

(1) Subject to this repayment ability, central sewer systems will be designed in accordance with a guide entitled "Guide for Engineers—Rural Community Sewerage Systems," available at all FHA offices.

(2) Sewerage collection lines will be designed and constructed with capacities based upon the estimated per capita population to be served by the system, including both existing and future. The average per capita flow of sewage is estimated at 40 gallons per day. The lateral and submain lines will be designed for not less than six times the average daily flow. Main trunk lines will be designed for not less than five times the average daily flow.

(3) Sewage treatment plants can also be designed on the basis of the average daily flow with allowances made for increased flow at certain times of day and during certain periods of the year. Sewage treatment units can be designed on the basis of organic loading with a biochemical oxygen demand (BOD) loading of from 0.17 pounds to 0.25 pounds per person served per 24 hours.

(4) Where waste stabilization lagoons (not oxidation ponds) are used for sewage disposal, the design ordinarily shall be used on 1 acre of liquid surface per 200 people, or for each 50 services.

(c) *Community domestic water and waste disposal systems.* (1) Minimum monthly payments by vacant lot owners will not be included in estimates of project income or determinations of feasibility. Taps for vacant lots will not be considered in computing average system investment per tap. There is no objection to an association's accepting agreements by the subscribers for such "dry taps" or connections to pay monthly minimum bills for certain periods, but they should be considered only as indications of future growth possibilities.

(2) The problem of extending service to undeveloped subdivisions from a system which is otherwise feasible and eligible might be met in some cases if the developer is willing to install and pay for the distribution system to serve the property he is developing. This policy is similar to that adopted by most larger municipalities.

(d) *Other soil and water facilities.* Other soil and water facilities, such as community irrigation systems and drainage facilities, will be designed in such manner so as to adequately serve their purposes. Such facilities will meet any requirements of appropriate State agencies and ordinarily will be designed in accordance with the recommendations of other agencies of the U.S. Department of Agriculture such as the Extension Service, the Soil Conservation Service, and the Agricultural Stabilization and Conservation Service.

(e) *Recreational facilities.* Community recreational facilities will be designed so as to adequately serve the needs of the applicant. They will be limited to those which are modest in size, design, and cost. Design of items such as clubhouses will also be limited to that necessary to the success of the outdoor-oriented recreational facility constructed or operated by the association. Elaborate restaurant and nightclub-type facilities are prohibited.

(f) *Shift-in-land-use projects.* Shift-in-land-use projects, such as association grazing and forestry facilities, will be designed to adequately meet the needs of the applicant and assure success of the facility in a manner necessary to incorporate the optimum range management plans or forestry management plans and shifts in land use. Particular attention will be given to incorporating all feasible soil and water conservation measures; recreational facilities; and game, fish, and wildlife preserves.

(g) *Compliance with State and local laws and regulations.* All facilities will be designed and constructed so as to conform to applicable State and local agency laws, ordinances, and regulations.

(h) *Water storage reservoirs.* Plans and specifications for water storage reservoirs which exceed 20 feet in height measured between upstream toe of the embankment to the crest of the dam will be forwarded to the National Office for review and comment. Plans and specifications for structures which will impound 15 acre-feet of water or more or involve extraordinary features or utilize design concepts which are complex or have not been previously proven may be sent to the National Office for review and comment if desired. Such plans and specifications are to be submitted prior to their review and approval or concurrence by the appropriate State agencies. No plans and specifications are to be submitted to the National Office in accordance with this paragraph without their first having been reviewed and found satisfactory by the State Director.

(i) *Buildings.* The guide entitled "A Guide for the Construction of Farm Buildings," available at all FHA offices, will be used to the extent practical in the design and construction of buildings financed with funds provided by loans covered by this subpart.

§ 1804.23 Technical services.

Each association will be responsible for selecting its architect or engineer and obtaining other technical service in accordance with the requirements of the

subpart under which the loan is being made.

§ 1804.24 Plans, cost estimates, and reports.

Planning development, including preliminary and final plans, specifications, and cost estimates, are the responsibility of the applicant, with such assistance from the County Supervisor as may be necessary to assure that the development is properly planned and completed.

(a) *Submission of complete plans with project report.* In cases such as small recreational projects, grazing facilities, simple water systems, and other projects where no complex plans, estimates, or specifications are required, the final plans may be submitted with the Project Report. The Project Report will be an analysis of the proposed facility or system prepared by the County Office.

(b) *Submission of preliminary plans with project report.* In cases requiring relatively complex plans, estimates, and specifications and in cases where it may not be advisable to incur the expense of finished plans until loan approval conditions are known, a preliminary report will be submitted with the Project Report. Such preliminary reports will contain sufficient information, descriptive narratives, drawings, sketches, photographs, cost estimates, and operating budgets to permit loan reviewing officials to be able to determine project feasibility.

(1) *Community domestic water systems.* The guide provided in § 1804.22 (a) (1) contains a lists of essential materials to be included in a preliminary engineering report. County Supervisors will provide applicants with a copy of this guide for use by their engineers.

(2) *Community waste disposal systems.* The guide provided in § 1804.22 (b) (1) contains a list of essential material to be included in the preliminary engineering report. County Supervisors will provide applicants with a copy of this guide for use by their engineers.

(3) *Other soil and water facilities.* The preliminary engineering report will contain special items such as contour or topographical maps, drainage maps, and other technical material and information necessary to fully describe the project as well as indicate its feasibility. The format will generally follow the format shown in the guide provided in § 1804.22 (a) (1).

(4) *Recreation projects.* The preliminary report will contain sufficient information to permit loan reviewing officials to determine that the objectives of the loan and requirements of applicable subparts of Part 1823 of this chapter will be met. The format will generally follow that shown in the guide provided in § 1804.22(a) (1).

(5) *Shift-in-land-use projects.* Preliminary reports will contain sufficient information to permit loan reviewing officials to determine that the objectives of the loan and requirements of applicable Instructions will be met.

(i) The format will generally follow that shown in the guide provided in § 1804.22(a) (1).

(ii) Preliminary reports will include sufficient "before" and "after" maps, photographs, sketches, or other similar plans to show the present and proposed use of all land involved in the project.

§ 1804.25 Review and evaluation of plans.

Plans for all facilities to be financed with FHA loans or grants will be reviewed by the loan approval official to be sure that such facilities are planned and designed in accordance with the criterion established in this subpart. If the loan approval official desires additional technical information and guidance on which to base his determinations, he may require the FHA State engineer to provide the approval official with a written evaluation of his findings concerning the plans. The engineer will complete Form FHA 424–14, "Design Evaluation—Domestic Water System," for each community domestic water system and Form FHA 424–15, "Design Evaluation—Waste Disposal System," for each waste disposal system. The engineer's design evaluation for other facilities may be in narrative form.

§ 1804.26 Methods of performing development.

All development planned and agreed upon will be performed in accordance with the following unless the National Office has given prior approval to another method:

(a) *Borrower method.* Cases involving relatively insignificant items such as landscaping, minor repairs to existing structures, fencing, and other similar small items may be completed by the borrower method. The borrower method includes cases where the borrower purchases all material and hires labor to complete the particular improvement involved. Development funds should not be used to pay members of the Association for labor; however, in justified cases, the State Director may authorize the use of development funds for special skilled labor performed by the members if the wages are not in excess of the average for similar skills in the area. He may also authorize the use of development funds for employment of members where unincorporated Economic Opportunity (EO) cooperatives are concerned. The fact that the persons employed are members of the association should not be the basis for that employment. A desirable alternative is for the association to contract with a labor supervisor and provide him with a fixed sum for labor to complete the work. This will permit him to hire the necessary labor from such sources as he may desire. It will tend to preclude opportunities for favoritism by members of the governing body, embarrassment for the association, and dissension within the community. Whenever it is necessary to purchase equipment or obtain certain special services to complete portions of the project by the borrower method, a written lump sum agreement or Form FHA 424–6, "Construction Contract," must be used to document the borrower's obligation. It is not intended that this method be used to construct substantial facilities such as clubhouses, swimming pools, bathhouses, or water or waste disposal systems.

(1) *Self-help method.* The self-help method of performing development is simply the borrower method applied to cases where it is imperative to utilize member labor contributions to develop a feasible project. In justifiable cases, with the approval of the State Director, this method of development may be used for water and waste disposal systems. The size of the project in which the self-help method may be used will be regulated by the ability and resources of the members and the availability of adequate supervision to make the method of development successful.

(b) *Negotiated contracts.* Individual items costing not in excess of $30,000 may be completed by negotiated contracts. This would also include cases where the borrower purchases materials and negotiates a contract for labor or installation of the material. Award of such contract will be subject to the determination of the State Director that the prices agreed upon are reasonable and all available contractors or suppliers have been considered.

(c) *Competitive bid contracts.* Except as provided in paragraphs (a) and (b) of this section all development work, including the purchase of material and equipment, will be completed by contracts which have been advertised and awarded to the most acceptable bidder. This does not preclude rejection of all bids and negotiation with the bidders when a satisfactory bid was not received as a result of advertisement. In such cases, negotiations will always be conducted with the lowest responsible bidder and may be conducted with other bidders at the discretion of the borrower, their engineer, and FHA.

§ 1804.27 Limitations on bidders.

No engineer or architect (individual or firm) who has prepared plans and specifications or who will be responsible for supervising the construction will be considered an acceptable bidder; or any firm or corporation in which such architect or engineer is an officer, employee, or holds or controls a substantial interest will be considered an acceptable bidder. Bids will not be awarded to firms or corporations which are owned or controlled wholly or in part by a member of the governing body of the association. Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting, and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so.

(a) Nothing in this subpart is intended to prevent the award of contracts to a supplier or manufacturer for the furnishing and installation of certain items such as swimming pools, prefabricated buildings, and lift station units which have been designed by the manufacturer so as to be brought to the job site in a finished or semifinished state or where the materials will be brought to the job and put together by the use of some

patented process or method. This type of construction does not include "package proposals" for combined engineering and construction of golf fairways or greens and other similar facilities constructed entirely at the job site.

(1) When bids are invited for prefabricated items or items to be constructed by patented process, the invitation and accompanying specifications will set out the various capacities, operational characteristics, and similar basic limiting criteria. They will further specifically state that a bidder may propose any types of facilities which will fulfill the basic conditions and that he will supply detailed information concerning the design and operation of the items he proposes to furnish under the invitation. The Association, in such cases, will agree to review each proposal carefully and will then determine which proposal it wishes to accept. The detailed plans and specifications submitted by the successful bidder for the item will then be incorporated into the contract documents.

§ 1804.28 Construction contracts.

The United States (including the FHA) will not become a party to a construction contract or incur any liability therefor.

(a) *Contract form—negotiated contracts.* Development performed in accordance with § 1804.26(b) may be completed by using:

(1) Form FHA 424–6 or when this form does not readily lend itself to this purpose.

(2) Contract forms customarily used in the area, provided there is adequate protection made for the borrower with respect to compliance with plans and specifications, payments for work, inspections, and acceptance and completion of work.

(b) *Contract forms—negotiated and competitive bids.* Development performed in accordance with § 1804.26 (b) and (c) may be completed in accordance with either lump-sum or unit-price contracts. Such contracts should contain the following:

Item I—Notice and Instructions to Bidders.
Item II—Bidder's Proposal.
Item III—Notice of Award.
Item IV—Bid Schedule.
Item V—Construction Contract.
Item VI—Performance Payment Bond.
Item VII—Plans and Specifications.
Item VIII—"Change Orders" (Form FHA 424–7).
Item IX—"Equal Opportunity Clause" (Form FHA 400–2) (where applicable).
Item X—"Compliance Statement" (Form FHA 400–6) (where applicable).

Model forms of contract documents listed from I to VI above, are available at all FHA offices. County Supervisors may obtain additional copies of these model forms from their State offices for use by private architects or engineers representing applicants. All such contract documents and related items will be approved by the State Director, with the assistance of the Office of the General Counsel (OGC), prior to the release of invitations to bid. Form FHA 440–27, "Labor Standards Provisions," will be used where required for contracts financed by Equal Opportunity loans to cooperatives.

(c) *State Director's approval of contracts.* All contracts will contain a provision that they are not in full force and effect until they have been approved by the State Director in writing.

§ 1804.29 Performance and payment bonds.

(a) Bonds assuring performance and payment of 100 percent of the contract cost including all contracts, whether negotiated or obtained through competitive bidding procedures, will be required in connection with each contract.

(b) The State Director may waive the requirement for bonds on contracts of $30,000 or less if he determines that:

(1) More effective competition can be obtained if performance and payment bonds are not required.

(2) The borrower's interest will be more adequately served and the borrower agrees in writing that the performance and payment bonds are unnecessary.

(3) The Government's interests will be adequately protected.

(c) If construction bids are invited or if negotiations are proposed with the performance and payment bond requirement and no satisfactory bids or proposals are received, the State Director may then waive the bond requirement on contracts of $30,000 or less, if he determines that the following conditions are met:

(1) Negotiations or competitive bidding and any subsequent negotiation procedures in accordance with this subpart have not resulted in an acceptable contractor who can obtain a bond.

(2) All qualified bidders have been given an opportunity to rebid on the basis of a contract without a bond.

(3) The past performance and credit record of the contractor selected indicate that he is reliable and that his work can be expected to be satisfactory.

(4) The borrower agrees in writing that the performance and payment bonds are unnecessary.

(d) The State Director may recommend an exception to the National Office only in exceptional cases when cogent reasons exist for waiving the performance and payment bond if the amount of the contract exceeds $30,000 and negotiations or competitive bidding procedures conducted in accordance with this subpart have not resulted in an acceptable contractor who can provide a bond.

(1) Recommendations for an exception will include the following information:

(i) Detailed explanation of the results of the contract negotiation or competitive bidding proceedings.

(ii) Brief summarization of the attempts to locate reputable contractors who can be bonded and the results of this effort.

(iii) Copy of the proposed contract, including approved plans and specifications, together with recommendations for waiving bond requirement from the governing body and its private consulting engineer or architect.

(iv) Showing how the interests of the association and the Government are to be protected in regard to:

(*a*) Completion of construction within allotted time.

(*b*) Prevention of mechanics' or materialmen's liens.

(*c*) Method of completion by the borrower if the contractor should declare insolvency or bankruptcy.

(2) If the National Office authorizes the waiving of the performance and payment bond requirement, the State Director will require that all qualified bidders be given an opportunity to resubmit bids on the basis of a contract without bonds, or require that bids be readvertised and taken on the basis of a contract without bonds.

(e) In every case where performance and payment bonds are waived, the contract will provide that partial payments will not exceed 60 percent of the value of the work in place or materials satisfactorily stored at the site. Steps also must be taken to guard against the possibility of mechanics' or materialmen's liens by using Form FHA 424–9, "Certificate of Contractor's Release," and Form FHA 424–10, "Release by Claimants." In special cases, the National Office may modify these requirements or provide additional safeguards.

§ 1804.30 Competitive bidding and contract awarding.

Bids will be invited and opened and contractors selected in a manner and on a time schedule so as to permit development to proceed with the least delay and cost to the borrower. In cases where it is desirable or necessary to open bids prior to loan closing, contracts will contain a clause that awards are dependent on successful loan closing and that the Association has a specified number of days (ordinarily 60) in which to accept the contract. A guide entitled "A Guide to Bidding in Policy," is available at all FHA offices and will be made a part of the handbook given each applicant for water and waste disposal loans and grants.

(a) *Invitations to bid.* Whenever it is practical, provisions should be made in the invitation and bid schedule for bids on portions of the work by specialized contractors. For example, an invitation might permit bids on any one or more of such division of a job as "well and pump," "elevated tank," and "distribution system."

(1) Bids will be taken on all suitable alternative materials and methods of construction, and such alternatives will be shown as separate items on the bid schedule. This requirement precludes base bids with provisions for additions or deductions for other materials.

(2) Invitations to bid will be sent to local and regional contractors who might be interested in bidding on projects of the size and scope concerned. Advertisements for bids should ordinarily be published at least 3 weeks prior to the bid opening date in a publication which has at least regionwide circulation or in a recognized construction trade journal

having circulation in the appropriate region. State Directors will include in procedures issued by the State Office specific requirements regarding the distribution and publication of invitations to bid.

(b) *Bid openings.* Bid openings will be attended by the County Supervisor and/or the District Supervisor and, in complex cases, by the FHA engineer.

(c) *Awarding contracts.* Ordinarily contracts will be awarded to the lowest qualified bidder. The FHA representative(s), the engineer for the association, and the governing body of the association will examine and thoroughly analyze the bids. They will mutually agree upon any contract awards to be made before the board takes any official action toward awarding contracts.

§ 1804.31 Contract approval.

The association's attorney will review the executed contract documents including performance and payment bonds and provide the County Supervisor with his certification that they have been properly executed and that the persons executing these documents are properly authorized to do so. The contract documents, including bid bonds and bid tabulation sheets (see the model form entitled "Bid Tabulation" available at any FHA office) along with the County and/or District Supervisor's recommendations and the certification of the association's attorney, will be forwarded to the State Office. The State Director will carefully review all the documents and supporting information and if they are found to be satisfactory, may approve the contract and performance and payment bonds. The State Director's approval of contracts for construction or contracts for purchase of materials will include approval not only of the form of these contract documents but also of their actual award, including all negotiations preceding the award and the executed contracts. To minimize the possibility that this requirement might conceivably be interpreted as making these documents "government contracts," language such as the following should be used in the contract:

"As lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, the Farmers Home Administration hereby concurs in the award of this contract to _____."

§ 1804.32 Preconstruction conference.

Prior to beginning development, the County Supervisor, with such assistance as provided by the State Director, will review the planned development with appropriate members of the applicant's attorney, the contractor(s) and other interested parties. The conference will thoroughly cover the items included in Form FHA 424–16, "Record of Preconstruction Conference," and the discussions and agreements will be documented on that form.

§ 1804.33 Development inspections.

County Supervisors are responsible for monitoring the construction of all projects, wholly or in part, being constructed with FHA financial assistance.

(a) *Projects with architect engineer service.* This paragraph refers to those projects where the association has retained the services of a professional architect or engineer for the design and inspection of the construction work or has made arrangements for such services with Soil Conservation Service, Economic Development Administration, or other Federal or State agency. Full-time resident inspection is encouraged for all water and sewer projects and all other projects with a substantial amount of development or complex development. The desirable arrangement is the procedure whereby the borrower's governing body arranges with the consulting engineer to employ a qualified local inspector who will later be employed as the operator of the system. In all cases where the governing body has entered into an agreement for technical services with an architect or engineer or if such services are being made available by another agency, the County Supervisor is authorized to countersign checks for payments as work progresses in accordance with estimates prepared by the architect/engineer or his representative. Each payment estimate will contain a certification that all material purchased and all work performed is in accordance with the plans and specifications. Each payment estimate must also be approved by the governing body. Form FHA 424–18, "Partial Payment Estimate," may be used for this purpose. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the County Supervisor should notify the State Director immediately and withhold all payments on the contract. To assist the County Supervisor in evaluating project inspection, the architect/engineer should furnish him a daily inspection report. A form entitled "Daily Inspection Report," available at all FHA offices, may be used as a guide for preparing a suitable daily inspection report form. Copies of the exhibit may be supplied to the architect/engineer.

(b) *Projects without architect/engineer service.* On projects where the borrower has not retained a qualified architect/engineer, the County Supervisor, with such assistance and guidance as the State Director may provide, will inspect all construction work to see that the project is being developed as planned. Partial payments may be made when the County Supervisor determines by his inspection that the amount of payment requested is correct and the work has been accomplished in accordance with the plans and specifications and the governing body has approved the partial payment. Periodic inspections by the County Supervisor normally should be scheduled immediately prior to each partial payment to the contractor. The County Supervisor will record inspection findings on Form FHA 424–12, "Inspection Report," and complete Form FHA 424–18. In case any deficiencies in construction are noted or it appears that the facility is not being constructed according to the plans and specifications, corrective action will be taken and payments will not be made until such deficiencies are corrected.

(c) *Final inspection.* A final inspection will be made by representatives of the borrower's governing body, the architect/engineer, the contractor, representatives of local, State, or Federal regulatory agencies, representatives of other agencies providing financial assistance, and the County Supervisor before final payment is made on the contract. Ordinarily, the County Supervisor will be assisted with final inspection of water and waste disposal systems by the FHA engineer or other designated staff members.

(d) *Final payment.* Final payment will not be made until the final inspection has been made and all parties concur in writing that the construction has been completed as planned.

§ 1804.34 Changes in development plans.

Changes in the development plan may be made at the request of the borrower in accordance with the following:

(a) *Authority of the County Supervisor.* The County Supervisor is authorized to approve changes in development provided:

(1) The change will not represent a change in technical design of the facility.

(2) Total project cost is not increased.

(b) *Authority of State Director.* The State Director is authorized to approve all additional changes not authorized by the County Supervisor, provided:

(1) The change is for a purpose for which loan funds can be used and which is consistent with loan approval conditions.

(2) Sufficient funds are deposited in the borrower's supervised bank account to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(3) The change will not adversly affect the soundness of the operation or the Government's security.

(c) *Recording changes.* All changes agreed on, including extra work orders, will be recorded on Form FHA 424–7, and will be prepared to show the total amount due the contractor which will be equal to the base bid plus the sum of approved contract change orders less previous partial payments.

§ 1804.35 Redelegation of approval authority.

State Directors may redelegate construction contract approval authority and change order approval authority in writing to State Office employees other than District Supervisors.

§ 1804.36 State procedures.

Each State Director will, with the assistance of the OGC, supplement this subpart with State regulations, forms, worksheets, guides, and other such guidance as necessary to successfully carry out the program.

Dated: January 15, 1971.

JOSEPH HASPRAY,
Deputy Administrator,
Farmers Home Administration.

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SUBCHAPTER C—LOANS PRIMARILY FOR PRODUCTION PURPOSES

[FHA Instructions 441.1, 441.3]

PART 1831—OPERATING LOANS

Subparts A and B, Part 1831, Title 7, Code of Federal Regulations (32 F.R. 14373) are revised to read as follows:

Subpart A—Operating Loan Policies and Authorities

AUTHORITY: The provisions of this Subpart A issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650.

Subpart A—Operating Loan Policies and Authorizations

§ 1831.1 General.

This subpart is supplemented by Parts 1890, 1890a, 1890b, 1890c, 1890f, 1890k, and 1890*l* of this chapter, and supplemented and modified by Part 1890m of this chapter. This subpart prescribes the policies and authorizations of the Farmers Home Administration (FHA) for making Operating loans to farmers, including ranchers and former farmers obtaining subsequent loans after converting their entire farming operations to recreational enterprises.

§ 1831.2 Objectives.

The basic objectives of the FHA in making Operating loans, supplemented as feasible by credit from other sources, are to assist eligible farmers and ranchers to make efficient use of their land, labor, and other resources, carry on sound and successful operations on the farm, and afford the family an opportunity to have a reasonable level of living. The operations include establishment or enlargement of recreational and other nonfarm enterprises on the farm to supplement the farm income. These objectives will be accomplished through the extension of Operating loans, supplemented by credit from other sources, and by supervisory assistance.

§ 1831.3 Supervisory assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the FHA in accordance with Part 1802 of this chapter. Such assistance consists of farm, home, and nonfarm or recreation planning, record keeping, analyzing the farm and any recreational or other nonfarm enterprises, and giving management advice.

§ 1831.4 Definition of a family farm.

The term "farm" includes a tract or tracts of land and improvements considered to be farm property, operated by the applicant and used or to be used in the production of crops or livestock, including the production of fish under controlled conditions. The term "farm" also includes any such land and improvements and facilities used in a recreational or other nonfarm enterprise.

(a) *Family farm.* A family farm is defined as: one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence; one that will provide substantial income by itself and which, together with any other dependable income, will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts; and one for which the operator and his immediate family provide the management and major portion of the labor including any recreation or nonfarm enterprise, except during seasonal peakload periods.

(b) *Recreational enterprises.* Loans may be made to operate, improve, establish, or enlarge recreational enterprises or to convert a part or all of the farming operation to such enterprises providing it is not feasible to make a Recreation loan (RL) for this purpose under the provisions of Subpart C of Part 1821 of this chapter. Subsequent loans for recreation purposes also may be made to borrowers who previously have converted their entire farming operation to a recreational enterprise(s).

(c) *Nonfarm enterprises other than recreational enterprises.* Loans may be made to farmers who will also continue farming operations to operate, improve, establish, or enlarge a nonfarm enterprise(s) needed to supplement farm income. Such enterprises must be located or headquartered on the farm. Nonfarm enterprises involving services such as delivery, custom, construction, or repair services must be headquartered on the farm. Loans will be made only for enterprises which produce goods or services for which there is a need that is not being adequately supplied by others in the community and for which there is a reasonably reliable market.

§ 1831.5 Eligibility requirements.

To be eligible for an Operating loan each applicant must:

(a) Be a citizen of the United States.

(b) Possess legal capacity to incur the obligations of the loan. State Offices will issue regulations with the advice of the Office of the General Counsel (OGC) with respect to this requirement.

(c) Be an individual who has a farm background and either training or farm experience and any other training or experience sufficient to assure reasonable prospects of success in the proposed operation. In addition, the applicant must be engaged in farming to qualify for a loan to convert his entire farming operation into a recreational enterprise.

(1) An applicant who is already earning sufficient income to have a reasonable standard of living is not eligible for a loan, even though he meets other eligibility requirements, unless the County Supervisor and the County Committee are reasonably certain that after the applicant's planned enterprise (including recreational or other nonfarm enterprise) is fully developed, he will not engage in other employment to supplement his income, except to the extent necessary to enable his family to have a reasonable standard of living.

(d) Possess the character, ability, and industry necessary to carry out the proposed operation and honestly endeavor to carry out the undertakings and obligations required of him in connection with the loan.

(e) Be unable to obtain sufficient operating credit elsewhere to finance his actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which he resides for loans for similar purposes and periods of time. The applicant's equity in real estate, chattels, and other assets should be considered in determining his ability to obtain credit from private and cooperative sources.

(f) After the loan is made, be operating not larger than the equivalent of a family farm as an owner or tenant.

(g) Be able to meet his major needs for operating credit within the indebtedness limitation for operating loans during the period that such loans likely will be needed, except in cases in which additional financing on a contractual or equally definite basis is available.

§ 1831.6 Veterans' preference.

Veterans, as defined in Part 1801 of this chapter, will be given preference. When it appears that available funds will be inadequate to meet the needs of all applicants, the applications on hand from veterans will be processed first.

§ 1831.7 Certification by County Committee.

Before an Operating loan is approved, the County Committee will certify on Form FHA 440-2, "County Committee Certification or Recommendation," that the applicant is eligible for a loan in accordance with the provisions of § 1831.5. In addition, the County Committee will establish the maximum amount of credit which may be extended, under the certification, to meet the actual needs of the applicant during his crop or operating year. The crop or operating year for each applicant will cover the 12-month period which will most accurately reflect the annual cycle of the borrower's major enterprise(s). This cycle ordinarily will not be the same for all borrowers in a County Office area. When an initial farm and home plan is developed toward the end of a crop or operating year and the year's business has been largely completed, the plan will be for the following crop or operating year. When the plan is developed sufficiently early in a crop or operating year, or the loan is to be

repaid in full from the year's operations, the plan will be for the current crop or operating year. The maximum amount of credit established by the County Committee will not necessarily represent the amount which actually will be loaned. For this reason, and to avoid possible misunderstandings, the applicant will not be notified of the maximum credit as established by the County Committee.

§ 1831.8 Supplementing FHA Operating loans with other credit.

(a) *Policy.* (1) Credit from other reliable agricultural credit sources will be obtained to the maximum extent possible to supplement FHA Operating loans. This is necessary in order to serve as many eligible Operating loan applicants and borrowers as possible with the loan funds available.

(2) Funds ordinarily will not be included in either initial or subsequent Operating loans for purposes for which credit can be obtained from other agricultural credit sources on terms which are generally available to other farmers in the community.

(3) Each new applicant or present borrower who applies for an Operating loan will be required to meet as much of his needs as possible from other agricultural credit sources by open account, note only, liens, feeder agreements, or other contractual basis or by use of Form FHA 441–3, "Participation Agreement."

(4) When credit for annual operating and family living expenses is not available from other agricultural credit sources on any other satisfactory basis, FHA may:

(i) Take a lien on chattels and crops subject to the lien of another creditor, as authorized in § 1831.12.

(ii) Subordinate its liens on chattels and crops as authorized in § 1871.11.

(5) Form FHA 441–3 may be used to participate with banks, production credit associations, and other recognized agricultural lending agencies when such agreements are desired by these lenders. Because of such factors as lending limitations, lack of loanable funds, or conditions in the money market, such lenders may not wish to provide all of the credit some of their farmer applicants and borrowers need during certain periods. In such cases, if the applicant or borrower is otherwise eligible for an FHA Operating loan, the FHA may participate with the other lenders by providing an appropriate part of the credit the applicant needs under the provisions of this subpart, and Subpart B of this part, as modified and supplemented by the following:

(i) The FHA and other lender will execute Form FHA 441–3.

(ii) The other lender will close the loans to the applicant. An understanding will be reached between the FHA and the other lender concerning the supervisory and servicing actions to be carried out by each. This understanding will be shown on Form FHA 441–3.

(iii) The applicant will be carrying on a sound operation after the loan is made and agrees to cooperate fully with both the FHA and the other lender.

(iv) The loan to be made by the FHA must not result in the applicant's FHA indebtedness for operating loans exceeding 80 percent of his combined total FHA Operating loan and the operating-type indebtedness owed to the other lender.

(b) *Relationships with other lenders and suppliers.* (1) County Supervisors will keep appropriate agricultural lenders and suppliers currently informed concerning FHA policies with respect to: loan making; cooperation with other lenders; and, subordinations, supervision, and servicing, including the distribution of income available for debt payments, and graduation of borrowers. However, FHA employees may not guarantee, personally or on behalf of FHA, repayment of advances from other credit sources.

(2) Other agricultural lenders and suppliers will be requested and encouraged to furnish as much of each applicant's or borrower's essential needs as possible with the balance being supplied with Operating loan funds.

(3) The County Supervisor will require applicants and borrowers, as appropriate, to contact other lenders and suppliers and obtain as much of their needs as possible from those sources. Such applicants and borrowers should request other lenders and suppliers to indicate the amounts and terms of operating-type credit which will be made available to them. The amount and purpose of such credit will be documented and clearly identified in Form FHA 431–2, "Farm and Home Plan," or Form FHA 431–4, "Business Analysis—Nonagricultural Enterprise."

(4) When operating credit is to be obtained from other sources, the County Supervisor should have reasonable assurance that the credit from other sources will be available when needed and that significant additional amounts will not be extended by such creditors except with the concurrence of FHA.

(c) *Documentation when applicants and borrowers are unable to obtain credit for operating expenses from other agricultural lenders or suppliers.* When FHA Operating loans are to be made which include funds for annual operating and family living expenses, the County Supervisor will document in the running record the efforts which were made to obtain such credit from other sources including the names of the lenders or suppliers contacted and the reasons it could not be obtained. When appropriate, the County Supervisor will check on evidence presented by the applicant or borrower that he cannot obtain credit elsewhere.

§ 1831.9 Loan purposes.

Subject to the loan limitations and special requirements set forth in § 1831.10, Operating loans may be made for:

(a) Purchase of livestock, poultry, fur bearing and other farm animals, fish, bees, farm equipment, and paying costs incident to reorganizing the farming system for more profitable operation and for other farm needs, including equipment to be utilized in the development of forest lands, and the production and harvesting of forestry products.

(b) Purchase of animals, birds, fish, tools, equipment, facilities, furnishings, inventories, and supplies, and paying costs incident to reorganizing, establishing or enlarging a nonfarm or recreational enterprise.

(c) Purchase of an undivided interest in the items included in paragraphs (a) and (b) of this section which would be operated under a joint arrangement or as a group service.

(d) Purchase of feed, seed, fertilizer, insecticides, farm and other supplies, including inventory; the repair or rental of equipment; and payment of essential operating expenses for the farm, forestry, recreation or other nonfarm enterprise; or paying bills incurred for any items in this subparagraph for the crop or operating year being financed.

(e) Payment of customary and equitable cash rent or cash charges for the use of essential buildings, pasture, crop, hay or other land, and grazing permits or bills for such purposes for the operating or crop year being financed, subject to the following:

(1) The applicant is obligated under a written lease or other formal agreement to pay such rent or charges in advance of the time income will be available from the operations to make such payment. For grazing fees an invoice showing the number of livestock to be grazed, the grazing period, the cost per head and the total cost may be used in lieu of a written lease. However, when relatively small amounts are involved an invoice will not be required if the applicant's explanation of a satisfactory grazing agreement is recorded in the loan docket.

(2) Arrangements cannot be made for the rent or charges to fall due when income will be available from the operations to make such payment.

(3) Not more than 1 year's cash rent or cash charges will be paid with loan funds in any one lease year, except that if a loan is approved near the end of the current lease year funds for payment of such rent or charges for the succeeding lease year may be included in the loan.

(4) The terms of the rental agreement provide the applicant with reasonably satisfactory tenure.

(f) Payment of:

(1) Personal and real property taxes due or about to become due subject to the limitations in § 1831.10(b)(5), and water or drainage charges or assessments. In addition, any amount advanced in excess of the equivalent of 1 year's taxes or water or drainage charges or assessments, without regard to whether such items are a lien on the property, will be treated as refinancing debts in accordance with paragraph (m) of this section.

(2) Social Security taxes in connection with hired labor.

(3) Premiums for insurance on real estate and personal property, including premiums on homeowners policies. However, Operating loans may be made to

pay premiums on insurance covering real estate of a borrower indebted for both FHA real estate and Operating loans, or of an FHA real estate loan borrower who is obtaining an Operating loan for other purposes only if the Operating loan is adequately secured.

(4) Premiums for public liability and property damage insurance on farm and other equipment, including farm trucks, and on recreational and other nonfarm enterprises.

(g) Payment of not more than a year's interest calculated at a rate not to exceed that which is reasonable and customary for the area, that is due on, or about to become due on debts secured by liens of other creditors on property essential for the farm, recreational or other nonfarm enterprises.

(h) Payment of depreciation in any one year not to exceed 20 percent of the market value of the essential farm, recreational or nonfarm enterprise equipment under prior lien to another creditor, or 20 percent of the amount owed to such creditors, whichever is less.

(i) Acquisition of memberships in farm purchasing and marketing and farm service-type cooperative associations, or to purchase stock in such associations to help provide capital for improvement of services to farmer members. Purchase membership or stock in recreational or other nonfarm purchasing, marketing, service or promotional-type cooperative association organized to produce additional income for its members exclusive of membership in associations which will acquire, lease, or improve land not otherwise under the control of the members.

(j) Meeting family subsistence needs, including premiums on reasonable amounts of health and life insurance, and expenses for medical care or paying bills incurred for any items in this paragraph for the crop or operating year being financed. Applicants must understand, however, that within the limits of their resources they should plan and carry on adequate food production and conservation programs.

(k) Purchase of essential home equipment and furnishings, and the payment for home equipment repairs required by the applicant family to sustain itself in a reasonably satisfactory manner.

(l) Expenses incident to loan closing.

(m) Refinancing secured and unsecured debts, other than the payment of bills referred to in paragraph (d), (e), and (j) of this section, subject to the following:

(1) The amount advanced for such purposes does not exceed the applicant's equity in: animals, birds, bees, fish, and so forth; farm and recreation equipment; and nonfarm enterprise equipment and inventory which are to be taken as security for the loan.

(i) When it is necessary to refinance a debt that was incurred for the production of feed on hand, or that is secured by a lien on such feed, the applicant's equity in the feed also may be used, if necessary, to justify the refinancing of this particular debt. The funds advanced for this purpose will be scheduled for repayment in the same manner as funds advanced for the purchase of feed.

(2) The provisions of § 1831.10 (a) and (b).

(3) The provisions of § 1831.32(e).

(n) Purchase of milk base either with or without cows where such action is necessary to assure the borrower a satisfactory market for his dairy products, as provided in regulations issued by the State Office or on prior approval of the State Director.

(o) Purchase of grazing license or permit rights of private parties which can be validly sold and transferred or waived separate from any land lease or other interest in land either with or without eligible livestock, provided loans for this purpose are approved by the State Director or are authorized by regulations issued by the State Office.

(p) The following real estate improvements are subject to the limitations in § 1831.10:

(1) Purchase, construction, alteration, repair, or relocation of service buildings or facilities essential to the operation, including minor repairs or alterations to dwellings.

(2) Purchase, repair, or relocate essential equipment which is or will become a part of the real estate and cannot: be made subject to a security interest as a fixture in Uniform Commercial Code (UCC) States; or be severed and made subject to a valid chattel mortgage in Louisiana, or to security interest in any UCC State.

(3) Provide land and water development, use, and conservation essential to the operation of the farm and any recreational or other nonfarm enterprise facilities such as fencing, land clearing, establishment and improvement of permanent hay or pasture drainage and irrigation facilities, basic application of lime and fertilizer, fish ponds, dams, nature trails, repair shops, sales buildings, golf driving ranges, lakes, hiking trails and campsites, and the development or acquisition of water supplies or rights. Also, loan funds may be used to pay that part of the cost of facilities, improvements, and practices which is to be earned by participation in the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced likely will exceed $500, the applicant will assign the payment to the FHA.

(q) The purchase of a franchise, contract, or a privilege when such action is necessary to the operation of the planned enterprise.

§ 1831.10 Special requirements and loan limitations.

(a) *Refinancing of debts.* (1) When an applicant's request includes the use of loan funds for the refinancing of debts, it must be determined before a loan is made that his present creditors will not give him rates and terms on the existing debts that he reasonably could be expected to meet. Before refinancing any debt, the County Supervisor will:

(i) Discuss with the applicant the possibility of obtaining the needed credit from the applicant's present creditors or other sources. He will request the applicant to contact his present creditors to explain his credit needs and to determine if the creditor will renew, extend, change, or reduce the present debts, as appropriate. He also will advise the applicant of other credit sources available in the area which might assist him with his credit needs and request that he contact such credit sources. If the applicant is unsuccessful in his efforts to obtain credit or to get a revision of the rates and terms of his indebtedness, the County Supervisor will obtain from the applicant the reasons given by the present creditors and other sources for not assisting the applicant, and document such information in the running record.

(ii) If the County Supervisor is notified by the applicant that his negotiations with the present creditor(s) or other sources were unsuccessful he will determine on the basis of the applicant's financial statement, planned income and expenses, estimated amount available for debt payment, and the additional facts presented by the applicant, whether it appears necessary to refinance the debt(s) or to obtain a change in the rates and terms. When it is determined that refinancing may be necessary, he will contact in person when practicable, each secured creditor and each unsecured creditor to whom substantial debts are owed for the purpose of verifying the necessity for refinancing. If the loan is to be processed, a statement of each secured account to be refinanced showing the final due date, interest rate, annual installment, amount delinquent, unpaid principal, and accrued interest will be obtained.

(b) *Purposes for which loans may not be made.* While it is impracticable to list all of the purposes for which loans may be made, the following are those commonly requested by applicants which are not authorized.

(1) Purchase of passenger automobiles or the refinancing of debts for such purchases. However, this will not prohibit the refinancing of such a debt secured by a lien on items described in § 1831.9 (a) and (b) only, or on such property and on the automobile to the extent of the equity in the property other than the automobile which serves as security for the debt.

(2) Payment of Federal or State income taxes, or Social Security taxes payable by borrowers in their own behalf.

(3) Purchase of real estate, or the making of payments on, or the refinancing of any indebtedness secured by a lien on real estate other than the payment of taxes and interest as authorized in this subpart. However, this will not prohibit the refinancing of a debt secured by a lien on items described in § 1831.9 (a) and (b), as well as on real estate to the extent of the equity in the nonreal property serving as security for the debt. In addition, loans may not be

made for carrying on any land purchasing or land leasing program.

(4) Replacing items described in § 1831.9 (a) and (b) or crops sold, or refinancing chattel debts incurred primarily for the purpose of obtaining funds for any of the real estate purposes referred to in subparagraph (3) of this paragraph, if such action was taken by the applicant with the intent of replacing the chattel property or refinancing the debts with operating loan funds.

(5) Payment of taxes in connection with real estate securing FHA loans other than Operating loans.

(6) Payment of debts owed by the applicant to the FHA or to make principal or interest payments on such debts.

(7) To: Purchase memberships or stock in production cooperatives; purchase memberships or stock for the purpose of establishing control by the FHA in any type of cooperative; or furnish a majority of the associations' capital requirements.

(c) *Limitations on loans for real estate improvements.* (1) Not more than $2,500 may be loaned to a borrower in any one fiscal year for real estate improvements or for refinancing unsecured debts clearly incurred for such purposes. Before an Operating loan is made for real estate improvements, a careful analysis must be made of the applicant's resources and proposed operations and all of the following determinations must be made:

(i) Operating loans will not be needed or made year after year to make substantial real estate improvements.

(ii) Such real estate improvements cannot be provided practicably through a real estate loan.

(iii) The sum of the Operating loan being made for real estate improvements and the unpaid indebtedness against the farm and other security which secures the FHA real estate loan will not exceed the total indebtedness or the normal value limitations prescribed for real estate loans. The borrower's equity in the livestock and farm and other equipment to be taken as security for the Operating loan may be added to the normal value of the farm where this is necessary to comply with the normal value limitations prescribed in Subpart A of Part 1821 of this chapter.

(iv) The applicant will likely continue to operate the farm for a sufficient period of time and under such terms that will enable him to obtain reasonable returns on his investment.

(2) Operating loans may be made to tenants to finance modest real estate improvements or repairs, provided the County Supervisor determines that the applicant has reasonably secure tenure for a sufficient period to enable him to realize adequate benefits to justify the expenditure, or a written lease is obtained providing for compensating the tenant for any unexhausted value of the improvement upon termination of the lease.

(d) *Limitations on amount of loan.* The amount of each loan will be limited to the needs of the applicant and his ability to pay. In addition, consideration will be given to the value of the chattel property, including crops, which will be available as security. In no case may a loan be made which would result in the total principal balance outstanding to exceed $35,000 for Operating loans (including Production and Subsistence).

(e) *Debt settlement cases.* A loan will not be made to an applicant whose debts have been settled pursuant to Part 1864 of this chapter, or who has been released from personal liability under Subpart A of Part 1872 of this chapter as reflected by the County Office records, or where settlement or release under such regulations is contemplated, unless the applicant's failure to pay his loan indebtedness was the result of circumstances beyond his control; the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed; and the borrower's operations will afford him a reasonable prospect of repaying the loan and meeting his other obligations. Prior to approval of the loan, the loan docket and any available case folders, including the County Supervisor's justification for making the loan, will be submitted to the State Office for a determination as to whether the loan should be made.

(f) *Loans to individuals jointly engaged in farming, recreational, and other nonfarm enterprises.* (1) A joint loan may be made to two eligible applicants living together or living separately and operating jointly not larger than the equivalent of one adequate family farming operation. When joint loans are made, both individuals will execute the application, payment authorization, notes, security agreements, and other documents required in connection with the making and closing of the loan.

(2) Separate loans may be made to eligible applicants who are jointly engaged in a farming or other operation, provided not more than three individuals are interested in the operation, and the operation provides the equivalent of not larger than one adequate family farming operation for each individual.

(g) *Relationship with Emergency loans.* Operating loans will not be made to applicants whose credit needs can be met adequately with Emergency loans as prescribed in Subpart A of Part 1832 of this chapter.

§ 1831.11 Rates and terms.

Interest will be charged at the rate of 6⅝ percent per annum on all Operating loans. Interest will accrue from the date of the loan check on outstanding principal only and will not be compounded. Loans will be scheduled for payment as follows:

(a) Payments of principal on Operating loans will be scheduled on the note in accordance with the borrower's reasonable ability to pay, determined by an analysis of his operations as reflected in his Form FHA 431–2, or Form FHA 431–4. Principal payments on such loans will be scheduled at least annually, unless it is determined that income sufficient to meet the initial payment will not be received within 12 months from the date of the loan check, in which case the initial payment may be scheduled on a date coinciding with the date the income is to be received, but not beyond the end of the second full operating or crop year following the date of the loan. At least one payment will be scheduled during each 12-month period thereafter. In no event will any payment be scheduled later than 7 years from the date of the loan check.

(1) Advances for annual recurring operating expenses or for paying bills incurred for such purposes for the operating or crop year being financed will be scheduled for payment when the principal income from the year's operations normally would be received. This includes advances for the payment of interest, taxes, and depreciation.

(2) Advances to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, except for feed of a type which the County Supervisor determines will be produced in future years, will be scheduled for payment when the principal income from the sale of such livestock or livestock products can be expected.

(3) Advances for purposes other than those enumerated in subparagraphs (1) and (2) of this paragraph, will be scheduled for payment over the minimum period consistent with the applicant's ability to pay, as determined from an analysis of the operations. This will include, among other things, the purchase of significant amounts of feed or seed which will be produced in future years and major repairs to equipment. In no instance may the payment schedule extend beyond the useful life of the security offered for the advance.

(4) When conditions warrant such action, principal payments scheduled in accordance with subparagraph (3) of this paragraph may vary in amount. For example, when a livestock enterprise is being expanded as the feed and pasture program is developed, a graduated payment schedule could be used if necessary. In connection with subsequent loans for such purposes, it is necessary to consider payment schedules established previously for outstanding loans in order to assure a realistic overall payment schedule within the prescribed limits. However, the last installment will not be larger than the amount which can then be refinanced with another lender or be repaid within a renewal period of not to exceed 5 years.

(b) *Supplementary payment agreement.* Form FHA 440–9, "Supplementary Payment Agreement," should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from a recreation or other nonfarm enterprise or from farming. It also should be used for other applicants when needed to facilitate servicing of the account.

§ 1831.12 **Security policies.**

The words "security instrument(s)" as used in this subpart includes financing statements and security agreements, chattel mortgages, and similar lien instruments.

(a) Except as provided in subparagraph (3) of this paragraph and paragraphs (b), (c), (d), and (f) of this section, each loan will be secured as follows:

(1) *Crops, title to which is held by the borrower.* By a first lien on the applicant's crops, or his share of the crops if he is a share tenant, which are growing or to be grown by him, subject only to:

(i) The landlord's lien on the crops for reasonable cash or privilege rent for the current year.

(ii) The real estate mortgagee's lien or real estate purchase contract holder's lien on the crops for the current year's installment on the real estate debt, provided such installment is reasonable when related to the normal rental charges for similar farms in the area.

(iii) The lien or contract of another creditor on crop(s) for necessary advances for planned annual farm operating and family living expenses for the crop year, provided the other creditor agrees in writing to the FHA that his advance(s) will be limited to a specific amount which has been determined necessary by the borrower, FHA, and the other lender.

(2) *Crops grown under contract when title to the crop is held by the contractor.* When a crop is being produced, harvested, processed, or marketed by the applicant under an equitable written contract with a responsible contractor and title to the crop is retained by such contractor, loans may be made in connection with such crops, provided (i) the contractor limits his advances to production, harvesting, processing, or marketing costs in connection with the contract crop or to purposes related thereto, and (ii) an assignment of all or a part of an applicant's share of the income from the crop is given to the FHA and is accepted in writing by the contractor holding title to the crops. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such crop. However, when no payment is expected to be made on the loan from the crops, an assignment will not be required. The form for use in obtaining such assignments will be approved by the OGC. In UCC States the assignment will constitute a security agreement on such crop income, and the contract will be described specifically, or as "Contract Rights" or "Contract Rights in Crops," and so forth, in paragraph 1(b) of the financing statement.

(3) *Feed crops only.* Subject to the limitations of subparagraph (6) of this paragraph, a lien on crops need not be taken when the crops to be produced by the borrower are for feed purposes only and the loan approval official determines that the loan is otherwise reasonably well secured and that liquidation action, either voluntary or involuntary, is not likely to occur during the crop year for which the loan is made.

(4) *Items of personal property described in § 1831.9 (a) and (b), purchased or refinanced.* By a lien on all such items subject only to the lien of another creditor for amount(s) advanced or to be advanced by such creditor to meet planned annual operating and family living expenses for the operation or crop year, provided the other creditor agrees in writing to the FHA that his advance(s) will be limited to a specific amount which has been determined necessary by the borrower, FHA, and the other lender. However, liens will not be taken on such equipment, facilities, or buildings which cannot be made subject to a valid chattel lien or a valid security interest, or on livestock or poultry kept primarily for subsistence purposes, or on household goods and equipment or on small tools and equipment.

(i) Undivided interests. An applicant obtaining a loan for the purchase of an undivided interest in the property referred to above or the refinancing of debts on an undivided interest in such items will secure his loan by a lien on his undivided interest in the item purchased or refinanced along with any other security required by this section. Joint security instruments will not be taken except as provided in § 1831.10(f). Each party having an undivided interest in such property will execute Form FHA 441–12, "Agreement for Disposition of Jointly-Owned Property," providing for the disposition of his interest in the property. However, Form FHA 441–12 will not be required when a tenant and landlord own property jointly and the lease provides for satisfactory division of such property or the proceeds from its sale, or a joint security instrument is taken to secure loans to two individuals jointly engaged in the operation.

(5) *Other items of personal property owned by the applicant described in § 1831.9 (a) and (b), not purchased or refinanced.* By the best lien obtainable on as much of such property of significant security value as is necessary to protect the interest of FHA. This will include any undivided interest in such property owned by the applicant jointly with others who have an interest in the operation. A lien will not be taken under this subparagraph on the types of items excluded under subparagraph (4) of this paragraph.

(6) *Liens and assignments to protect FHA's interest in feed purchased or produced with loan funds.* Loans made to purchase or produce feed for livestock being fed for market or to be fed to productive livestock (excluding livestock and poultry kept primarily for subsistence purposes) will ordinarily be secured by first liens on such livestock. However, when a first lien cannot be obtained, the loan will be secured by liens or assignments as provided below:

(i) When the livestock will be owned by the applicant and a first lien cannot be obtained, a junior lien will be taken, *Provided:* It is determined that the applicant has, or will acquire during the feeding period, an equity in the livestock being fed or will receive income from livestock or livestock products, either of which must be commensurate with the investment made for this purpose; and prior lienholders sign Form FHA 441–13, "Division of Income and Nondisturbance Agreement," or similar form approved by the OGC, agreeing to a suitable nondisturbance period and to a division of the income to be received from the livestock and livestock products, which will permit the applicant to pay his loan in accordance with the policies expressed herein. However, when no payment is expected to be made on the loan from the livestock or livestock products, Form FHA 441–13 will not be required.

(ii) When the livestock enterprise is to be managed by the applicant under a livestock share lease, share agreement, or contract, and the income to be received therefrom will be from the livestock fed, or from livestock products, an assignment of all or a part of such income will be taken, provided the owner or purchaser of the livestock or livestock products accepts in writing the assignment. The assignment will be in an amount at least equal to the amount planned to be paid on the applicant's FHA indebtedness from such income. The form for use in obtaining such assignments will be approved by the OGC. However, when no payment is expected to be made on the loan from the livestock or livestock products, an assignment will not be required. In UCC States, if an assignment on the livestock income is taken, such assignment will constitute a security agreement on such income and the share lease, share agreement, or contract will be described specifically, or as "Contract Rights" or as "Contract Rights in Livestock," and so forth, in paragraph 1(b) of the financing statement.

(7) *Assignments of crop insurance.* Assignments of all or a part of crop insurance proceeds will be taken when the loan approval official determines such action is necessary to protect the interests of the FHA.

(i) In order to obtain a claim on Federal crop insurance proceeds, it will be necessary to obtain an assignment on such proceeds. The assignment will be prepared on Form FCI–20, "Collateral Assignment," furnished by the local representative of the Federal Crop Insurance program. The assignment must be approved by the Federal Crop Insurance Corporation.

(ii) An assignment of other crop insurance is not required in cases where a crop insurance policy contains a standard mortgage clause naming the FHA as mortgagee or secured party.

(8) *Assignment of or consent to payment of proceeds from sale of products or other income.* (i) Assignments of and "consents" to payment of proceeds from the sale of products or other income will be used when payments are planned from such sources and such instruments are necessary to protect the interest of FHA and it is possible to obtain the acceptance of the purchaser or other payor.

(a) Form FHA 441–18, "Consent To Payment of Proceeds From Sale of Farm Products," will be used for products or income except dairy products in which FHA has a security interest under the UCC.

(b) Form FHA 441–8, "Assignment of Proceeds From the Sale of Agricultural Products," will be used for products or income in which FHA does not have a security interest under the UCC. Other forms approved by the OGC may be used when Form FHA 441–8 is not adequate.

(c) Assignment of incentive and agricultural program payments will be taken on forms provided by Agricultural Stabilization and Conservation Service (ASCS) except that Form FHA 462–8, "Wheat and Feed Grain Programs—Assignments," will be used to obtain assignments of Wheat Certificate and Feed Grain Program payments.

(d) Form FHA 441–25, "Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FHA has a security interest under the UCC.

(9) *Real estate.* Real estate security will not be taken in connection with making initial Operating loans, except that in most UCC States a security interest may be taken on fixtures even though they are considered to be real estate in the particular State. Furthermore, such real estate security will not be taken in connection with making subsequent Operating loans except in individual cases in which it appears that it may be necessary to rely on such security for payment of the loan. When such security is taken the provisions of § 1872.19 will apply. Generally, an item is to be considered a fixture if it is attached to a building or other structure or to land in such a way that it cannot be removed without defacing or damaging the land, or defacing or dismantling the structure, or damaging substantially the item itself.

(10) *Consent and subordination agreements and severance agreements.* (i) In those UCC States in which the regulations issued by the State Office do not require the use of a Severance Agreement, Form FHA 440–26, "Consent and Subordination Agreement," will be used as necessary to meet the security requirements contained in subparagraph (4) of this paragraph. (ii) In Louisiana, and in those UCC States in which the regulations issued by the State Office so provide, Form FHA 440–6, "Severance Agreement," will be obtained when Operating loan funds are used to purchase or refinance debts on property which is or may become a fixture, and it is necessary to sever such property from real estate to meet the security requirements contained in Subparagraph (4) of this paragraph.

(b) Loans for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(1) An assignment, pledge, or other security interest in stock or other evidence of membership will be obtained, provided it would have security value. Such security interest also may be taken on significant amounts of dividends to be received from stock, memberships, or patronage, or on undivided profits and other retains. The security interest will be in the form of an assignment, pledge, or other instrument and will be taken on forms and in the manner approved by the OGC.

(2) In individual cases, loan approval officials may require a lien on crops or chattels as security for a loan made for the acquisition of a membership or stock if they determine that such action is necessary to protect the interest of FHA due to such reasons as the amount of the advance or the borrower's financial situation.

(c) Loans made under participation agreements between the FHA and other lenders under Form FHA 441–3, as prescribed in § 1831.8, will be secured by liens taken by the other lenders. Such liens will be taken on livestock or farm or other equipment or crops and may also include any other property which the other lender determines is desirable. In such cases the loan approval official must determine that the security to be obtained by the other lender in accordance with the provisions of the participation agreement will be adequate to protect the interests of FHA under that agreement.

(d) Loans of not more than $1,500 for real estate improvements may be made on the basis of the borrower's promissory note without taking security when the applicant has a good reputation for paying his debts promptly, he clearly has sufficient income to meet all of his obligations, and he has assets from which a recovery of the loan could be made in case of default.

(e) Property and public liability and property damage insurance will be obtained as follows:

(1) Applicants obtaining Operating loans should be encouraged to carry insurance on the property serving as security for the loan and on other chattel or real property necessary to afford them adequate protection against substantial losses from the common hazards existing in an area. It is especially desirable that insurance be obtained by applicants who obtain large loans and have considerable personal property including feed, supplies and inventory centrally stored or housed over an extended period. Such insurance may be required by the loan approval official in individual cases or by regulations issued by the State Office.

(2) Applicants receiving loans for a recreational or other nonfarm enterprise will be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on customer's property in custody of the borrower. Such insurance may be required by the loan approval official in individual cases.

(3) When insurance is required on property serving as security for an Operating loan, a Form FHA 426–2, "Property Insurance Mortgage Clause (Without Contribution)," or a standard mortgage clause which is in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration) as mortgagee or secured party.

(f) State Directors, with the advice of the OGC, will inform County Supervisors on a State basis if it is necessary, because of State statutes or types of leases, land purchase contracts, and real estate mortgages commonly in use, to obtain subordination agreements, Form FHA 441–17, "Certification of Obligation to Landlord," severance agreements, disclaimers, and consent and subordination agreements, and will otherwise supplement this paragraph as necessary.

(g) Lien searches will be obtained in accordance with the provisions of Subpart B of this part to determine that the FHA will have the required security, except that when the loan is made under a written participation agreement with another lender a lien search will not be required by the FHA if the loan approval official determines that the other lender will take the necessary steps in closing the loan to assure proper protection of FHA's interests.

§ 1831.13 Tenure.

Good tenure is essential for a successful operation. Applicants will, therefore, be required to make satisfactory arrangements for the use of the kind of property necessary for carrying on the planned operation. The tenure policies set forth below will be followed by FHA officials in the making and approving of loans.

(a) *Tenant operators.* (1) Before a loan is made, the tenant, landlord, and County Supervisor must understand the terms and conditions of the tenure arrangements. These understandings can best be reached through discussions, preferably on the unit, and such discussions will be held whenever possible, except when no significant adjustments and improvements are to be made in the operations. In any event the understanding will include, as applicable, (i) how the unit will be operated, (ii) the manner in which the planned adjustments, improvements and operation will be financed, (iii) the distribution of income and expenses and other contributions by the tenant or the landlord, (iv) provisions for the division of the jointly-owned property when the lease is terminated, (v) agreement on any pertinent longtime aspects of the case, and (vi) any other factors affecting the tenure relationship.

(2) Ordinarily, loans will not be made unless the applicant obtains a satisfactory written lease. However, when for good reason an applicant cannot obtain a written lease on part or all of the real estate he expects to operate, the loan may be approved, provided the County Supervisor determines that the understanding existing between the tenant and landlord are definite and the rental

terms are satisfactory; the lack of a written lease will not likely jeopardize the applicant's operations; and the loan docket clearly reflects the rental arrangements made with respect to each tract of land or building.

(3) Pertinent information concerning the tenure arrangements will be recorded as set forth in Subpart B of this part.

(b) *Owner operators.* Before loans are made to owner operators, the terms existing with respect to any real estate indebtedness owing will be ascertained and a determination will be made as to whether the applicant's proposed operations will enable him to meet the required payments on the real estate indebtedness as well as being feasible in other respects, and the applicant will have reasonably secure tenure on the real estate under the terms of the real estate mortgage or purchase contract.

§ 1831.14 Loan approval.

(a) Indebtedness limitation with respect to loan approval authority. Current information regarding limitations on loan approval authorities of various officials of the FHA may be obtained from any County or State Office of the Farmers Home Administration or from its National Office at 14th and Independence Avenue SW., Washington, DC 20250.

(b) Administrative determinations and responsibilities. When the County Committee certification has been made, the loan approval official will determine administratively whether:

(1) The applicant is eligible and likely to be successful in the proposed operations and to achieve the objectives of the loan.

(2) The applicant has available, under satisfactory tenure arrangements, a unit adequate in size and productivity to reasonably expect success, taking into consideration farm and other income including income from a recreational or other nonfarm enterprise.

(3) Plans have been made and documented for:

(i) A suitable system of farming or type of recreation or other nonfarm enterprise.

(ii) The crucial adjustments and improvements and key practices essential for the applicant's success.

(iii) Effective supervision and corrective action.

(4) The proposed farm and home operations, and recreational or other nonfarm enterprise(s) of the applicant are feasible.

(5) The loan is feasible and can be repaid from income as scheduled, except as provided in § 1831.11(a)(4) with respect to the last installment.

(6) The amount of the loan and the purposes for which the funds are to be used are consistent with the applicant's needs and are for authorized purposes.

(7) The security requirements can be met.

(8) The certifications required of the applicant and County Committee have been made and are a part of the loan docket.

(9) The loan meets all other FHA requirements.

Subpart B—Operating Loan Processing

Sec.
1831.31 General.
1831.32 Loan forms and routines.
1831.33 Loan docket.
1831.34 Review and approval or rejection.
1831.35 Loan checks.
1831.36 Loan closing.
1831.37 Revision in the use of Operating loan funds.

AUTHORITY: The provisions of this Subpart B issued under Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of the Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650.

Subpart B—Operating Loan Processing

§ 1831.31 General.

This subpart sets forth the requirements and procedure for the preparation and execution of documents and for other routines in connection with making Operating loans as prescribed in Subpart A of this part.

§ 1831.32 Loan forms and routines.

(a) *Applications for Farmers Home Administration (FHA) assistance.* Applications for FHA assistance will be taken as outlined in Part 1801 of this chapter.

(b) *Form FHA 440–2, "County Committee Certification or Recommendation."* (1) When the applicant is determined to be eligible, the County Committee will execute Form FHA 440–2 before the loan is approved. This certification will cover any Operating loan(s) to be made to the applicant for the crop or operating year specified within the maximum amount of credit established by the County Committee. The date designated by the County Committee as the end of the crop or operating year and the maximum amount of credit will be inserted in the appropriate spaces.

(i) It is intended that County Committees will have some latitude in determining for which crop or operating year(s) credit may be extended. In some cases where an initial Operating loan is being made, the County Committee may indicate that the crop or operating year for which credit may be extended coincides with that for which an interim plan is developed. Such action may be taken because the Committee wishes to review the circumstances of the applicant again at the end of the interim crop or operating year before committing itself for the succeeding crop or operating year. In other cases, the County Committee may, when an application is being acted upon during the latter part of a crop or operating year, establish the maximum amount of credit for both the interim crop or operating year and the next crop or operating year, provided the operations for the current year have advanced to the point that the County Committee will be able to determine with reasonable certainty the maximum amount of credit which the applicant would need for the next crop or operating year under normal conditions. The same principles with respect to County Committee certifications for an initial loan may be followed in connection with subsequent loans.

(ii) If it is found, after an applicant has been certified as eligible, that there will be a major change in operations or that an amount of credit in excess of the maximum previously established by the County Committee will be required for the designated crop or operating year, it will be necessary for the County Committee again to certify the applicant as eligible on the basis of the changed circumstances if a loan is to be made.

(2) When the County Committee has agreed to increase the original amount of loan assistance certified for the crop or operating year because such amount was insufficient to meet the needs of the borrower, a new Form FHA 440–2 will be prepared and executed. The date of the end of the same crop or operating year (month, day, and year) as that indicated in the original certification will be inserted in the appropriate space. In the space indicating the maximum amount of credit for the crop or operating year, the amount to be inserted will be the sum of the latest certification for the crop year for any Operating and Emergency loans, plus the additional amount(s) of any such loan(s) the County Committee determines is necessary to meet the actual credit needs of the borrower for the remainder of the crop or operating year. A notation will be made in the blank space on Form FHA 440–2 that the County Committee has again reviewed the applicant's situation and his credit needs for the crop or operating year are as indicated rather than $_____ shown on Form FHA 440–2 dated _____. The new Form FHA 440–2 should be executed by the County Committee and dated as of that date. The Form FHA 440–2 previously executed will be retained in the case files.

(c) *Form FHA 431–1, "Long-Time Farm and Home Plan."* Form FHA 431–1 will be developed with the assistance of the County Supervisor.

(d) *Form FHA 431–2, "Farm and Home Plan."* Form FHA 431–2 will be developed by the borrowers, with the assistance of the County Supervisor, using Form FHA 431–1 as a framework, except when a loan is made only for the acquisition of membership or the purchase of stock in a cooperative association and the applicant is not indebted for another FHA loan. In the latter case, the best estimates available will be used to complete Table J of Form FHA 431–2 in order to determine whether the loan requested can be paid and the period over which payments should be scheduled. The source of payment should be shown in Table K. When the preparation of Table J is inadequate to enable the loan approval official to make the required determinations, other portions of Form FHA 431–2, as necessary, will be used.

(e) *Appraisal of chattel property.* (1) When a debt is to be refinanced under the provisions of § 1831.9(m), Form FHA 440–21, "Appraisal of Chattel Property," will be completed. In lieu thereof, a form

issued by the State Office showing as a minimum the information required on Form FHA 440–21 may be used. Ordinarily only one appraisal form will be required with a loan docket.

(2) When funds are to be advanced for the payment of depreciation pursuant to § 1831.9(h), an appraisal will be made with respect to the farm, recreation, or nonfarm equipment involved for the purpose of making the determination required in that paragraph.

(f) *Form FHA 440–32, "Request for Statement of Debts and Collaterals."* This form will be used as necessary to obtain information from the creditors of the applicant concerning the amount of debts owed and the collateral for the debts.

(g) *Tenure agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. Where it is not practical to obtain a copy of the lease agreement, a statement setting forth those terms and conditions of the agreement which are not clearly reflected in the Farm and Home Plan will be prepared and made a part of the loan docket. A brief summary of the joint discussion between the tenant, landlord, and County Supervisor will be reflected in the running case record. If such a discussion is not held, a statement of the reasons therefor should be included in the running case record.

(h) *Form FHA 441–1, "Promissory Note."* The amount of each loan and the scheduled payments thereon will be in multiples of $10. Not more than four payments on a single note will be scheduled for any year. The time limitations for payment schedules prescribed in § 1831.11 run from the date of the loan check instead of from the date of the note. Form FHA 441–1 will be dated as of the date of execution by the applicant. The applicant's spouse will be required to execute Form FHA 441–1 when (1) legally required by State law, (2) the loan approval official determines that the signature is needed because of the spouse's interest in the farm being operated or in property offered as security, or (3) it is determined by the State Director on a State basis, that the spouse's signature will be required. The State Director, with the advice of the Office of the General Counsel (OGC) will issue an appropriate State regulation concerning the spouse's signature on Form FHA 441–1. In all cases in which the wife joins with her husband in executing a promissory note or other evidence of indebtedness, the purpose and effect of the wife's signature shall, in addition to any other purpose and effect for which her signature is obtained, be to engage her separate and individual personal liability regardless of any State law to the contrary.

(1) When an Operating loan is made for purposes which would be secured in accordance with the provisions of § 1831.12(a) and also for purposes in which the security provisions of § 1831.12 (b) or (d) apply, separate notes will be required.

(2) Form FHA 441–1 will not be used when a participation loan is made because a note provided by the participating lender will be used.

(i) *Form FHA 441–3, "Participation Agreement."* This form will be used when the FHA is participating in a loan under the provisions of § 1831.8(a)(5). Form FHA 441–3 will be executed by the applicant and the other lender before it is executed by the loan approval official on behalf of the Government.

(j) *Form FHA 441–16, "Repayment Schedule for Participation Loans."* This form will be used when the FHA is participating in a loan under the provisions of § 1831.8. It provides the Finance Office and County Office with the repayment schedule agreed upon for each advance to be made by the FHA under the Participation Agreement. Form FHA 441–16 will show the same repayment schedule as is shown on the note taken by the lender to evidence each FHA advance. The borrower's address will be inserted on the lower right corner of this form.

(k) *Form FHA 441–4, "Participation Notice."* This form will be used by the lender when the FHA is participating in a loan under the provisions of § 1831.8 to notify the County Supervisor of the actions taken in closing the loan.

(l) *Form FHA 440–9, "Supplementary Payment Agreement."* This form will be used, as needed, with applicants and borrowers who will be receiving regular off-farm income and income from a recreational or other nonfarm enterprise(s) from which payments are to be made on the loan.

(m) *Form FHA 440–1, "Payment Authorization."* (1) Form FHA 440–1 will be prepared for the total amount of the loan as indicated on Form FHA 441–1. Separate Forms FHA 440–1 will be prepared for each loan. However, when separate notes are prepared in accordance with paragraph (h) of this section, Form FHA 440–1 will be prepared for the total amount of the notes. The approval official will indicate his determination that the applicant is eligible and his approval of the loan by signing and dating the original in the space provided, and by inserting his title. The type of loan will be inserted in the space provided for that purpose as follows:

(i) "OL–I" to indicate a loan to an applicant who is not indebted for an Operating loan.

(ii) "OL–S" to indicate a loan to a borrower who is indebted for an Operating loan.

(2) When a loan is to be disbursed from State Rural Rehabilitation Corporation funds, the letter "C" will be inserted immediately after the letters "OL" indicating the type of loan.

(3) In order to assist the Finance Office in the examination of loan documents, the date, amount, and receipt number of receipts issued for collections received within 15 days prior to the submission of an Operating loan will be inserted on Form FHA 440–1 whenever a loan is submitted which would cause a borrower's indebtedness before the application of such collection to exceed the debt limitations established for Operating loans or the delegated loan approval authority.

(n) *Borrower's case number.* The use of the borrower's case number (including the State and County codes) for loan processing is prescribed in the guides available in all FHA offices for preparation of Form FHA 440–1.

(o) *Immediate and future disbursements.* All of the applicant's anticipated credit needs for the crop or operating year will be planned for when Form FHA 431–2 and Form FHA 431–4, "Business Analysis—Nonagricultural Enterprise," as applicable, are developed and all of the documents for loan advances required for the crop or operating year may be submitted to the Finance Office at one time. Such documents may provide for the loan funds to be dispersed in an immediate loan advance; an immediate loan advance and one or more future loan advances; or one or more future loan advances without an immediate advance, provided, however, all such loans must be disbursed at least 30 days apart. The payment date(s) for any future advance(s) must be not later than the date shown as the ending date of the crop or operating year, line 2 of Form FHA 440–2. If more than one loan advance is submitted to the Finance Office at the same time all such advances will be shown as the same type; that is, either initial or subsequent. Subsequent loans also may be submitted at any time during the crop or operating year to meet credit needs of the applicant which would not be anticipated at the beginning of the crop or operating year, provided the need for such credit is reflected on a revision of Form FHA 431–2 and Form FHA 431–4.

(1) Each loan advance will be limited to an amount which can be expended promptly usually within 60 days after loan closing. This will prevent loan funds from remaining in the possession of borrowers or in supervised bank accounts for long periods of time.

(2) When credit is to be extended in more than one loan advance, a separate payment authorization and note must be submitted for each advance and for each future advance the date for Wednesday of the week in which the loan check is to be issued will be shown in the upper righthand corner of Form FHA 440–1. The Finance Office will issue checks for future loan advances only on Wednesday of each week. Immediately upon receipt of a payment authorization for loan funds to be disbursed on a designated future date, the Finance Office will obligate sufficient funds to pay the amount of that authorization. This weekly schedule will include all payment authorizations with request dates occurring within the calendar week. Whenever there is an occasion to communicate with the Finance Office concerning a future loan advance, it will be necessary to inform that office of the date on which the loan check was requested to be issued as these payment authorizations are filed in the Finance Office according to these dates. In order that these dates will be available in

County Offices, an appropriate notation should be inserted on Form FHA 405–1, "Management System Card—Individual," if it has been prepared, or on the County Office copy of the Promissory Note.

(p) *Form FHA 441–5, "Subordination Agreement," or Form FHA 441–17, "Certification of Obligation to Landlord."* When a subordination agreement is required on crops, livestock, farm equipment, and other chattel property, including items which have become personal property through execution of a severance agreement, Form FHA 441–5 or other form approved by the State Director, with the advice of the OGC, where Form FHA 441–5 is not legally sufficient, will be used except as provided in subparagraph (1) of this paragraph. The years to be covered by the subordination generally will be for the period of the loan or the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(1) Form FHA 441–17 may be used in lieu of obtaining a subordination agreement when it appears that the applicant is not obligated to the landlord except for rent for the lease year and that he will not incur other obligations to the landlord during such year, and when a regulation from the State Office authorizing the use of Form FHA 441–17 in such cases has been issued. See § 1831.12.

(q) *Assignment of or consent to payment of proceeds from the sale of products.* Form FHA 441–8, "Assignment of proceeds from the Sale of Agricultural Products," Form FHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," or Form FHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used in accordance with § 1831.12(a)(8). Form FHA 441–21, "Transmittal of Assignment or Consent," may be used to transmit Form FHA 441–8 or Form FHA 441–18 to purchasers.

(r) *Form FHA 440–6, "Severance Agreement."* This form will be used as required by regulations issued by State Offices.

(1) State Directors, with the advice of the OGC, will specify the situations in which severance agreements are required under State law to comply with the requirements of Subpart A of this part; whether the severance agreement should be filed or recorded; and whether the spouse of the borrower and the spouse(s) of other party(ies) of interest also will be required to execute the severance agreement. In specifying the situations in which severance agreements will be required, consideration will be given to the actions necessary to prevent the property from becoming part of the real estate as well as to severance after it has become attached to the real estate.

(2) If severance agreements are required in accordance with the provisions of Subpart A of this part and regulations issued by State Offices, such agreements will be executed no later than the date on which the property purchased with loan funds is delivered to the farm, or prior to the release of loan funds to the creditor if refinancing of debts on such property is involved.

(s) *Form FHA 440–26, "Consent and Subordination Agreement."* Unless otherwise provided by regulations issued by a State Office, this form rather than a severance agreement, will be used in Uniform Commercial Code (UCC) States when a security interest is taken in property after it has become a fixture.

(1) Consent and subordination agreements will be obtained when necessary to meet the security requirements contained in Subpart A of this part, as follows:

(i) Prior to the release of loan funds to the creditor, if a debt is being refinanced on an item which already has become a fixture.

(ii) Not later than the time of loan closing, in all other cases in which a security interest is being taken on an item which already has become a fixture.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before all of the following steps have been taken: The financing statement and security agreement covering the fixture have been executed; the financing statement is filed; and the payment authorization is signed by the loan approving official.

(t) *Form FHA 441–13, "Division of Income and Nondisturbance Agreement."* Form FHA 441–13 will be used when it is necessary to obtain both a division of income and a nondisturbance agreement from prior lienholders.

(u) *Form FHA 441–10, "Nondisturbance Agreement."* Form FHA 441–10 will be used when it is necessary to obtain only nondisturbance agreements from creditors of an applicant who are in a position to interfere with the applicant's operations.

(v) *Running case record entries.* In addition to the information required by Part 1801 of this chapter, the running case record also will include pertinent information concerning the applicant's tenure arrangements and proposed operations not reflected elsewhere in the loan docket.

(w) *Form FHA 441–7, "OL–EM and Other Credit Analysis."* Form FHA 441–7 will be prepared after the loan docket otherwise is completed, and will be transmitted to the Finance Office along with Forms FHA 441–1 and FHA 440–1. If more than one loan is transmitted to the Finance Office at one time for a borrower, only one Form FHA 441–7 will be used.

(x) *Form FHA 492–19, "Characteristics of Approved Applicants."* Form FHA 492–19 will be prepared for each initial Operating loan.

(y) *Taking security instruments*—(1) *Forms to be used.* Form FHA 440A25, "Financing Statement," or Form FHA 440–25, "Financing Statement," and Form FHA 440–4, "Security Agreement," will be used to obtain security interests in personal property in UCC States unless regulations issued by the State Office provide for the use of other forms. Regulations issued by the State Office also will provide information as to whether Form FHA 440A25 or Form FHA 440–25 will be used. The Financing Statement and Security Agreement together will constitute a security instrument. Although only the Financing Statement is required to be filed or recorded, it is necessary also to take a Security Agreement in order to have a complete security instrument. (See also § 1831.12(a) (2) and (6).) Form FHA 440–4 La., "Chattel Mortgage (Louisiana)," or Form FHA 440–4A La., "Chattel Mortgage and Crop Pledge (Louisiana)," as appropriate, will be used in the State of Louisiana.

(2) *Describing notes on security instruments.* When security agreements, chattel mortgages, or other similar security instruments are taken, all outstanding Operating loan notes, and all notes representing other operating-type debts as prescribed by the respective loan making regulations, will be described on such security instruments.

(3) *Describing security property on security instruments.* The printed form of the FHA Financing Statement describes certain types of collateral. If items of collateral not covered under those types are to serve as security they should be described by types or individual items in the space provided in the Financing Statement for that purpose. Unless otherwise provided by regulations issued by State Offices, animals, birds, fish, and so forth, should be described by groups on the Security Agreement. The serial or motor number should be shown on only major items of equipment. If a security interest is to be taken in property such as inventory, supplies, recreation, or other nonfarm equipment or fixtures which cannot be readily described under the column headings of item 2 or 3, as appropriate, of the Security Agreement, an appropriate description of such property will be inserted in item 2 or 3 below, the other property described in the item without regard to the column headings. The advice of the OGC will be obtained in individual cases as to how to describe in the Financing Statement and Security Agreement items such as grazing permits, milk bases, membership or stock in cooperative associations, unless the subject is covered by a regulation issued by the State Office. The property to be described on security instruments should be reconciled with any existing security instruments and Form FHA 462–1, "Record of the Disposition of Security Property."

(4) *When to take security instruments*—(i) *Initial loans.* In initial loan cases the Financing Statement and Security Agreement will be taken at the time the note is executed. When the initial Security Agreement does not describe individually or by groups all of the collateral that is to serve as security, an all inclusive Security Agreement will be taken as soon as all of the security property has been purchased. Form FHA 440–4 La. and Form FHA 440–4A La. will be taken in Louisiana in initial loan cases in accordance with regulations issued by the State Office.

(ii) *Subsequent loans—(a) Financing statements.* A filed FHA Financing Statement is effective for a period of 5 years from the date of filing and as long thereafter as it is continued as provided in Subpart A of Part 1871 of this chapter. If the filed Financing Statement is still effective and covers all types of collateral that are to serve as security for the subsequent loan and describes the land on which crops or fixtures are or are to be located, a new Financing Statement will not be required. However, when a new Financing Statement is needed, it will be taken at the time the subsequent loan note is executed. Form FHA 440–4 La. and Form FHA 440–4A La. will be taken in Louisiana in subsequent loan cases in accordance with regulations issued by the State Office.

(*b*) *Security agreements.* An additional Security Agreement will not be taken in connection with a subsequent loan until it is required by Subpart A of Part 1871 of this chapter, if the existing Security Agreement covers all types of collateral that are to serve as security for the subsequent loan, describes the land on which the crops or fixtures are or are to be located, and was taken within 1 year before the crops become growing crops, unless otherwise provided by regulations issued by State Offices.

(*c*) If a subsequent loan is being made and the Operating loan indebtedness is being secured for the first time under the UCC, the procedure in subdivision (i) of this subparagraph with respect to securing initial loans will be followed.

(5) *Executing security instruments.* County Office employees in bonded positions are authorized to execute any legal instruments necessary to obtain or preserve security for loans. This includes Financing Statements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits, acknowledgments, and other instruments. The Financing Statements in UCC States, and Forms FHA 440–4 La. and FHA 440–4A La., in Louisiana, will be executed on behalf of the Government. The requirements with respect to the execution of security instruments on behalf of the borrower(s) will be the same as prescribed for Form FHA 441–1.

(6) *Filing or recording security instruments.* Ordinarily, in UCC States, Financing Statements will be delivered or mailed to the filing officer(s) for filing or recording, whichever is appropriate, when the loan is approved. However, when this is not practical the Financing Statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the check to the borrower. If crops or other property of the borrower are or are to be located in a State other than that of a borrower's residence, the County Supervisor servicing the loan will contact the County Supervisor in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The Financing Statement will be filed or recorded as required by regulations issued by State Offices. Security Agreements will not be filed or recorded unless otherwise provided in regulations issued by State Offices because of special State law requirements. Form FHA 440–4 La. or Form FHA 440–4A La. will be filed or recorded in Louisiana as provided by the regulations issued by the State Office.

(7) *Additional actions required to perfect a purchase money security interest in inventory.* In order to properly perfect a purchase money security interest in inventory, it is necessary, on or before the time the debtor receives possession of the inventory, to obtain a Security Agreement and file a Financing Statement as required by this subpart, and to notify in writing any parties known to have a security interest in such inventory or who have filed a financing statement covering the inventory that the FHA has or expects to acquire a purchase money security interest in the inventory being purchased with FHA loan funds. The notice must describe the inventory by item or type. These actions are necessary, for example, when FHA funds are advanced to purchase inventory in connection with a nonfarm enterprise and another creditor has on file a Financing Statement covering such inventory.

(8) *Fees.* Statutory fees for filing or recording Financing Statements mortgages, or other legal instruments and notary and lien search fees incident to loan transactions in all cases will be paid by the borrower from personal funds, or from the proceeds of the loan.

(i) Whenever cash is accepted by FHA personnel to be used to pay the filing or recording fees for security instruments (including Financing Statements), or the cost of making lien searches, Form FHA 440–12, "Acknowledgement of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FHA personnel who accept custody of such fees will make it clear to the borrower that the amount so accepted is not received by the Government as credit on the borrower's indebtedness, but is accepted only for the purpose of paying the recording, filing, or lien search fees on behalf of the borrower.

(9) *Retention and use of security agreements.* (i) Originals: Original executed Security Agreements will not be altered, and will not be disposed of when new Security Agreements are taken.

(ii) Work copy: Information with respect to changes in security property will be noted only on the work copy. When an additional Security Agreement covering all collateral for the indebtedness is taken, the work copy used in preparing the additional Security Agreement may be destroyed.

(10) *Security requirements in relation to "Future Advance" and "After-Acquired Property" clauses and special State statutes.* The after-acquired property and future advance provision of Security Agreements in UCC States will be considered valid in all respects unless otherwise provided in regulations issued by State Offices.

(i) Future advance provision: A properly prepared executed and filed or recorded FHA Financing Statement and a properly prepared and executed FHA Security Agreement give FHA a security interest in the property described thereon to secure any Operating or Emergency loan indebtedness owed by the debtor, including any such future loans, advances, or expenditures without regard to whether they are evidenced by promissory notes described on the Security Agreements; and to secure any other FHA debts evidenced by notes described on the Security Agreement and any advances or expenditures made in connection with the debts evidenced by such notes.

(ii) After-Acquired Property Provisions: Any after-acquired property, except fixtures, of the same type as described (individually or by groups or specifically or generally), on the Financing Statement and Security Agreement will serve as security for the debt covered thereby. The after-acquired property clause in the Security Agreement will encumber crops grown on the land described in the agreement and Financing Statement, provided they are planted or otherwise become growing crops within one year of the execution date of the Security Agreement, or such other period as provided by regulations issued by State Offices. Except as set forth in § 1871.33(a)(4), such FHA after-acquired security interests take priority over other security interests perfected after the FHA Financing Statement was filed.

(11) *Regulations issued by State Offices.* In addition to the regulations issued by State Offices referred to in other subparagraphs of this paragraph, regulations will be issued by State Offices, as necessary, to provide additional routines for taking liens on motor vehicles and motor boats, and any special type of security. The regulations also will supplement subparagraph (10) of this paragraph with respect to the "future advance" and "after-acquired property" clauses of security instruments. The regulations will set forth the requirements with respect to filing or recording of security instruments if the borrower is not a resident of the State, but is conducting some operation in the State. This is for use when County Supervisors in other States request such information in accordance with Subparagraph (6) of this paragraph.

§ 1831.33 Loan docket.

(a) The loan docket will consist of the following prepared and executed forms or documents as appropriate:

410–1	Application for FHA Services (Attachments)
410–2	Supplement to Application for FHA Services (For Applicants Who Depend on Off-Farm Income).
	Running case record.
440–2	County Committee Certification or Recommendation.
	Tenure agreement.
441–5	Subordination Agreement.
431–1	Long-Time Farm and Home Plan.
431–2	Farm and Home Plan.

431-4	Business Analysis—Nonagricultural Enterprise.
	Timber management plan.
440-21	Appraisal of Chattel Property.
440-32	Request for Statement of Debts and Collaterals.
441-1	Promissory Note.
441-3	Participation Agreement.
441-12	Agreement for Disposition of Jointly Owned Property.
441-16	Repayment Schedule for Participation Loans.
441-4	Participation Notice.
440-9	Supplementary Payment Agreement.
440-1	Payment Authorization.
440-25	Financing Statement.
440-4	Security Agreement.
440-4	Crop and Chattel Mortgage.
(State)	(If to be filed.)
	(If to be recorded)
	Assignment, pledge, or other security interest in stock, or other evidence of ownership.
440-6	Severence Agreement.
440-26	Consent and Subordination Agreement.
441-8	Assignment of Proceeds from the Sale of Agricultural Products.
441-18	Consent to Payment of Proceeds from Sale of Farm Products.
441-25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.
402-1	Deposit Agreement.
402-5	Deposit Agreement NonFHA Funds.
400-4	Nondiscrimination Agreement.
441-13	Division of Income and Nondisturbance Agreement.
441-10	Nondisturbance Agreement.
403-1	Debt Adjustment Agreement.
441-7	OL—EM and Other Credit Analysis.
492-19	Financial Characteristics of Approved Applicants for Initial Farm Ownership and Operating Loans.

(b) The documents to be submitted will be examined thoroughly by the County Office Clerk to make sure that they are complete as to dates, signatures, and mechanical accuracy. For loans requiring approval other than in the County Office, the loan submission will consist of the required documents enumerated above and all of the applicant's County Office case folders.

§ 1831.34 Review and approval or rejection.

After the documents prescribed in § 1831.33 have been assembled, the loan approval official will make the determinations required in § 1831.14.

(a) *Approval of loans.* If the loan is to be approved, the loan approval official will date and sign Form FHA 440–1 and insert his title and grade in the spaces designated for these purposes. The loan approval official also will set forth any special conditions of approval or special security requirements in the running record in the loan docket or by memorandum. Ordinarily, after approval the original of Form FHA 441–1, Form FHA 441–7, Form FHA 492–19, when applicable, and the original and copy of Form FHA 440–1 will be removed from the assembled loan docket and forwarded to the Finance Office together with a copy of the memorandum from the National Office authorizing approval of the loan in those cases in which such authorization is required. However, if an Operating loan is being made in connection with the making of an FHA real estate loan and one loan is dependent on the other, the loan approval official may determine that the loan checks should be issued simultaneously in order to avoid unnecessary interest charges to the applicant. The Operating loan docket will be held in the County Office if it is within the approval authority of the County Supervisor, or returned to the County Office after approval in other cases, and the appropriate forms will be transmitted to the Finance Office at the time the loan check for the real estate loan is requested. When Operating loan allotments are nearly exhausted, State Offices should take the necessary steps to assure that sufficient funds are retained in their allotment to pay such loans at the time the loan check is needed. However, when it is not possible to order the real estate loan check before the end of the fiscal year, the Operating loan should not be approved until after the beginning of the new fiscal year.

(1) If a "participation loan" under the provisions of § 1831.8 is involved, the loan approval official also will execute Form FHA 441–3 on behalf of the Government.

(b) *Rejection of loans.* If a loan is rejected, the loan approval official will indicate the reasons for the rejection in the running case record in the loan docket or in a memorandum. The County Supervisor will notify the applicant of the rejection and will return to him the original of Form FHA 441–1, any tenure agreements, and any executed security instruments (including the unfiled financing statement in UCC States).

§ 1831.35 Loan checks.

(a) When a check cannot be delivered or is lost or destroyed, the Finance Office will be notified immediately.

(b) If a check is to be canceled, the County Supervisor will return the check with Form FHA 440–10, "Notification of Loan or Grant Cancellation," to the Regional Disbursing Center, United States Treasury Department, Post Office Box 2509, Kansas City, MO 64142. Copies of Form FHA 440–10 will be furnished to the Finance Office and the State Office.

§ 1831.36 Loan closing.

(a) *Check delivery.* County Office employees in bonded positions will receive and deliver loan checks. Upon receipt of a loan check, the County Supervisor will notify the applicant promptly on Form FHA 440–8, "Notice of Check Delivery," or mail the check to him; or if a "participation loan" is involved, deliver the loan check to the other lender and notify the applicant of such delivery; or when a supervised bank account is required and the depository bank does not require the applicant's endorsement for deposit, he may deposit the loan check in the supervised bank account and furnish the applicant a copy of the deposit slip. If the bank will not accept the loan check for deposit in a supervised bank account without the applicant's endorsement, the County Supervisor will retain the check and arrange with the applicant for a time and place for its deposit. When a loan check is mailed or delivered direct to the applicant (or other lender in case of a participation loan), or when the check is deposited in a supervised bank account, the amount and date thereof will be entered on Form FHA 405–1 or Form FHA 405–2, "Loan Record," as appropriate.

(1) If a "participation loan" is made, the other lender will close the loan, and take security instruments, in accordance with the provisions of the "Participation Agreement."

(b) *Form FHA 440–13, "Report of Lien Search."* Form FHA 440–13 or other form providing substantially the same information will be prepared.

(1) Lien searches will be obtained at a time which will assure that the security instruments give the Government the required security. Under this policy the lien search normally will be obtained at the time the Financing Statement (mortgage in Louisiana) is filed or recorded. However, lien searches may be obtained after that date, but in no case later than the first withdrawal of any loan funds from the supervised bank account or delivery of the check to the borrower. Lien searches may also be obtained in connection with processing applications when such searches are determined to be necessary on an individual case basis, but in these cases it will be necessary to obtain continuation searches to meet the policy prescribed above.

(i) Under the UCC it is necessary to obtain lien searches in connection with the making of subsequent loans only in those cases in which an addtional Financing Statement is required. This is when crops or fixtures to be taken as security are or are to be located on land not described on the existing Financing Statement or property not otherwise covered by the Financing Statement is to be taken as security for the Operating loan debt.

(2) Except as otherwise provided in this subparagraph, applicants are required to obtain and pay the cost of lien searches. County Supervisors will make inquiries locally concerning the available sources through which satisfactory lien searches can be obtained at nominal cost to applicants. However, applicants should select the sources through which lien searches are made. The cost of lien searches may be paid from the proceeds of loan checks when necessary.

(i) County Office employees may make continuation lien searches when such searches are made as referred to in the last sentence of subparagraph (1) of this paragraph.

(ii) State Directors may authorize the employees of a particular County Office unit to make lien searches without cost to applicants when the cost of lien searches is exhorbitant, when such service is not available, or when experience has shown that the service available will cause undue delay in the closing of loans or make it difficult to comply with the

provisions of subparagraph (1) of this paragraph.

(3) State Directors, with the advice of the OGC, will issue regulations setting forth the minimum requirements for lien searches, including the records to be searched and the period to be covered with respect to each.

§ 1831.37 Revision in the use of operating loan funds.

(a) Authority of the County Supervisor or Assistant County Supervisor (GS–7 or GS–9). The County Supervisor or Assistant County Supervisor (GS–7 or GS–9) is authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The loan was within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect the feasibility of the operation, or the Government's interest. If the County Supervisor is uncertain as to the probable effect the change would have on the feasibility of the operation or on the Government's interest, he should obtain the advice of the State Director prior to approving the change.

(b) *Authority of State Office officials.* (1) The State Director may delegate additional authority to County Supervisors to approve certain kinds of changes in the use of loan funds upon prior approval of the National Office.

(2) The State Director and employees in the State Office who have loan approval authority are authorized to approve changes in the use of loan funds provided the changes are consistent with authorities, policies, and limitations for making Operating loans.

(c) *Documentation and routines.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on Form FHA 441–1 or in the loan record of the Management System Card—Individual, nor will a corrected Form FHA 441–7 be prepared. However, when funds loaned for the purchase of capital goods are to be used to meet operating expenses, the borrower must agree to repay the funds so used in accordance with the repayment terms prescribed in § 1831.11. Appropriate changes with respect to the repayments will be made in Table K of Form FHA 431–2 and initialed by the borrower. The County Supervisor also will make appropriate notations in the "Supervisory and Servicing Actions" section of the Management System Card—Individual for followup.

Dated: January 8, 1971.

JOSEPH HASPRAY,
Acting Administrator,
Farmers Home Administration.

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SUBCHAPTER F—SECURITY SERVICING LIQUIDATION

[FHA Instructions 462.1, 455.1, AL's 908(462), 910(462)]

PART 1871—CHATTEL SECURITY

Subparts A and B, Part 1871, Title 7, Code of Federal Regulations (31 F.R. 14212) are revised to read as follows:

Subpart A—Servicing Chattel Security

Sec.
1871.1 Scope.
1871.2 Definitions.
1871.3 General.
1871.4 Keeping security instruments current and taking additional security.
1871.5 Furnishing account and security information in UCC cases.
1871.6 Furnishing lists of borrowers.
1871.7 Using Form FHA 431–2, "Farm and Home Plan," or Form FHA 431–3, "Family Budget," and Form FHA 431–4, "Business Analysis Nonagricultural Enterprises," as a basis for exercising authority to release chattel security.
1871.8 Releasing chattel security.
1871.9 Accounting for security property.
1871.10 Amendments of consents or releases of suspensions of assignments.
1871.11 Use of other credit and subordination of chattel security.
1871.12 Correcting errors in security instruments and executing special releases.
1871.13 Satisfaction or termination of chattel security instruments.
1871.14 Assignment of notes and security instruments including financing statements.
1871.15 Fees.
1871.16 Stamping peanut and tobacco marketing cards.
1871.17 Subordinations and waivers of crop liens for borrowers receiving loans under Commodity Credit Corporation program.

AUTHORITY: The provisions of this Subpart A issued under sec. 301, 80 Stat. 379, sec. 510, 63 Stat. 437, sec. 339, 75 Stat. 318, sec. 602, 78 Stat. 528; 5 U.S.C. 301, 42 U.S.C. 1480, 7 U.S.C. 1989, 42 U.S.C. 2942; Order of Director, Office of Economic Opportunity, 29 F.R. 14764, Orders of Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650, 33 F.R. 9677.

Subpart A—Servicing Chattel Security

§ 1871.1 Scope.

This subpart is supplemented by Parts 1890c and 1890e of this chapter. This subpart covers the servicing of chattel security for all Farmers Home Administration (FHA) loans to individuals and Emergency (EM) loans to corporations and partnerships. After accounts have been approved for liquidation as provided in Subpart B of this part, security property will be disposed of and the proceeds will be used and accounted for in accordance with the provisions of that subpart.

§ 1871.2 Definitions.

As used herein (a) "FHA" means the United States of America acting through the Farmers Home Administration; also FHA's predecessor agencies, and the United States as trustee for assets of State Rural Rehabilitation Corporations or successor State agencies or officials (SRRC), (b) "OGC" means the Regional Attorneys and Attorneys in Charge of the Office of the General Counsel of the United States Department of Agriculture, (c) "UCC" means the Uniform Commercial Code, and (d) "chattel security" and "security property" include crops, livestock, fish, farm, and other equipment, supplies, farm products, inventory, other personal property, fixtures and the proceeds of such property covered by FHA security agreements, chattel mortgages, assignments of income, and similar instruments.

§ 1871.3 General.

Borrowers must account to FHA for all property serving as security for FHA loans. Supervisory officials in County Offices will inform borrowers of their responsibilities with respect to security property by calling attention to the various covenants in the security instruments. In addition, such officials, in the protection of FHA's security interests, will discuss and advise with borrowers concerning the wise use of income and specifically the uses which are authorized by this subpart to be made of proceeds from the sale of security property. The lending policies of FHA, the many different enterprises financed, and the varied situations encountered in servicing individual cases require that this subpart include some broad authorities which should not be used in all individual cases and under all circumstances. Supervisory officials must determine that the proposed use of property or proceeds within the limits set out in this subpart is warranted at the time and under the circumstances, considering the loan objectives and the security interests of FHA, for the ultimate collection of the debt. The failure of FHA employees to comply with the requirements contained herein may result in their personal accountability and financial liability.

§ 1871.4 Keeping security instruments current and taking additional security.

In accordance with the provisions of this subpart and the related regulations issued by the State Office, County Supervisors are responsible for maintaining security instruments which will properly cover all security property, including replacements, increases, and other after-acquired property, and for obtaining additional security, as needed.

(a) *Conversion to servicing under UCC.* (1) Cases in which FHA holds chattel mortgages or other security instruments taken before the effective date of the UCC in the particular State, will be converted to servicing under the UCC subject to the limitations contained in subparagraphs (2) and (4) of this paragraph, when:

(i) A subsequent loan is being made.

(ii) A new lien is needed to cover (a) crops on the same land or crops to be produced on other land, or (b) fixtures or other property not covered by the after-acquired property clause in the existing lien instrument.

(iii) A crop and chattel mortgage is about to expire as notice to third parties and cannot be renewed or extended or it is considered inadvisable to do so.

(iv) Substantial changes in the collateral require new security instruments.

(v) The borrower is moving to another farm under circumstances that require refiling of the existing chattel mortgage or filing a new security instrument.

(vi) Such conversion is considered advantageous to the Government for other reasons.

(2) When a Severance Agreement has been taken in connection with obtaining a chattel mortgage, the severed property will continue to be considered personal property for future servicing purposes. This means that when the case is converted to servicing under the UCC, the severed property will be described as personal property, rather than as a fixture, in the Financing Statement and Security Agreement. Therefore, FHA will continue to rely on the Severance Agreement and it will not be necessary to obtain a Consent and Subordination Agreement with respect to such severed property, even though the Severance Agreement was not recorded because of legal or other reasons applicable when the Severance Agreement was taken.

(3) When converting to servicing under the UCC a lien search will be made in accordance with the provisions of Subpart B of Part 1831 of this chapter as supplemented by regulations issued by the State Office.

(4) If the lien search reveals intervening liens that may affect the security position of FHA, the case file will be forwarded to the State Office for advice as to the action to be taken with respect to maintaining existing security, converting to servicing under the UCC, or liquidating the account, unless the manner of handling such cases has been prescribed by regulations issued by the State Office.

(5) State Offices will issue regulations as necessary to comply with State law requirements.

(b) *After-acquired property and future advance clauses.* See § 1831.32(y) (10) and any supplementary regulations issued by the State Office with respect to the effect of the after-acquired property and future advance clauses in FHA security instruments.

(c) *Chattels, crops, fixtures, assignments, and insurance.* When additional chattels, crops, or fixtures, not presently covered by an FHA lien, are available and needed to protect FHA's interests, County Supervisors will obtain one or more of the following: (1) Liens on such property, (2) assignments of the proceeds from the sale of agricultural products when such proceeds are not covered by the lien instruments, or (3) assignments of other income, including Agricultural Conservation Program payments. When a current loan is not being made to a borrower, crop liens will be taken as additional security when the County Supervisor determines in individual cases that such liens are necessary to protect the interests of FHA. However, crop liens will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described thereon. Ordinarily, when taking additional security, such security instrument will describe the notes for all FHA loans for which the security is serviced under this subpart. However, notes for FO, RH, LH, or SW loans having final due dates which extend substantially beyond that of other FHA loans being secured will not be described on such security instruments unless such notes are presently secured by substantially the same items of security property. To obtain chattel security in such instances for extended periods of time might impair seriously the borrower's ability to refinance his indebtedness or to obtain operating credit after the particular loan for which the additional security was required has been paid. When additional security is taken, a lien search will be made except with respect to: crops or other property covered by a filed FHA Financing Statement but not covered by an FHA Security Agreement; or, assignments of income. The search will be made in accordance with the provisions of subpart B of Part 1831 of this chapter and any regulations issued by State Offices.

(1) County Supervisors are authorized to approve bills or invoices for payment of premiums on insurance on chattel security for FHA loans when (i) a borrower is unable to pay the premiums out of his own resources at the time due, (ii) it is not practical to process a loan for that purpose, (iii) such action is necessary to protect FHA's interests, and (iv) the amount advanced can be charged to the borrower under the provisions of the security instrument.

(d) *Real estate.* (1) Real estate will be taken as additional security for FHA chattel indebtedness in accordance with the provisions of subpart A of Part 1872 of this chapter.

(2) Borrowers will be encouraged to insure improvements on real property taken as security for FHA chattel indebtedness. When insurance is necessary it should be obtained in accordance with the provisions of Part 1806 of this chapter except that it will be in reasonable amounts and against such hazards as are customary in the area.

(e) *Securing unpaid balances on unsecured loans.* Except as provided otherwise by loan making regulations, when Operating, EM, or Economic Opportunity (EO) loans are being made to borrowers owing unsecured balances on FHA loans, the County Supervisor must determine in individual cases whether to request borrowers to give security covering such unsecured balances owed to FHA. In addition, in the servicing of EO loans, regardless of whether additional loans are being made, chattel security may be taken when the County Supervisor determines that: it may be necessary to rely on such property for collection of the loan; or such action will assist in accomplishing the objectives of the loan. These policies permit the exercise of sound discretion by County Supervisors in requesting borrowers to convert such unsecured loans to a secured status.

(f) *Continuation, extension, or renewal of chattel security instruments.* County Supervisors are responsible for seeing that security instruments are continued, extended or renewed as necessary to protect FHA's security interests. County Office employees in bonded positions are authorized to execute continuation, extension, or renewal instruments, as appropriate.

(1) *Financing statements and security agreements*—(i) *Financing statements.* A properly filed FHA Financing Statement is effective as notice for a period of five (5) years from the date of filing. A new Financing Statement needs to be taken and filed only if the debt is to be secured by: property not described specifically or by type on the filed Financing Statement; or, crops growing or to be grown or fixtures located or to be located on land not described on the filed Financing Statement. However, the filed Financing Statement must be continued to afford constructive notice to third parties after the original five (5) year period. Such continuation may be accomplished by filing Form FHA 462–7, "Continuation Statement," or Form FHA 462–12, "Continuation or Termination Statement," if provided by regulations issued by the State Office within 6 months prior to the expiration of the original 5-year period. Upon timely filing of Form FHA 462–7, the effectiveness of the filed Financing Statement is continued for 5 years after the last date to which the original filing was effective. Successive Continuation Statements may be filed to continue the notice to third parties. A lien search is unnecessary in connection with the continuation of a Financing Statement, provided the Continuation Statement is filed within the period prescribed above. Form FHA 462–11, "Request for Continuation Statement Filing Fee," may be used to notify the borrower that it is necessary to continue the Financing Statement and to request that he submit the amount of the filing fee.

(ii) *Security agreements.* An additional Security Agreement will be taken when (*a*) property not covered by specific description or the printed language of the previous Security Agreement is to serve as security for the debt, (*b*) it is necessary to obtain or maintain a security interest in crops or, (*c*) it is necessary to keep the Security Agreement up to date to assist in accounting for security property. In keeping the Security Agreement up to date for accounting purposes, an additional Security Agreement normally will be taken only when there are significant changes in the chattel security, and even then only one additional Security Agreement normally will be taken during the year for this purpose. Such

additional Security Agreement usually will be taken at about the time of the annual inspection of security property required by § 1871.9.

(2) *Chattel mortgages.* Extension or renewal of chattel mortgages may be accomplished either by: Obtaining new chattel mortgages as provided in paragraph (c) of this section; or, the use of Form FHA 462–6, "Affidavit of Extension and Renewal," or similar form approved for this purpose by the OGC. However, it is preferable to renew or extend chattel mortgages by obtaining new ones unless such action is inadvisable because of intervening liens or other legal reasons.

(i) State Offices will issue regulations as necessary outlining the actions to be followed to assure that FHA liens and the priority thereof are maintained by renewing or extending security instruments or by obtaining new security instruments, and lien searches are made as necessary to determine that FHA will obtain the required priority of liens.

§ 1871.5 Furnishing account and security information in UCC cases.

Within 2 weeks after receipt of a written request from the borrower, FHA is required to provide information as to the security and the total unpaid balance of the FHA indebtedness covered by the Financing Statement. If FHA fails to provide the above information it is liable for any loss caused to the borrower and, in some States, to other parties, and also may lose some of its security rights. Therefore, it is essential that the information be furnished within the period of 2 weeks specified above. The UCC provides that the borrower is entitled to such information once every 6 months without charge and that FHA may require payment of not to exceed $10 for each additional statement furnished. However, it is the policy of FHA to provide such additional statements without charge. The requested information will be furnished on Form FHA 462–10, "Farmers Home Administration's Answer to Request for Information."

(a) Although the UCC only requires FHA to furnish such information pursuant to the borrower's written request, it is the policy of FHA to honor oral requests of borrowers for such information. Furthermore, the UCC does not prohibit giving this information to other individuals who have a proper need for it, such as a bank or another creditor who may be contemplating advancing additional credit to the borrower. Therefore, the relationship with banks and other creditors, in this respect, may be continued the same as it was before the UCC became effective.

§ 1871.6 Furnishing lists of borrowers.

(a) *To purchasers.* County Supervisors may furnish buyers within a trade area with lists of borrowers whose chattels or crops are subject to FHA liens. State Directors, however, may prescribe the use of such lists in specific areas of the State or throughout the entire State. The list will contain the statement: "The crop and chattel liens or related financing statements of the Farmers Home Administration are recorded or filed as required by law. This list is furnished only as a convenience and is not necessarily complete." Lists will be transmitted by Form FHA 462–3, "Lists of Farmers Home Administration Borrowers." When the County Supervisor considers it advisable, he should personally deliver the form and list to the buyers and explain their purpose. It will be the responsibility of the County Supervisor to keep current the lists that have been distributed by notifying buyers in writing of the names of borrowers that should be added and the names of paid-up or transferred borrowers that should be deleted, or to indicate clearly in writing that such lists are "annual" lists.

§ 1871.7 Using Form FHA 431–2, "Farm and Home Plan," or Form FHA 431–3, "Family Budget," and Form FHA 431–4, "Business Analysis Nonagricultural Enterprises," as a basis for exercising authority to release chattel security.

The exercise of release authority in § 1871.8 with respect to both basic and normal income security will be based upon information concerning the borrower's operations as reflected on Form FHA 431–2, Form FHA 431–3, or Form FHA 431–4 as appropriate, and to the extent possible, as follows:

(a) If complete plans have been developed for the borrower's current crop or business year, the release will be based on such plans.

(b) If abbreviated plans have been developed for the borrower's current crop or business year, the release will be based on such plans, plus the applicable information contained in any recent complete plans available in the borrower's file and the County Supervisor's knowledge and judgment concerning the borrower's present operations. If the recent complete Farm and Home Plan is in a paidup loan file of the borrower, it will be brought forward and filed in the borrower's current file.

(c) If no recent plans have been made with the borrower to reflect his operations, the releases will be based on the County Supervisor's knowledge of the borrower's current operations, plus such additional inquiry and documentation of the facts concerning the borrower's present operation in the running case record or otherwise as the County Supervisor thinks necessary to justify the release.

§ 1871.8 Releasing chattel security.

Chattel security may be released as provided in this subpart only when it clearly appears from the facts that such release will not be to the financial detriment of FHA. Borrowers will be held strictly accountable to FHA for the proper use of proceeds from the sale of security property. Insurance proceeds derived from the loss of security property will be treated the same as proceeds derived from the sale of security property. The authority to release security for FHA loans is different for basic security and normal income security.

(a) Basic security consists of all equipment (including fixtures in UCC States) and foundation herds and flocks securing FHA loans, which serve as a basis for the farming or other operation outlined in Form FHA 431–2, Form FHA 431–3, or Form FHA 431–4. Basic security also includes replacements of such property, and animals that are sold as a result of the normal culling process unless the borrower has replacements that will keep numbers and production up to planned levels. In addition, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security. County Supervisors are authorized hereby to release basic security when the property has been sold or exchanged for its present market value, and the proceeds are used for one or more of the following purposes:

(1) To pay on the debts owed to FHA which are secured by liens on the property sold.

(2) To purchase from the proceeds of the sale, or to acquire through exchange, property more suitable to the borrower's needs provided the new property, together with any proceeds applied to the indebtedness, will have security value to FHA at least equal to that of the lien formerly held by FHA on the old property and subject to the following:

(i) In UCC cases. Under the after-acquired property provisions of the Security Agreement, the new property, except fixtures, will be subject to the security interest of FHA provided the Financing Statement on file and the Security Agreement cover the class of property involved. Therefore, in such cases, new security instruments will not be taken until required for other reasons. However, if either the Financing Statement or Security Agreement does not cover such property, a new instrument(s) will be taken. Since the after-acquired property clause in the Security Agreement does not cover fixtures, a new Security Agreement will have to be taken if fixtures are acquired. A new Financing Statement also will have to be taken and filed unless the existing filed Financing Statement covers fixtures by class and describes the land on which the new fixtures are or are to be located. The new security instrument(s), when required, will be taken at the time of acquisition of the new property except as authorized by subdivision (iii) of this subparagraph.

(ii) In chattel mortgage cases. The new property is made subject to a lien in favor of FHA by the execution of a new security instrument (or by operation of the "replacement" or "after-acquired property" clauses in lien instruments in accordance with State regulations). The new security instrument when required will be taken at the time of acquisition of the new property except as authorized by subdivision (iii) of this subparagraph.

(iii) Delaying the taking of new security instruments. In individual cases, County Supervisors may delay the taking of new security instruments, referred to in subdivisions (i) and (ii) of this subparagraph, not to exceed 1 year or until new instruments are necessary for other reasons, whichever is earlier, when adequate security (the value, as determined by a present market value appraisal of the borrower's property remaining under lien to FHA is substantially greater than the amount of the debt) will continue to exist.

(3) To make payments to other creditors having liens on the property sold which are superior to the liens of FHA, provided any amount remaining after payments are made to the other creditors is used in accordance with the provisions of subparagraphs (1) and (2) of this paragraph.

(4) To pay costs required to preserve or realize on security property because of an emergency or catastrophe, when the need for funds cannot be met through an FHA loan, or an FHA loan cannot be made in sufficient time to prevent the borrower or FHA from suffering a substantial loss.

(b) Normal income security consists of all security property not considered as basic security. This will include crops, livestock, poultry, products and other property covered by FHA liens which are sold in the usual course of operating the farm or other business. County Supervisors are authorized hereby to release normal income security when the property has been sold for its present market value and the proceeds are used in accordance with the requirements set forth below, or the property is disposed of without sale under one or more of the conditions set forth below:

(1) To pay debts owed to FHA.

(2) To pay farm and home or other operating expenses provided for in the appropriate tables of Form FHA 431–2, Form FHA 431–3, or Form FHA 431–4, including approved revisions thereof.

(3) To pay necessary farm and home or other operating expenses which are shown as debts in the financial statement on Form FHA 431–2 or Form FHA 431–3 and which are to be paid during the year as shown by the debt payment table, provided these debts were incurred in the production, harvesting, or marketing of crops, livestock, poultry or products, sold during the year, or were for family subsistence for that year.

(4) To pay an amount not to exceed the equivalent of 1 year's income taxes and social security taxes.

(5) To make payments to other creditors having liens on the property sold which are superior to FHA liens.

(6) To pay annual installments on debts owed on essential real estate which are owed to creditors other than FHA, provided amounts of such installments are reasonble when related to the normal rental charge for similar real estate in the area, and there is assurance that the borrower will retain possession of the real estate at least for the next year.

(7) To make reasonable payments on debts owed to other creditors for essential home equipment and essential passenger automobiles provided for in the debt payment tables of Form FHA 431–2 or Form FHA 431–3 or approved revisions thereof. Such debts ordinarily will be considered for payment only after the full amount agreed upon for the year has been paid to FHA. However, reasonable amounts may be paid on such debts to other creditors before the amount agreed upon for the year has been paid to FHA, provided failure to make such payments to other creditors when due would result in the borrower's losing possession of essential home equipment or an essential passenger automobile, and such loss of possession would make it necessary for the borrower to replace the property or to go to substantial additional expense in order to continue his operations.

(8) To make payments on debts on harvesting equipment such as cotton pickers, corn pickers, combines, forage harvesters, and so forth; in addition to the payment of essential harvesting expenses provided: an Operating or Emergency loan for the crop year did not include funds for the payment of depreciation on such equipment; and, the total amount released for such payments and harvesting costs, plus any loan funds advanced for harvesting costs, does not exceed the amount that would be required during the crop year on a custom basis to harvest the crop(s) in connection with which the harvesting equipment is used.

(9) To make payments on debts owed to other creditors and to make purchases or to meet expenses which are not otherwise provided for in this paragraph, including the payment of income taxes and social security taxes not included in subparagraph (4) of this paragraph, provided: such debt payments, purchases, or expenses are included in the Form FHA 431–2, Form FHA 431–3, or Form FHA 431–4; it appears clear that sufficient income will be available to pay on FHA debts secured by liens on chattel property an amount equivalent to that scheduled on the notes to fall due during the year, plus the amount agreed upon on any delinquencies on such debts; and, such debt payments, purchases, or expenses are essential to permit the borrower to obtain or retain necessary equipment, or to continue his operations on a sound basis.

(10) To pay costs required to preserve or realize on security property because of an emergency or catastrophe, when the need for funds cannot be met through an FHA loan or an FHA loan cannot be made in sufficient time to prevent the borrower or FHA from suffering a substantial loss.

(11) To permit crops serving as security for FHA loans to be fed to livestock when it is determined by the County Supervisor that disposal of such crops through livestock is preferable to direct marketing of the crops, provided a lien or assignment is obtained in accordance with § 1831.12(a)(6).

(12) When livestock is consumed by the borrower family for necessary subsistence purposes.

(13) When FHA holds a lien on crops in which neither the borrower nor FHA has an interest due to the fact that the borrower is no longer occupying or farming the premises described in the lien instrument.

(c) In exercising the authority contained in paragraph (b) of this section, if the County Supervisor finds that the amount of income originally planned for the year will not be received, he will determine, in consultation with the borrower, the uses to be made of income which is available at the time or will become available during the remainder of the planned year as shown on Forms FHA 431–2 or 431–4 revised as prescribed by regulations available at all FHA offices. If other creditors have liens on the property from which the normal income is received, the consultation also must include such creditors. In the cases referred to in this paragraph the following priorities should be followed in distributing the income that will be available:

(1) Pay necessary farm and home and other operating expenses which are planned for payment by cash as incurred.

(2) Prorate repayments on credit advanced for necessary farm and home and other operating expenses to the FHA and other creditors.

(3) Make planned payments on other debts as shown in Table K of Form FHA 431–2 or Table H of Form FHA 431–3. However, minimum payments may be made on such debts along with the payment of cash farm and home and other operating expenses or on credit advanced for such purposes when necessary to enable the borrower to retain essential property.

(d) The County Supervisor is authorized hereby to redelegate the authority to release security property, as provided in this section to Assistant County Supervisors, Emergency Loan Supervisors, and Assistant Emergency Loan Supervisors, provided it is determined that the individual to whom such authority is being redelegated has had sufficient training and experience to exercise properly the authority. The County Supervisor also may redelegate such authority to any other employees in bonded positions in his office under the same conditions except that such employees may not be authorized to release: basic security unless the use to be made of the proceeds therefrom has been agreed to by the County Supervisor or Assistant County Supervisor, Emergency Loan Supervisor, or Assistant Emergency Loan Supervisor if he has been redelegated release authority; or, normal income security if current complete plans are not available unless the use to be made of the proceeds therefrom has been agreed to by such Supervisor. Agreements under the provisions above must be documented in the borrower's running case record before the release authority is exercised.

(e) Release of valueless junior lien: State Directors are authorized to release

chattels and crops serving as security for FHA loans when such property has no present or prospective security value or the enforcement of the FHA lien would be ineffectual or uneconomical.

(1) *Documentation.* The following information will be obtained and documented in the running case record:

(i) The present market value of the chattels or crops, as determined by the County Supervisor, on which FHA has a valueless junior lien.

(ii) The names of the prior lienholders on the property described in subdivision (i) of this subparagraph, amount secured by each such prior lien, and the present market value of any other property which serves as security for such amount. The value of all property serving as security for amounts owed to prior lienholders must be taken into account to determine whether the junior FHA lien has any present or prospective value.

(2) *Release forms.* Forms FHA 460–6, "Release (UCC States)," and FHA 460–1, "Partial Release," as approriate, will be executed by State Directors covering the specific items of property to be released.

§ 1871.9 Accounting for security property.

County Supervisors are responsible for maintaining currently a record of each borrower's security property as prescribed herein. When the borrower acquires additional items of chattel property which will be described on subsequent security instruments appropriate descriptions of such items will be recorded on the work copy of the Security Agreement or the file copy of the chattel mortgage as appropriate. At least once each year, during a regularly scheduled farm and home visit, an inspection should be made of the chattel property serving as security for FHA loans to see that such property is properly accounted for and maintained.

(a) *Accounting by the borrower.* Borrowers are required to account for all security property. They will be instructed regarding the care, maintenance, and disposition of security property when their loans are made and as ofen thereafter as it is determined that additional instruction is necessary. When borrowers sell security property, the sale will be made subject to the FHA lien and the property and proceeds will remain subject to such lien until the lien thereon is released or the sale is approved by the County Supervisor or his delegate and the proceeds are used for one or more of the purposes outlined in § 1871.8. Purchasers of security property who make inquiry should be informed that the property is subject to FHA's lien and will remain subject to the lien until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FHA and the check has cleared.

(b) *Recording dispositions of security property.* (1) Basic security. All dispositions of basic security will be recorded on Form FHA 462–1, "Record of the Disposition of Security Property," as soon as such information becomes available. This will include items sold, exchanged, lost through death, theft, destruction, or deterioration, and livestock consumed by the family. Entries on Form FHA 462–1 will be sufficiently detailed to identify the property, the quantity disposed of, the net price received, the date of disposition, and the actual use made of any sale proceeds. In addition, with respect to property lost through death, theft, deterioration, or destruction, the circumstances or causes resulting in the loss should be shown. This information will be inserted on Form FHA 462–1 regardless of whether the action taken by the borrower is approved.

(2) Normal income security. Dispositions of normal income security will be recorded on Form FHA 462–1 in the manner outlined in subparagraph (1) of this paragraph. In addition the actual uses made of the sale proceeds will be recorded in sufficient detail so that such uses may be related readily to the appropriate tables in Form FHA 431–2, Form FHA 431–3, or Form FHA 431–4. However, such entries are not required on Form FHA 462–1 when: the borrower is not delinquent on any FHA debts and has paid the amount agreed upon for the year; or, when farm products such as milk, eggs, or wool are sold and are accounted for by the use of Form FHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," or the farm and home plan shows that no payments are to be made on FHA debts from this source.

(3) Employees having release authority will indicate in the columns provided for that purpose whether the action is approved or disapproved and will initial and date the entry. Recording of the disposition of security property under subparagraphs (1) and (2) of this paragraph, or dispensing with making a record of the disposition of security property under subparagraph (2) of this paragraph, does not release the FHA lien on the security property involved.

(c) *Release forms.* The County Supervisors or their delegates are authorized hereby to execute releases covering specific items of property when the requirements of § 1871.8 have been met. If security interest under the UCC are involved, Form FHA 460–6 will be used in accordance with the FMI to release such property from Financing Statements and Security Agreements. If chattel mortgages are involved, Form FHA 460–1 or other approved form will be used for this purpose. Releases need not be executed in any case unless requested by a borrower or by an interested third party. Form FHA 462–2, "Statement of Conditions on Which Lien Will Be Released," may be used when borrowers or purchasers request such statement prior to the date of sale.

(d) *Reporting improper dispositions of security property.* When the borrower fails to account properly for security property, the County Supervisor will report the facts promptly to the State Office in accordance with the provisions of Subpart B of this part.

§ 1871.10 Amendments of consents or releases or suspensions of assignments.

(a) *Consent to payment of proceeds from the sale of farm products.* (1) County Supervisors are authorized hereby to temporarily amend consents to the payments of proceeds from the sale of farm products to permit borrowers to use all or a greater amount of such proceeds in emergency situations and in other justifiable circumstances provided such action will not be to the financial detriment of FHA and the funds will be used for the purposes enumerated in § 1871.8. Form FHA 462–9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used for this purpose. In each case the borrower's file will show the purpose for which the amendment is made and the justification for such action. County Supervisors will take action to see that payments are made in accordance with the original consent when the temporary amendment period expires.

(2) When a Form FHA 441–18 has been executed and the amount of the payment to FHA needs to be decreased for other than a temporary period, or increased for any period, a new Form FHA 441–18 will be executed.

(3) If a Form FHA 441–18 has been executed with respect to a particular product and it develops that FHA is no longer looking to the proceeds from that product for payment on the FHA indebtedness, the purchaser should be advised by letter as follows: "The Farmers Home Administration is not presently looking to the proceeds from the sale of (name of product) covered by the 'Consent to Payment Proceeds From the Sale of Farm Products' executed by (name and address of borrower) and accepted by you on (date). Therefore, until further notice, you may discontinue making payments to FHA for such product."

(4) If a Form FHA 441–18 has not been executed with respect to a particular product because the FHA is not expecting payment from the proceeds of such product, but the purchaser of the product makes inquiry about the payment of proceeds, he should be advised by letter as follows: "The Farmers Home Administration has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on his debt owed to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FHA for such product."

(b) *Assignments.* (1) County Supervisors are authorized hereby to release, reduce, or temporarily suspend assignments of proceeds from the sale of agricultural products including Agricultural Conservation Program payments and crop insurance assignments and to permit borrowers to use such proceeds including those received in the form of checks made payable jointly to the borrower and FHA. This authority may be exercised in the same situations, under the same conditions, and for the same

purposes as provided in paragraph (a) of this section. County Supervisors will take action to see that suspended, reduced or released assignments are reinstated or new assignments are obtained when needed. All suspensions, reductions or releases of assignments will be made on forms approved by OGC. Such forms will be prepared in an original and one copy. The original will be forwarded directly to the person or firm making the payment against which the assignment is effective and the copy will be retained in the borrower's case file. In each case, the borrower's file will show the purposes for which the suspension, reduction or release is made and the justification for such action.

(2) State Directors are authorized hereby in justifiable cases to approve requests for suspensions, release or reduction of assignments other than those specified in paragraph (a)(1) of this section, in accordance with the routine outlined in that paragraph and provided such action will not be detrimental to FHA's interest.

(c) *Authority.* County Supervisors are authorized hereby to redelegate the authorities contained in paragraph (a)(1) and (b)(1) of this section to Assistant County Supervisors, Emergency Loan Supervisors and Assistant Emergency Loan Supervisors provided it is determined that the individual to whom such authority is being redelegated has had sufficient training and experience to exercise properly the authority.

§ 1871.11 Use of other credit and subordination of chattel security.

(a) *Policy.* (1) Borrowers will be required to obtain credit needed for necessary operating purposes from other reliable sources as prescribed in § 1831.8.

(2) FHA liens on chattels and crops may be subordinated in order to permit applicants and borrowers to obtain all or part of the credit they need from other reliable sources as set forth in paragraph (b) of this section.

(b) *Purposes and limitations.* (1) When credit is obtained by subordination for necessary expenses directly related to a particular crop(s) or a particular livestock enterprise(s) it is preferable that the subordination cover only such crop(s), livestock increase or feeder livestock, or other normal farm income security. However, the minimum amount of basic chattel security necessary may be subordinated to enable borrowers to obtain the credit they need from other sources for necessary operating expenses.

(2) Chattel liens of the FHA may be subordinated as necessary to obtain credit from other reliable sources for expenses which are not ordinarily considered annual operating expenses such as major repairs and parts for essential equipment for which FHA operating loans would otherwise be required.

(3) When an obligation secured by a lien prior to that of FHA is about to mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced, the FHA lien may be subordinated provided the relative lien position of FHA is maintained.

(4) The subordination will be limited to a specific amount determined to be necessary to meet that part of the expenses not otherwise provided for.

(5) A subordination in favor of only one creditor will be outstanding at any one time in connection with the same security, except that a subordination may also be executed to enable a borrower to obtain necessary crop insurance if the creditor to whom a subordination has been given on that crop(s) gives his consent in writing to payment of the insurance premiums from the proceeds of the crop or the insurance.

(6) When a subordination is executed to enable the borrower to obtain insurance on crops under lien to FHA the borrower will assign the proceeds of such insurance to FHA or FHA will be named in the loss-payable clause of the policy.

(7) Chattel liens of the FHA will not be subordinated to enable a borrower to obtain credit for making payments on FHA accounts, the purchase of capital goods, except feeder livestock, or to make principal payments on real estate debts.

(8) Waivers of FHA lien priority, in lieu of subordinations, may be executed in favor of a creditor who has or will make advances to produce, harvest, process or market crops under written contract to that creditor provided such waivers are limited to the purposes for which subordination may be made under this subpart. When the waiver includes other purposes such as principal repayments for the purchase of equipment the concurrence of the State Director will be obtained before the waiver is executed.

(c) *Approval authorization.* Loan approval officials are authorized hereby to execute subordination and waivers of FHA lien priority as provided in paragraph (b)(8) of this section on chattel property subject to the above-stated policies provided the amount of the subordination for the borrower, plus the outstanding total principal balance owed by him on Operating and Emergency loans does not exceed the loan officials loan approval authority. Current information regarding limitations on loan approval authorities of various officials of the FHA may be obtained from any County or State Office of the FHA or from its National Office at 14th and Independence Avenue SW, Washington, DC 20250. However, the State Director may approve subordinations regardless of the total principal OL and EM balances plus the subordination.

(d) *Methods.* Subordinations or lien waivers authorized herein will be made on Form FHA 460–2, "Subordination by the Government," or on other suitable forms approved by the State Director upon the advice of the OGC.

(e) *Reporting use of other credit.* (1) The use of other credit will be documented on Form FHA 441–7, "OL–EM and Other Credit Analysis."

(2) One copy of Form FHA 441–7 will accompany each Operating loan docket to the Finance Office.

(3) Form FHA 441–7 will be prepared and forwarded to the Finance Office for each active Operating loan borrower who does not receive an Operating loan during the fiscal year but will receive operating credit from other sources.

§ 1871.12 Correcting errors in security instruments and executing special releases.

When security instruments have been taken covering chattel security property which the borrower did not own or on which he could not give a lien, County Supervisors are authorized hereby to release such property from the instrument, except when it is determined that there was bad faith on the part of the borrower in including the property in the security instrument. Likewise, when items which are not intended to serve as security for the loan are covered by the broad language in the Financing Statement, or in the Financing Statement and Security Agreement, County Supervisors are authorized hereby to release such property. In addition, State Directors are authorized hereby to release chattel security property which has been taken as additional security for real estate-type loans under the provisions of § 1872.14. This authority will be exercised through the use of Form FHA 460–1 in the case of chattel mortgages or other similar instruments or Form FHA 460–6 in the case of Financing Statements or by the use of other forms approved by OGC if the above forms are not legally sufficient.

§ 1871.13 Satisfaction or termination of chattel security instruments.

(a) County Supervisors are authorized to terminate Financing Statements and to satisfy chattel mortgages, chattel deeds of trust, assignments, severance agreements, and other security instruments:

(1) Upon receipt of payment in full of all debts secured by collateral covered by the security instruments;

(2) When all security property has been liquidated or released in accordance with § 1871.8(e) and proceeds properly accounted for, including collection or settlement of all claims against third party converters of security property, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) When the U.S. attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that appropriate actions be taken to satisfy or terminate such instruments.

(b) *Form of payment.* (1) When a payment is received in the form of currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible the security instruments may be satisfied or the Financing Statements may be terminated upon receipt of final payment.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days

after the date of the final payment except that in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (The reason for the 10 day requirement in UCC States is set forth in paragraph (c) (1) of this section.)

(c) *Filing or recording*—(1) *Termination statements.* Financing Statements will be terminated by use of Form FHA 460–7, "Termination Statement," or Form FHA 462–12 if provided by regulations issued by the State Office. The original will be delivered to the borrower for filing or recording and a copy will be retained in the borrower's case file. Under the provisions of the UCC if FHA fails to furnish a termination statement to the borrower within 10 days after written demand therefor, it shall be liable to the borrower for $100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by regulations issued by the State Office. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to him when the paid-in-full notes are received from the Finance Office, except as provided in the next sentence. If FHA has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year the Financing Statement(s) need not be terminated, in the absence of such demand, until it is determined that a loan for the succeeding year will not be made and then only after all paid-in-full notes covering the entire period of FHA financing have been received from the Finance Office, unless earlier termination is required by regulations issued by the State Office.

(2) *Satisfactions.* Satisfactions of chattel mortgages and similar instruments will be made on Form FHA 460–4, "Satisfaction," or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if regulations issued by the State Office based on State law require recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor.

(i) *Marginal entry or other form of satisfaction.* When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form FHA 460–4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to regulations issued by the State Office. In such cases, Form FHA 460–4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FHA 451–1, "Receipt for Payment," or Form FHA 456–3, "Journal Voucher for Write-Off or Judgment," which will be retained in the borrower's case folder.

(d) *Notice to purchasers of farm products under consents or assignments.* County Supervisors will notify purchasers of farm products as soon as FHA has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. In cases in which Form FHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," is in effect under the UCC, the notice to purchaser will be made on Form FHA 460–8, "Notice of Termination of Security Interest in Farm Products." In cases where assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by regulations issued by the State Office.

(e) *Satisfaction or termination of liens when old loans cannot be identified.* When a request is received for the satisfaction of a crop or chattel lien or for the termination of a Financing Statement and the status of the account secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in his office regarding the account. The letter will request the Finance Office to inform him as to whether the borrower is still indebted to FHA and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form FHA 460–4 or other approved form or to effect the satisfaction by marginal release, or a Termination Statement on Form FHA 460–7, as appropriate.

(f) *Release of FHA's interest in insurance policies.* When liens on property covered by insurance have been released, the County Supervisor is authorized hereby to notify the insurance company that FHA has released its lien on the property covered by the insurance.

(g) *Redelegation of authority to terminate financing statements and to satisfy other security instruments.* County Supervisors are authorized hereby to redelegate to County Office employees in bonded positions the authority to terminate Financing Statements and to satisfy other security instruments in accordance with this section, provided it is determined that the individual to whom such authority is being redelegated has had sufficient training and experience to exercise properly the authority.

§ 1871.14 Assignment of notes and security instruments including financing statements.

State Directors are authorized hereby to accept from third parties payment in full of a borrower's notes held by FHA and to assign such notes to such third parties without recourse against FHA and to assign related security instruments including Financing Statements without warranty by FHA in the situations set forth below. See § 1872.20(a) for special provisions on assigning insured loans. The OGC will review each proposed assignment, as to the legal matters involved, and will approve the form of assignment.

(a) When borrowers request or give written consent to such an assignment.

(b) When borrowers have not requested or given written consent to such an assignment but have demonstrated an unwillingness to cooperate voluntarily with FHA in the servicing and orderly retirement of their accounts which otherwise would be liquidated.

§ 1871.15 Fees.

(a) *Security instruments.* Borrowers will be required to pay statutory fees for filing or recording financing statements or other security instruments (including Form FHA 462–7, "Continuation Statement," Form FHA 462–6, "Affidavit of Extension and Renewal" or other renewal statements) and any notary fees in connection with the execution of such instruments. They also will be required to pay costs of obtaining lien search reports that are necessary in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials rendering the service. When cash is accepted by FHA personnel to be used to pay the above-mentioned fees, Form FHA 440–12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed and handled as prescribed in subpart B of Part 1831. If the borrower is unable to pay the necessary fees, the County Supervisor may pay such fees in the manner outlined in paragraph (d) of this section, but such fees will be charged to the borrower's account.

(b) *Satisfactions.* Fees for filing or recording satisfactions or termination statements must be paid by the borrower unless regulations issued by the State Office based on State law require that such fees be paid by FHA.

(c) *Notary fees.* Fees for notary service necessary in connection with releases, subordinations, and related documents executed for and on behalf of FHA, will be paid by FHA if the notary service cannot be obtained without cost.

(d) *Payment of fees.* Fees referred to in paragraphs (a), (b), and (c) of this section that must be paid by FHA, will be paid in accordance with regulations available at any FHA office.

§ 1871.16 Stamping peanut and tobacco marketing cards.

(a) *General.* This section provides a method of assisting borrowers in the orderly marketing of crops of peanuts and tobacco mortgaged to the FHA, and at the same time, provide buyers of these commodities with information as to the existence of such mortgage liens. In accordance with this purpose, arrangements have been made with the Agricultural Stabilization and Conservation

Service (ASCS) to permit County Office personnel of the FHA to indicate on marketing cards that the FHA has a lien on the commodity involved.

(b) *Authorization.* State Directors are authorized to designate the areas in their States within which this procedure will be followed for any of the named commodities.

(c) *Contact with State Agricultural Stabilization and Conservation Committee.* State Directors of the FHA will inform the State Agricultural Stabilization and Conservation Committee each year, on a commodity basis, whether this procedure will be followed in the State, and if so, the counties in which it will be applicable.

(d) *Procedure for marking marketing cards.* (1) The Office of the County Agricultural Stabilization and Conservation Committee (County ASCS Office) will notify the FHA County Office when work begins in connection with the preparation of marketing cards for each commodity.

(2) When notice is received that work has been started on the preparation of marketing cards for a commodity, the FHA County Office will furnish the appropriate ASCS County Office(s) with applicable lists of FHA borrowers, including names and addresses, whose marketing cards are to be marked as provided in subparagraph (3) of this paragraph, to denote that FHA has a lien on the commodities involved. Upon the approval of the State Director, the FHA County Office may exclude from this list the names of borrowers whose past records indicate conclusively that assistance is not needed in marketing crops or in the application of proceeds therefrom.

(3) The County ASCS Office will prepare the marketing cards in the usual manner, but will segregate the cards of borrowers shown on the FHA list. Prior to the time the cards are delivered, the County ASCS Office will notify the FHA County Office that the marketing cards have been prepared. The person designated by the FHA County Supervisor will go to the County ASCS Office and check carefully the cards which have been segregated, and:

(i) For peanuts and tobacco, except flue-cured and burly tobacco, will stamp the cards with the following stamp:

Notice. Make check payable jointly to Producer and Farmers Home Administration.

The stamp will be placed on such card wherever it is mutually agreeable to the FHA County Supervisor and the ASCS County Office Manager. If the borrower satisfies the lien or repays the amount due for the current year, the FHA County Supervisor, Assistant Couty Supervisor or County Office Clerk will cancel the "Notice" by writing across such notice the word "canceled," followed by the name of the official making the cancellation and the date of such cancellation.

(ii) For flue-cured and burley tobacco, will stamp Form MQ 76 (Flue), "Tobacco Marketing Card," with the following stamp:

FHA Lien.

The stamp will be placed on the left at the bottom of the signature strip under "Tobacco Marketing Card." If the borrower satisfies the lien or repays the amount due for the current year, the FHA County Supervisor, Assistant County Supervisor, or County Office Clerk will cancel the notice by writing the word "Canceled" across "FHA Lien" followed on the same line by the name of the official making the cancellation and the date of such cancellation.

(e) *Notice to borrowers.* County Supervisors will inform borrowers of these arrangements, including the arrangements for canceling the lien notice.

(f) *Notice to buyers.* County Supervisors will explain this plan to buyers (warehousemen and dealers in case of tobacco) in the area and solicit their cooperation. In doing so, it should be explained that the actual notice of liens afforded by this procedure is not in lieu of the constructive notice afforded by recorded mortgages. Instead, it is offered as a courtesy and to provide buyers with readily available current information. This explanation should be made personally, if practical. If, because of a large number of buyers in the area served by a County Office, personal contact with them is impractical, the County Supervisor may explain the plant to them through correspondence.

§ 1871.17 Subordinations and waivers of crop liens for borrowers receiving loans under Commodity Credit Corporation program.

(a) *General.* This section sets forth the policy and procedures for subordinating and waiving FHA crop liens for borrowers to receive loans or sell commodities under Commodity Credit Corporation (CCC) program. An agreement, has been reached with the CCC under which price support may be made available to borrowers under loan and purchase programs conducted by CCC without causing undue inconvenience to borrowers, FHA, and CCC in securing lien waivers. The agreement reached with the CCC follows:

MEMORANDUM OF UNDERSTANDING AND BLANKET COMMODITY LIEN WAIVER

The Farmers Home Administration (FHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FHA and CCC in, and without causing undue inconvenience to producers and FHA and CCC in securing lien waivers on such commodities. Now, therefore, it is agreed as follows:

1. Upon request of an official of an ASCS State Office, the FHA State Director in such State shall furnish designated ASCS County Offices with the names of producers in the trade area from whom FHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FHA will try to furnish a complete and current list of the names of such producers; however, FHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

2. For a loan disbursed by an ASCS County Office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity, payable jointly to the FHA and the producer if (a) his name is on the list furnished by FHA, or (b) he names FHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

3. On issuance of the draft, the security interest of FHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FHA in such commodity shall terminate.

4. Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

5. This agreement may be terminated by either party on 30 days written notice to the other party.

(b) *Policy and routines—1 Furnishing lists of borrowers.* Upon the request of Agricultural Stabilization and Conservation Service (ASCS) State Offices, State Directors will inform appropriate County Supervisors to furnish designated ASCS County Offices with the names of borrowers in the trade area from whom FHA holds currently effective liens on commodities with respect to which CCC conducts price support programs.

(2) *Advances by ASCS.* When CCC loans are advanced by the ASCS County Offices direct to the borrower:

(i) ASCS will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity, payable jointly to FHA and the borrower if: the borrower's name is on the list furnished by FHA; or, the borrower names FHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(ii) On issuance of the draft, payable jointly to FHA and the borrower, the security interest of FHA will be: subordinated to the rights of CCC in the commodity with respect to which the loan is made, or, terminated in the commodity purchased by CCC.

(iii) No form of subordination or lien waiver will be executed by FHA.

(iv) If the commodity covered by the loan, in connection with which the draft payable to FHA and the borrower was issued, is released by CCC or redeemed by the borrower, the lien of this Agency would be restored to the same priority it held before the issuance of such joint draft.

(3) *Advances by banks and established ginners and warehousemen.* When the full amount of the CCC loan value of the cotton involved is to be advanced to the borrower by a bank or an established ginner or warehousemen whom the County Supervisor considers financially responsible, and when a check or draft

issued by the bank, ginner or warehousemen is made payable to FHA, or jointly to FHA and the borrower and is delivered to the County Supervisor, he may then execute the lienholder's Waiver on Form CCC Cotton A even though item 2 of that Form shows that the CCC loan will be distributed to such a bank, ginner or warehousemen.

(i) *Redelegation of authority.* The County Supervisor is authorized hereby to redelegate the authority to execute waivers of FHA liens in favor of CCC as provided in subparagraph (3) of this paragraph to any employee in a bonded position in his office, provided it is determined that the individual to whom such authority is being delegated has had sufficient training and experience to properly exercise the authority.

Subpart B—Liquidation of Chattel Property and Related Actions

Sec.

AUTHORITY: The provisions of this Subpart B issued under sec. 301, 80 Stat. 379, sec. 510, 63 Stat. 437, sec. 339, 75 Stat. 318, sec. 602, 78 Stat. 528; 5 U.S.C. 301, 42 U.S.C. 1480, 7 U.S.C. 1989, 42 U.S.C. 2942; Order of Director, Office of Economic Opportunity, 29 F.R. 14764, Orders of Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650, 33 F.R. 9677.

Subpart B—Liquidation of Chattel Property and Related Actions

§ 1871.21 General.

This subpart is supplemented by Part 1890e of this chapter. This subpart establishes the policies, procedures, and authorities for: liquidating chattel security and Economic Opportunity (EO) property; disposing of acquired chattel property; and, handling civil actions, bankruptcy and similar proceedings, probate or administration proceedings, and alleged criminal violations.

(a) *Insured loans.* When liquidation involving an insured loan is approved; the State Director will take immediate steps to obtain an assignment of the loan to Farmers Home Administration (FHA). If the liquidation is approved by the County Supervisor, he immediately will refer the case to the State Office with a request that the assignment of the loan be obtained. The State Director will notify the County Supervisor as soon as the assignment has been obtained. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be instituted and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless it is essential to do so to protect FHA's interests and Office of the General Counsel (OGC) advises that such action can be taken. However, other liquidation action need not be held up pending assignment of the insured note(s) to FHA.

(b) *Definitions.* As used in this part:

(1) "FHA" means the United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies. "FHA" also includes the Regional Agricultural Credit Corporation of Washington, D.C. (RACC), and the United States of America acting under Trust or Liquidation Agreements covering assets of State Rural Rehabilitation Corporations or successor State Agencies or officials (SRRC).

(2) "Chattel Property" includes crops; livestock; fish; farm, business, and recreational equipment; supplies; farm products; other personal property; and fixtures.

(3) "Chattel Security" and "Security Property" is chattel property covered by FHA financing statements and security agreements, chattel mortgages, and other security instruments covering chattel property.

(4) "EO Property" is nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

(5) "EO Property Essential for Minimum Family Living Needs" as used in this subpart is nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would be unable to have such necessities. This includes the livestock, poultry, or other animals which are to be used as food or which will produce food for the family or produce income needed for minimum essential family living needs. It includes items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. If any such item is of a value in excess of the minimum need, such item may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the sale proceeds will be paid on the EO loan. The term also includes modest amounts of real property needed for shelter for the family or for the production of food or income required for minimum essential family living needs.

(6) "Default" is the failure on the part of the borrower to observe his agreements with FHA as contained in notes, security instruments and other similar or related instruments. A borrower is in default when he:

(i) Is delinquent, and his refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other operation, or other circumstances within his control.

(ii) Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

(iii) Has disposed of security or EO property without the required FHA approval, has not properly cared for such property, has not accounted properly for such property or the proceeds from its sale, or taken some other action which resulted in bad faith or other violations in connection with his loan.

(iv) Has progressed to the point that he is able to obtain credit from other sources, has agreed in his note or other instrument to do so but refuses to comply with that agreement.

(7) "Liquidation" is the act of: selling security or EO property in line with the policies expressed in § 1871.22 for the purpose of closing out the loan in those cases in which it has been determined that no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security property or the value thereof, or to recover amounts owed to FHA; or filing claims in bankruptcy or similar proceedings or in probate or administration proceedings for the purpose of closing out the loan. Cases which become paid up from normal income or income resulting from the planned reduction in the size of the enterprise or by refinancing will not be considered as liquidations.

(8) "Civil Action" refers to court proceedings to protect FHA's financial interests such as by obtaining, as appropriate: possession of property from borrowers or third parties; judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property; or, judicial foreclosure of security instruments. "Bankruptcy" and similar proceedings to impound and distribute the bankrupt's assets to his creditors, and "probate" and similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are treated separately in this subpart and are not included in the term "civil action."

(9) "Criminal Action" refers to court prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes including, but not limited to violations such as (i) unauthorized sale of security property with intent to defraud, (ii) purchase of security

property with intent to defraud and without payment of the purchase price to FHA, (iii) falsification of assets or liabilities in loan applications, (iv) application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose, (v) decision, after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use, or (vi) by scheme, trick, or other device, covering up or concealing misuse of funds or unauthorized dispositions of security or EO property or other illegal actions, or (vii) any other false statements or representations relating to FHA matters. In order to establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time be signed the loan agreement or the check on the supervised bank account, intended to sell the property in violation of his loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. When actions by borrowers represent minor deviations from the policies expressed in FHA regulations, such actions are not considered as criminal violations for the purposes of this subpart. Examples of such minor deviations are failure of the borrower to account properly for nominal amounts derived from the sale of security property or for minor items of security. However, repeated unauthorized disposition of even minor items by the borrower will be considered criminal violations.

(10) "Abandonment" is the voluntary relinquishment of control by the borrower of security or EO property without providing for its care.

(11) "Repossessed Property" is security or EO property which is in FHA's custody, but which is still owned by the borrower.

(12) "Purchase Money Security Interests" means a special type of security interest which, if properly perfected, will take priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken either by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or obligates himself to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it and if such value is given not later than the time the debtor acquires the collateral or obtains rights in it.

(13) "Foreclosure sale" is the act of selling security property either under the "Power of Sale" in the security instrument or through court proceedings.

(14) "Acquired chattel property" is former security or EO property of which FHA has become the owner through liquidation action authorized by this subpart, foreclosure sales by prior lienholders at execution sales by FHA or other parties, sales in bankruptcy, and other sales which will affect FHA's interests.

(15) "OGC" means the Regional Attorneys and Attorneys in charge of the Office of the General Counsel of the U.S. Department of Agriculture.

(16) "United States Attorney" includes the Department of Justice.

§ 1871.22 Policy.

(a) *Liquidation.* It is the policy of FHA to continue with borrowers provided they make payments in accordance with their ability, account properly for security or EO property and otherwise meet their obligations under all loans owed to FHA. When liquidation action is taken, it is the policy to liquidate all security property or all EO property which can be liquidated except that which is determined essential for minimum family living needs. However, only so much of such property will be liquidated as is necessary to pay in full the indebtedness owed to FHA. Ordinarily, before a decision is made to initiate liquidation action, the facts in the case will be presented to the County Committee for consideration and recommendations. Liquidation action will be undertaken when it is determined that no further assistance will be given to a borrower and when he is in default.

(b) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FHA's interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the actions necessary to report the information required by Part II of Form FHA 455–22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interests of FHA and making collection efforts may affect the recommended criminal action. Otherwise, the cases will be submitted in the manner outlined in § 1871.35. Civil action will be recommended provided that:

(1) One or more of the following conditions exist: there is a need to repossess security or EO property, or to foreclose a lien, and such action cannot be accomplished by other means authorized in this subpart; there is a need for filing claims against third parties arising out of conversion or other action; the borrower fails to make payments due on his debts in accordance with his reasonable ability to pay and has assets or income from which collection can be made; the borrower has progressed to the point that he is able to obtain credit from other sources, has agreed in his note or other instrument to do so, but refuses to comply with that agreement; FHA or its security property becomes involved in court action through foreclosure by a third-party lienholder or through some other action; or other conditions exist which indicate that court action may be necessary to protect FHA's interests.

(2) Debts of less than $250 principal will not be referred to OGC for court action unless: a statement of facts is submitted as to the exact manner in which the interest of FHA, other than recovery of the amount involved, would be adversely affected if suit were not filed, and collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. State Offices will issue regulations to set forth such exemptions or a summary of those exemptions with respect to property to which FHA normally would look for payment such as real estate, livestock, equipment, and income.

(3) Except as provided in the initial part of paragraph (b) of this section, before court action is recommended the following actions will be taken or determinations made:

(i) It must be determined on the basis of reasonably current credit data that there is a reasonable prospect of collection now or in the near future of all the debt or a substantial amount on the debt from assets and income that are not exempt under State or Federal law.

(ii) The debtor must be contacted personally and requested to pay the debt in full, unless one or more such contacts have been made recently without success, or such contact is not feasible considering the distance of the debtor from the County Office or other relevant factors.

(iii) Form FHA 455–21, "Notice of Acceleration and Demand for Payment," will be used to accelerate the borrower's indebtedness, give him at least 15 days but not more than 30 days within which to make payment, and inform him of the consequences of his failure to make payment as demanded. However, this form will not be sent to the borrower unless the facts are first reviewed thoroughly with the District Supervisor and he is of the opinion that it would be appropriate to refer the case to the U.S. attorney if the borrower does not comply with the demand.

(iv) It must be determined that collection cannot be made either by Agricultural Stabilization and Conservation Service (ASCS) setoff in accordance with the provisions of § 1871.41, or by setoff or other agreement in accordance with the provisions of § 1871.41 if the debtor is employed by another Federal Agency or has a judgment against the United States.

(v) The current address of the debtor will be determined or efforts will be made to locate him in accordance with § 1864.5(b).

(vi) If the debtor advises that he is unable to pay the claim in full and if the County Supervisor believes that this may be the situation and that there has been no fraud or misrepresentation in the case, he will suggest that the debtor submit promptly an application for compromise or adjustment on Form FHA 456–1, "Application for Settlement of Indebtedness," in order that it may be considered and the debt disposed of by such debt settlement, if possible.

(4) When a borrower has not accounted properly for the proceeds of the

sale of security property, it is the general policy to look first to him for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security property on which FHA holds a first lien usually will be liquidated before demand is made or civil action taken to recover from third-party purchasers.

(i) In those cases in which the District Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security property purchased by a converter, a demand will be sent to the converter at the same time that Form FHA 455–21, "Notice of Acceleration and Demand for Payment," is sent to the borrower.

(ii) In all other cases in which the District Supervisor determines that action likely will have to be taken to collect from third-party purchasers, the County Supervisor will notify such purchasers by letter that FHA security property has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, the demand will be made unless the case already has been referred to OGC or the U.S. attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, he will be informed by the County Supervisor that FHA will take no action against him. However, if OGC determines that the facts support the claim against the third-party purchaser but it is determined that no substantial part of the claim can be collected from him, he will not be notified of that decision unless he makes inquiry. If he makes such an inquiry, he will be advised that no further action is to be taken on the claim "at this time."

(iv) If court action is recommended against a converter, the applicable provisions of subparagraphs (2) and (3) of this paragraph will be followed with respect to such converter the same as with respect to the borrower. In addition, unless personal contacts with the converter or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a followup letter will be sent to him by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional followup letter will be sent to the converter by OGC after the case has been referred to that office.

(c) *Criminal action.* When factual information has been obtained indicating that criminal violations may have been committed as defined in § 1871.21 (b) (9) and the violations are of such a nature that criminal action will be recommended, the facts will be immediately reported to OGC in the manner prescribed in § 1871.35 without taking collection actions necessary to report the information required by Part II of Form FHA 455–22. In all other cases in which it appears that criminal violations may have been committed, but in which criminal action will not be recommended, the factual situation will be reported to OGC as soon as collection action has been completed in accordance with paragraph (b) (3) and (b) (4) of this section. Cases in which there are minor deviations as referred to in § 1871.21(b) (9) need not be reported.

§ 1871.23 Responsibilities of FHA staff members.

(a) *County Supervisors.* County Supervisors are responsible for applying the liquidation policy in the manner prescribed by this subpart and related regulations issued by the State Office. In exercising this responsibility they will initiate liquidation actions, assemble information and make report, and complete the liquidation promptly. County Supervisors are not authorized to commit the Government to institute court action or to use the threat of criminal action to effect collections.

(b) *District Supervisors.* District Supervisors are responsible for: Advising with County Supervisors in properly carrying out their responsibilities under this subpart; following up to see that County Supervisors properly perform their functions; and consulting with County Supervisors to determine whether or not civil or criminal action should be recommended under the provisions of § 1871.22 (b) and (c).

(c) *Operating loan staff members in State Offices.* Operating loan staff members in State Offices are responsible for: Assisting the District Supervisor in carrying out his functions under this subpart; seeing that cases are properly documented for referral to the OGC; reviewing cases to be referred to OGC and the referral of such cases; and, proper followup to see that appropriate steps are taken with OGC in cases referred to that office.

§ 1871.24 Approval of liquidations.

County Supervisors in charge of County Offices, subject to the policies and procedures contained herein, are authorized to approve liquidation of security property which can be accomplished by the use of Form FHA 455–3, "Agreement for Public Sale by Borrower," Form FHA 462–2, "Statement of Conditions on Which Lien Will be Released," Form FHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," or, except in the State of Louisiana, the "Power of Sale" in the security instrument. Such County Supervisors also are authorized to approve liquidations in EO cases in accordance with the loan agreement and the applicable policies and procedures contained herein. However, cases involving legal problems not covered by this subpart or related regulations issued by the State Office and cases in which real estate serves as security for any FHA loan will be referred to the State Director for consideration and advice as to whether and on what conditions the liquidation is approved. When a liquidation is approved without referral to the State Director, a statement of facts setting forth the reasons for the action will be recorded in the running case record. Liquidation will be considered approved on the date (1) when forms such as Forms FHA 455–4, FHA 455–3, FHA 462–2, or FHA 455–6, "Agreement for Temporary Custody of Property," authorizing liquidation are executed by the County Supervisor, (2) when possession of property is taken under a security instrument or EO Loan Agreement to exercise the power of sale contained therein, (3) when the borrower or another party is requested to sell EO property under the loan agreement, or (4) when the State Director notifies the County Supervisor that liquidation is authorized in cases required to be submitted to the State Office.

(a) *Lien searches.* Before liquidation is approved, a current lien search report will be obtained to determine the effect that liens of other parties will have on the liquidation action, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as for loan making purposes. However, if obtaining the searches from third party sources would cause undue delay which would interfere with orderly liquidation action, such searches may be made by County Office employees. If the lien search is made by third parties, the cost will be paid by the borrower from his own funds or if he refuses, it will be paid by FHA and charged to his account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with regulations issued by the State Office supplementing § 1831.36 (b) (3).

§ 1871.25 Acceleration of unmatured installments.

When a case has been approved for liquidation, the following policies will govern the acceleration of unmatured installments.

(a) In cases referred to OGC for civil action, it will not be necessary to issue a notice of acceleration under this paragraph if the notice has previously been given in accordance with § 1871.22(b). However, when security property is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the County Supervisor will accelerate all unmatured installments by use of Form FHA 455–21.

(b) With respect to liquidation cases in which Form FHA 455–13, "Report of Sale of Chattel Security," is used, the statement contained therein declaring unmatured installments immediately due and payable will suffice for loan servicing purposes. However, in such liquidation cases County Supervisors may accelerate unmatured installments by use of Form FHA 455–21 when it is determined that

such action will assist in the collection of any remaining indebtedness.

(c) In cases not covered by paragraphs (a) and (b) of this section, the County Supervisor will accelerate all unmatured installments by use of Form FHA 455–21.

(d) Notice of acceleration will be sent to each obligor at his last known address. A copy of the notice of acceleration will be forwarded to the Finance Office only in those cases which have been referred to OGC for civil action, and County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only in such cases.

§ 1871.26 Advances to protect FHA's interest in security and EO property pending liquidation.

(a) When liquidation has been approved and security property is in imminent danger of loss or deterioration, State Directors are authorized to protect FHA's interest and approve advances in payment of: Delinquent taxes or assessments which constitute prior liens and which would be paid ahead of FHA under § 1871.33; premiums on insurance essential to the protection of FHA's interest; and, other costs necessary to protect or preserve security property, including necessary transportation costs. However, such advances may not be made unless the amount advanced becomes a part of the debt secured by FHA's lien, or for expenses of administration of estates or for litigation costs. If a case is in the hands of the U.S. attorney, such advances may not be made without his concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. marshal or other similar official, but if he seizes the property and delivers it to FHA for sale by FHA, costs incurred by FHA after delivery to FHA will be paid by it. Costs provided for in Form FHA 441–19, "Loan Agreement," also may be paid to protect FHA's interests in EO property.

(b) County Supervisors will submit a report on the need for such advances to the State Director, including: The borrower's County Office case folder; a current lien search report; a statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and recommendations.

(c) Any such costs incurred by FHA in protecting its interest in security or EO property may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and will be charged to the borrower's loan account, or may be paid out of the proceeds of the sale of security or EO property.

§ 1871.27 Sale of security or EO property by borrowers.

(a) *Public sale.* Normally, it is to the best interest of the borrower and FHA for the borrower to sell security or EO property at public auction in his own name. Therefore, when liquidation has been approved, the borrower usually will be encouraged to sell such property in this manner. When such property is to be sold by this method, Form FHA 455–3 will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds prior to execution by FHA. When EO property is involved, delete from the Form: The reference to the FHA lien in the first "Whereas" clause; the second sentence in item 5; and all of item 8. The County Supervisor is authorized to and will execute Form FHA 455–3 on behalf of FHA. No FHA official is authorized to bid at such sales. The County Supervisor or Assistant County Supervisor will arrange to receive promptly the proceeds of the sale which are due to FHA for application on the borrower's indebtedness.

(b) *Private sale.* If the borrower has ready purchasers and can effect an immediate private sale of all of the security or EO property for its present market value, or if the property is perishable, or of a type customarily sold on a recognized market, or if the remaining property consists of items of small value or a limited number of items which do not justify public sale, the borrower may be permitted to sell such property at private sale. Form FHA 462–2 may be used to liquidate such security property. In case of private sales, the County Supervisor will document, in the running case record, the reasons that a public sale was not justified. If security property is not sold within 30 days after the execution of Form FHA 462–2, it will be disposed of in accordance with paragraph (a) of this section and § 1871.32.

§ 1871.28 Repossession of security or EO property.

(a) *Taking possession.* Subject to the limitations in paragraph (b) of this section, County Supervisors will take possession of security or EO property for FHA in the following situations:

(1) When Form FHA 455–4 has been executed. When EO property is involved this form will be revised by placing a period after "interest" in the first "Whereas" paragraph and deleting the remainder of that clause, and striking the words "collateral covered by the aforesaid security instruments" in the second "Whereas" paragraph and inserting in lieu thereof "property covered by the debtor's loan agreement which is hereinafter referred to as collateral."

(2) When such property has been abandoned by the borrower.

(3) When peaceable possession can be obtained but Form FHA 455–4 is not executed by the borrower.

(4) When such property is delivered to FHA as a result of court action.

(b) *Limitations on taking possession.* Possession of security or EO property will be taken only:

(1) When the value of the security or EO property, based on a conservative appraisal, is substantially greater than the estimated sale expenses and the amount of any prior liens. It is not the policy to repossess such property if FHA's estimated recovery will be small in relation to the amount of the FHA claim, or the amount FHA will be required to pay on prior liens and sale expenses if it bids in the property.

(2) When prior lienholders, if any, do not intend to enforce their liens.

(3) When arrangements cannot be made for the borrower or some member of his family to sell EO property in accordance with the loan agreement.

(4) When Form FHA 455–4 has been executed by the borrower, County Supervisor, and all other lienholders, or when Form FHA 455–5, "Agreement of Lienholders to Sale of Mortgaged Chattels," is executed by all prior lienholders if possession is taken under paragraph (a) (2) or (3) of this section: *Provided*, That if prior lienholders will not agree to the liquidation of the property, their liens may be paid if their notes and liens are assigned to FHA on forms prepared or approved by OGC. When prior liens are paid, the payment will be made by means of Standard Form 1034 and charged to the borrower's account in accordance with § 1871.32(e).

(c) *Record of Security or EO Property Repossessed.* Except for those items which already have been included on Form FHA 455–4, Form FHA 455–6, or Form FHA 455–7, "Agreement for Cultivating, Harvesting, and Delivering Crops," there will be maintained in the borrower's case file a list, dated and signed by the County Supervisor, of all security or EO property repossessed in accordance with this section. Whenever a County Supervisor in charge of a County Office is transferred to another position or leaves the service or when there is a change in his jurisdiction, the District Supervisor will ascertain which cases are in process of liquidation at the time and will see that the succeeding County Supervisor is furnished, in writing, the names of such borrowers and a list of the property repossessed and not disposed of at the time of the change as shown by the County Office records. Such list will indicate the repossessed property in the custody of the County Supervisor and in the custody of caretakers, the location of the property, and the names and addresses of the caretakers.

§ 1871.29 Care of repossessed property pending sale.

When possession has been taken of security or EO property as provided in § 1871.28, County Supervisors will arrange for the custody and care of such property for the period specified in § 1871.32 and are authorized to execute the necessary agreements as follows:

(a) *Livestock.* Livestock will be delivered to a person who is capable of, and has adequate facilities for, caring for and feeding the livestock. Reasonable compensation will be agreed upon in advance. Whenever practicable, animal products will be computed as a part or all of the caretaker's compensation. Delivery, however, will be made pursuant only to a written agreement on Form FHA 455–6 and the number of days covered by the agreement will be entered in the blank space in Paragraph 2 of the form. When an approved extension of time is granted in accordance with § 1871.32, Form FHA 455–6 will be amended as appropriate and initialed by the parties thereto, or a new agreement executed covering such

extension. If a more favorable arrangement cannot be obtained, custody agreements may provide that FHA will supply feed necessary to maintain the livestock.

(b) *Machinery, equipment, tools, harvested crops, and other chattels.* This type of property will be properly stored and cared for pending its sale. Space may be leased for this purpose, if necessary, or such property may be stored and cared for by agreement on Form FHA 455–6 as prescribed above in the case of livestock. This type of property will not be put to use by the caretaker but will be held in storage only.

(c) *Crops.* Arrangements will be made for the custody, care, and disposition of growing crops and for unharvested matured crops. Form FHA 455–7 will be used for this purpose unless the crops are to be sold in place. When Form FHA 455–7 is used it will be executed by the caretaker and by the landlord unless he gives his consent otherwise in writing. If the written consent of the landlord cannot be obtained or whenever the procedures herein are not adequate to cover a given situation, the circumstances should be reported to the State Office for advice as to further handling.

§ 1871.30 Tests and inspections of livestock.

If required by State law as a condition of sale, livestock being sold will be tested or inspected prior to the sale. This section will be supplemented by regulations issued by the State Office for those States in which such a condition prevails.

§ 1871.31 Liquidation of security property by other parties.

(a) *Bidding by FHA at sales by other parties*—(1) *Sales by prior lienholders.* County Supervisors are authorized hereby to bid on property on which FHA holds a junior lien subject to the provisions of § 1871.32(d).

(2) *Sales by other parties.* With the advice of State Directors, County Supervisors are authorized hereby to bid on behalf of FHA: At execution sales conducted by marshals, sheriffs or other parties acting under court orders to satisfy FHA judgment liens; at FHA foreclosure sales conducted by U.S. marshals (or local sheriffs in those States in which regulations issued by the State Office provide for sales to be conducted by them); and, sales by Trustees in Bankruptcy and other officials under court orders. Such bidding will be subect to the provisions of § 1871.32(d). However, County Supervisors are not authorized to bid at sales by junior lienholders.

(b) *Retention by other lienholders without sale.* If another lienholder notifies FHA that he has taken possession of security property after default and proposes to retain it in satisfaction of his secured claim, the County Supervisor will promptly reply in writing that FHA objects to the retention by the secured party in satisfaction of his claim and insists that the property be sold in accordance with law. This will be done only when FHA's estimated recovery will meet the requirements outlined in § 1871.28(b)(1). After such notice the facts in the case will be referred to the State Office for advice.

(c) *Sales by junior lienholders.* If the County Supervisor learns through formal notice or otherwise that a junior lienholder has instituted foreclosure actions, the following action will be taken:

(1) A determination will be made as to whether liquidation action should be taken by FHA.

(2) If it is determined that liquidation action should be taken by FHA the County Supervisor will so inform the junior lienholder and will endeavor to arrange for voluntary liquidation as provided for in this subpart. If the junior lienholder has already instituted foreclosure action and if the voluntary liquidation cannot be effected, FHA will endeavor to foreclose its lien so that a single foreclosure sale may be held under both liens. If it is not possible because of insufficient time or other reasons to hold a joint foreclosure sale, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FHA holds a prior lien, and that if the junior lienholder's foreclosure sale is held FHA will announce at the sale that: FHA holds a prior lien on each item of such property as security for an indebtedness of $_____ (total principal and interest); any such property sold will continue to be subject to FHA's prior lien; and, FHA will immediately commence foreclosure or other legal action to obtain the full value of each item of such property for application on its prior lien until such lien is fully satisfied. If the sale is held by the junior lienholder, such announcement will be made by the County Supervisor.

§ 1871.32 Sale of repossessed property by FHA.

(a) *Manner of sale.* Repossessed property may be sold by FHA at public or private sale under: Form FHA 455–4; Form FHA 441–19, "Loan Agreement"; the power of sale in security agreements under the UCC; the power of sale in crop and chattel mortgages and similar instruments if authorized by regulations issued by the State Office. Also, repossessed property may be sold at private sale when the borrower executes Form FHA 455–11, "Bill of Sale 'B' (Sale by Private Party)." Private and public sales will be made for cash. When FHA is the successful bidder at a public sale the amount of its bid (less any amount thereof paid to prior lienholders and costs of sale) will be credited on the borrower's account. The sale will be as follows:

(1) *Public sales.* Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, and so forth, or at other advantageous sales locations.

(2) *Private sales.* Perishable property such as fresh fruits and vegetables that are in immediate danger of deterioration or spoilage will be sold by FHA for the best price obtainable. Staple crops such as wheat, rye, oats, corn, cotton, and tobacco will be sold by FHA for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Property sold under Form FHA 455–4, other than perishable property and staple crops, will not be sold for less than the minimum price established by the agreement. Other property sold by FHA, including that sold when the borrower executes Form FHA 455–11, will be sold for its present market value.

(b) *Period within which the sale will be made.* All repossessed property will be sold as soon as commercially reasonable, except that when notice is required by paragraph (c) of this section, the sale will not be made until the notice period has expired. In all cases, the sale will be made within 60 days after repossession except that: The sale will be made within a shorter maximum period if so required by regulations issued by the State Office because of State laws; crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such crops; and, in an individual case or items or property the State Director may grant an extension within any State law limits, in which case the sale will be made within the extended period. The foregoing requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FHA real estate loans and will be sold or transferred with the real estate. However, if there are any State law limits within which such items must be sold along with or as a part of the real estate, the State Office will issue regulations to prescribe such time limits.

(c) *Notice and advertising*—(1) *Notice to borrowers and lienholders—public and private sales.* Notice of public or private sale of repossessed property will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in such property, except as provided in subdivision (i) and (ii) of this subparagraph. The notice, when required, will be delivered or mailed in sufficient time so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by regulations issued by the State Office) before the time of any public sale or the time after which any private sale will be held. Form FHA 455–8, "Notice of Sale," may be used for public or private sales.

(i) Notice to the borrower or lienholder is not required when the property is sold under Form FHA 455–4 because the parties are placed on notice when they execute the form. When the sale involves only collateral which is perishable or threatens to decline speedily in value or is a type customarily sold on a recognized market, notice of sale is not required but may be given if time permits in order to maintain good public relations.

(ii) Notice to lienholder only is required when repossessed property is sold at private sale and the borrower exe-

cutes Form FHA 455–11, "Bill of Sale 'B' (Sale by Private Party)."

(iii) If the property is to be sold under a chattel mortgage, the manner of notice of sale will be set forth in regulations issued by the State Office or on an individual case basis.

(2) *Notice to internal revenue service (IRS).* If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security property, notice to the District Director of IRS must be given at least 25 days before the sale. The notice should be given by sending a copy of Form FHA 455–8 and a copy of the filed Notice of Federal Tax Lien (Form 668). However, if the security property is perishable, the full 25 days' advance notice to the District Director is not required, but notice must be given to the District Director by registered or certified mail or by personal service before the sale, and the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the sale proceeds or a sufficient amount thereof to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office as to disposition to be made of such funds.

(3) *Advertising—public and private sales*—(i) *Private sales and sales at established public auctions.* Such sales will be advertised by FHA only if required by regulations issued by the State Office based on State law.

(ii) *Other public sales.* Such sales, whether under the power of sale in the lien instrument or under Form FHA 455–4 will be given wide publicity for the purpose of assuring good attendance and a fair sale. One or more of the following methods will be used to advertise such sales in line with the usual customs in the area:

(*a*) *Notices or handbills.* The sale may be advertised by posting or distributing handbills, posting Form FHA 455–8, "Notice of Sale," or revision thereof approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving such notice will be prescribed by regulations issued by the State Office as necessary

(*b*) *Newspapers, radio, and TV advertising.* Reasonable advertising in newspapers or spot advertising on local radio or TV stations may be used depending on: The amount of property to be sold and the cost of the advertising in relation to the value of the property; the usual customs in the area; and, whether such advertising meets the requirements of State law. When newspaper advertising is required, regulations issued by the State Office will prescribe: The types of newspapers to be used; the number and times of insertions of the newspaper advertisment; and, the form of notice of sale to be used.

(d) *Bidding at public sales.* Under no circumstances will any employee of FHA bid on or acquire property at such sales except on behalf of FHA. The County Supervisor will attend all public sales of repossessed property held pursuant to paragraph (a) of this section and will observe the following rules:

(1) When no bids are received on an item of property (or on several items offered in a lot) equal to its present market value, a bid will be made on behalf of FHA in an amount equal to the present market value of such item or lot. However, bidding for FHA should cease at such sales when enough property has been sold, including that purchased on behalf of FHA, to repay the indebtedness owed to FHA, prior liens and costs described in § 1871.33(b) (1) and (2). In complicated cases such as those in which FHA holds a junior lien on several items of security property, the advice of the State Office should be obtained concerning the procedure to follow in bidding. Bids will not be made on behalf of FHA on any item or lot when the amount of probable recovery is small in relation to the amount of the prior liens. The present market value of the property will be determined by the County Supervisor for the purpose of establishing a bid price. When it is determined that a current independent appraisal of such property is desirable, it may be made by FHA County Committeemen or without cost by disinterested, competent third parties.

(e) *Payment of costs and prior lienholders by voucher.* When expenses must be paid before the sale or if cash proceeds are not available from the sale of the property with which to pay costs referred to in § 1871.33(b) or to pay prior lienholders, such costs or prior liens will be paid by invoice or Standard Form 1034 (Standard Form 1143, "Advertising Order," for newspaper) and the amount of such voucher will be charged to the respective borrower's account, except to the extent limited by State law as set forth in regulations issued by the State Office. No costs incident to the repossession and sale of security property should be incurred unless they can be charged to the borrower's account, and in no event will any such costs be borne by the Government. However, if any such costs are incurred which legally are not chargeable to the borrower, they may be paid as herein provided, and charged to an account set up against the officials or other person found to be responsible for the incurrence thereof. Each invoice or voucher will be approved by the County Supervisor, signed by the payee or supported by signed invoices, and submitted to the Finance Office for payment. Invoices or vouchers in payment of such costs as custody, care, storage, harvesting, and marketing will be supported by the original and one copy of Form FHA 455–6 or Form FHA 455–7.

(f) *Bill of sale or transfer of title.* If a purchaser requests a written conveyance of repossessed property sold by FHA at public or private sale, the County Supervisor will execute and deliver to the purchaser Form FHA 455–12, "Bill of Sale 'C' (Sale Through Government as Liquidating Agent)," or other necessary instruments to convey all of the rights, title, and interest of the borrower and FHA. State regulations will be issued as necessary with respect to conveying title to motor vehicles and boats.

§ 1871.33 Distribution of proceeds of liquidation sales.

This section applies to distributing and receipting for proceeds of nonjudicial liquidation sales; this is, liquidation sales conducted under the power of sale in lien instruments or under Form FHA 455–4, Form FHA 455–3, or Form FHA 462–2.

(a) *Lien priorities*—(1) *Federal tax and other Federal liens.* When Federal income, social security, or other Federal tax liens, or liens of other Federal agencies, are among the liens involved, the advice of OGC will be obtained as to lien priorities.

(2) *State and local tax liens.* The priorities of such liens will be set forth in regulations issued by the State Office to the extent considered necessary by the State Director and OGC or the State Office issued regulations may provide for referral of cases in which State and local taxes are involved to the State Office for handling.

(3) *Chattel mortgages and other liens of private parties.* The priorities of chattel mortgages, landlords liens, mechanics and materialmen liens, and other liens of private parties will be set forth in the regulations issued by the State Office to the extent considered necessary by the State Director and OGC.

(4) *Security interests under the UCC.* Unless otherwise provided by regulations issued by the State Office, liens on the same collateral that are perfected by filing a financing statement under the UCC and that are still effective as constructive notice will be paid in the order of their perfection, except that:

(i) *Purchase money security interests.* Subject to the limitations and additional requirements of (*a*), (*b*), and (*c*) of this subdivision, a purchase money security interest in personal property will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed prior to the time the purchaser receives possession of the collateral or within 10 days thereafter. However:

(*a*) *Motor vehicles.* In the case of motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken within the above-required time. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles. Regulations will be issued by the State Office as necessary, with respect to this subdivision.

(*b*) *Farm equipment.* A purchase money security interest in farm equipment, costing $2,500 or less (other than fixtures, or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not taken or filed. Regulations will be issued by the State Office as necessary, in connection with this subdivision.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest provided a security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and before the purchaser receives possession of the property the purchase money creditor notifies the earlier perfected secured party, in writing, that he has or expects to acquire a purchase money security interest in the inventory described by item or type.

(ii) A security interest taken in goods before they become fixtures has priority over real estate interest holders. A security interest taken in goods after they become fixtures is valid against all persons subsequently acquiring an interest in the real estate, but not against persons who had an interest in the real estate when the goods became fixtures, unless they execute a consent disclaimer or subordination agreement.

(iii) A security interest taken in and to finance crops not more than 3 months before they are planted or otherwise become growing crops, has priority over an earlier perfected security interest for obligations that were due more than 6 months before the crops became growing crops.

(b) *Order of payment of sales proceeds.* The proceeds of such sales will be distributed in the following order of priority.

(1) To pay expenses of sale, including advertising, and costs of lien searches, tests and inspection of livestock and costs of the transportation, custody, care, storage, harvesting, marketing, and other costs and expenses chargeable to the borrower, including reimbursement of amounts already paid by FHA and charged to the borrower's account. This includes paying bills incurred, after liquidation has been approved, for essential repairs of machinery and equipment and parts for machinery and equipment necessary to place it in reasonable condition for sale, provided agreements in writing are obtained from any holders of liens which are prior to those of FHA that such bills may be paid out of the sales proceeds ahead of their liens. However, any such expenses listed in this paragraph incurred by the United States Marshal or other similar official may not be paid from the proceeds of the sale turned over to FHA. On the other hand, if the United States Marshal or other similar official has taken possession of the property and delivered it to FHA for sale, such costs incurred by FHA after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which under the provisions of paragraph (a) of this section and supplemental regulations issued by the State Office are prior to FHA liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of FHA, will be paid only when demand is made by tax collecting officials before distribution of the sales proceeds. The sale proceeds will not be used to pay real estate taxes nor to pay income or other taxes which are not a lien against the security property, nor to pay substantial amounts of personal property taxes against nonsecurity personal property. If action is threatened or taken by the sheriff or other official to collect taxes not authorized in this subdivision to be paid out of the security property or the sale proceeds the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible disinterested party an amount equal to the tax claim, pending determination of the priority rights thereto. When such action is taken, or such an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(ii) If FHA subordinations have been approved in accordance with § 1871.12 recognition will be given to the intent of such subordinations in the use of sale proceeds even though the creditor in whose favor the FHA lien was subordinated did not obtain a lien, provided there are no other third party liens on the property involved or if there are such liens, the lienholders agree to the use of the sale proceeds to pay such creditor ahead of them.

(3) To pay rent for the current crop year out of the proceeds from the sale of other than basic security or EO property provided there are no liens junior to FHA's other than the landlord's lien, if any, and the borrower consents in writing to such payment. However, if an emergency loan was made for the current year, rent will be paid ahead of the full repayment of amounts falling due on the emergency loan only if that loan was made subject to claims or liens for rent under § 1832.10(a)(1).

(4) To pay debts owed FHA which are secured by liens on the property sold.

(5) To pay liens junior to those of FHA in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid under paragraphs (a) (2) and (3) of this section. Junior liens will not be paid unless, upon request, the lienholder furnishes reasonable proof of the existence and amount of his lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year, if the borrower consents in writing to such payment and if such rent has not already been paid as provided in paragraphs (a) (2), (3), or (5) of this section.

(8) To pay on any other debts owed to FHA which are unsecured or are secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such sale proceeds by the borrower for other necessary purposes, provided: The other FHA debts are adequately secured; or, the borrower makes satisfactory arrangements to pay the other debts from income or other sources, which payments likely can be depended upon.

(9) To pay the remainder to the borrower.

(c) *Receipts.* Receipts will be obtained for all amounts paid out of the sale proceeds and retained in the borrower's case file. Form FHA 451–1, "Receipt for Payment," will be issued only for the total amount remitted to FHA for credit to the borrower's indebtedness. Such amount will be scheduled to the Finance Office in accordance with Part 1862 of this chapter.

§ 1871.34 Reporting sales of security and EO property in liquidation cases.

Form FHA 455–13 will be prepared in all cases in which: property is repossessed by FHA; the borrower sells the property under Form FHA 455–3 or Form FHA 462–2 and the FHA debt is not paid in full; or, the property is sold by prior or junior lienholders or other parties. Form FHA 455–13 will not be prepared when the sale is held by the borrower through the use of Form FHA 455–3 or Form FHA 462–2 and the borrower's FHA indebtedness is paid in full. Form FHA 455–13 will be completed as soon as all of the property is sold. In completing Part I of Form FHA 455–13 the names of the purchasers need not be shown if there are numerous purchasers and the clerk's report of sale is filed in the borrower's case file, or liquidation is effected through the use of Form FHA 462–2.

§ 1871.35 Handling civil and criminal cases.

All cases in which court actions to effect collection or to enforce the rights of FHA are recommended, as well as actions relating to apparent violations of Federal criminals statutes, will be forwarded to OGC for submission to the appropriate U.S. attorney.

(a) *County Office actions.* In cases to be reported under § 1871.22 Form FHA 455–1, "Request for Legal Action," and Form FHA 455–22, "Information for Litigation," will be prepared. Form FHA 455–2, "Evidence of Conversion," will be prepared for each conversion. The original and two copies of Form FHA 455–1, Form FHA 455–22 and, where applicable, Form FHA 455–2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers or others to support the information contained on Form FHA 455–1. Appropriate recommendations will be made on Form FHA 455–1 and Form FHA 455–22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office informed of any future developments in the case.

(b) *State Office actions.* (1) Upon receipt of Form FHA 455–1 and, when applicable, Form FHA 455–2, the State Director will analyze each case to determine whether all necessary facts have been established and, if not, whether appropriate efforts have been made to establish them. If the analysis discloses that such efforts have not been made, the State Director will return the case to the County Supervisor with appropriate instructions. When the County Supervisor, after diligent effort is unable to obtain the facts, the State Director will

refer the case to the Office of the Inspector General when required.

(2) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC if referral is required under the policy expressed in § 1871.22. If such referral is not required, the State Director will set forth in item 19 of Form FHA 455–1 the basis for his determination not to refer the case as well as his instructions for followup servicing action. Cases which have been investigated by the Office of the Inspector General will be referred to OGC. Demands on third-party purchasers will be made in accordance with § 1871.22(b)(4). In cases referred to OGC, the State Director will make his comments and recommendations regarding the civil and criminal aspects of the case on Form FHA 455–1. With respect to the criminal aspects of the case, the State Director, in making his recommendations, will take into consideration the nature and gravity of the offense, the restitution made or undertaken, and all other extenuating circumstances.

(i) In all cases which are referred to OGC the County Office case file, Form FHA 455–1 and when appropriate, Form FHA 455–2 will be transmitted. In addition, in those cases in which the institutions of court proceedings by FHA is recommended, the following will be submitted: Notes, Financing Statements, Security Agreements, other security instruments, loan agreements, and other legal instruments and copies thereof as required by OGC; and, Form FHA 451–11, "Statement of Account," and Form FHA 455–22. The State Director with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed. When any of the accounts of a borrower have not been maintained on a note basis and a statement of account by notes is required, Form FHA 451–4, "Statement of Application of Remittances," will be prepared in the State Office and will accompany the request for the certified statement of account.

(ii) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for court or other action will be obtained from the Finance Office or County Office by the State Director. When the time required for obtaining the above material or documents may jeopardize FHA's interest permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or at his direction to the U.S. attorney.

(c) *Actions on cases referred to OGC.* When a case is referred to OGC, the State Director will notify the County Supervisor and the Finance Office of the referral and will return the County Office case file when it is no longer needed. After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when the borrower voluntarily proposes to make a payment on his account, the County Supervisor will receive the collection in accordance with established procedure unless he has received notice that the case has been referred to the U.S. attorney. The County Supervisor will immediately notify OGC direct by memorandum, with a copy sent to the State Director, of any such collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect any case which has been referred to OGC.

(d) *Actions on cases referred to the U.S. attorney and on judgment cases (including third-party judgments).* OGC will notify the State Director, the Finance Office, and the County Supervisor when: a case is referred to the U.S. attorney; a judgment (including third-party) is obtained; or, a case is otherwise disposed of. With respect to referral to the U.S. attorney, the Finance Office will discontinue mailing Form FHA 450–1, "Statement of Account," to such borrowers.

(1) When the State Director receives notice from OGC that a judgment (including third-party) has been obtained, he will notify the Finance Office to establish a judgment account by submitting Form FHA 455–20, "Notice of Judgment."

(2) After notice has been received that a case has been referred to the U.S. attorney or that a judgment has been obtained, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FHA's security interests or any pending court action to enforce collection. In addition, at the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether judgment debtors whose judgments have not been charged off, have assets or income from which collection of the judgment accounts can be obtained and record his findings in the case files. If information is obtained indicating that such collections can be made, the facts will be reported to the State Director. The State Director will notify immediately OGC of any developments which might have a bearing on cases referred to the U.S. attorney, including judgment cases. Furthermore, the following will be observed in connection with such debtors:

(i) If the debtor proposes to make a payment, FHA employees will not accept such payment, but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. attorney. In such a case the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor to the State Office for forwarding through OGC to the appropriate U.S. attorney. Likewise, collections received by the District Supervisor, the State Office, or the Finance Office will be forwarded through OGC to the appropriate U.S. attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order fees will be paid out of the amount received and the money order receipts will remain attached to the money orders. Form FHA 452–1 will not be issued in any case in which payment is made on a judgment account, or on an account which is in the hands of the U.S. attorneys. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received and that payments in the future should be made to the U.S. attorney at a given address.

(iii) If the debtor proposes a compromise settlement to FHA, such proposal will be handled in accordance with § 1864.9.

(iv) If the debtor requests information as to the amount of his indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payments of court costs, information as to such costs will be obtained through the State Office from OGC.

§ 1871.36 Care and disposition of acquired chattel property.

The County Supervisor will make immediate arrangements for the care and storage of acquired chattel property in the same manner as for repossessed property. Acquired chattel property may not be left with a custodian under a custody agreement executed prior to its acquisition by FHA. A new custody agreement will be executed on Form FHA 455–6 for the care of such property. Acquired chattel property will be disposed of as expeditiously as possible, but may not be held more than 120 days, except upon the approval of the State Director in individual situations. Form FHA 455–6 will contain a statement as to the number of days during which the property will be cared for. Cash charges for the care, custody, transportation, and sale of such property, including any necessary tests and inspections of livestock, will be paid by FHA by means of Standard Form 1034 or certified invoice approved by the County Supervisor.

(a) *Disposition.* County Supervisors are authorized to sell, for cash, acquired chattel property for the best price obtainable at public auction or by privately negotiated sale. If feasible, such property will be sold at established public auctions in which case it will not be necessary to give public notice of the sale. However, if this is not feasible, the property will be sold at other public sale or at privately negotiated sale and notice of such sales will be given. Notice of such sales will be

posted at least 5 days before the sale and in a sufficient number of well known places (not less than five) to give wide publicity to the sale. Form FHA 455–8 will be used for public or private sales.

(1) *Transferring title to purchaser.* Title to acquired chattel property will be transferred to the purchaser, at the time the cash purchase price is paid, by execution and delivery of Form FHA 455–10, "Bill of Sale 'A' (Sale of Government Property)."

(2) *Reporting sales of acquired chattel property.* Form FHA 455–14, "Invoice" will be prepared at the time of sale, in an original and two copies, covering all of the property sold to each purchaser. The original and one copy will be transmitted to the Finance Office with Form FHA 451–2, "Summary of Remittances," covering the payment and the remaining copy will be retained in the County Office operational files.

(3) *Transmitting payments received from sale of acquired chattel property.* Any form of payment that is acceptable as a payment on indebtedness owed to FHA may be accepted in payment for acquired chattel property. Such payments will be scheduled in accordance with Part 1862 of this chapter. Form FHA 451–1 will not be issued for funds received from the sale of acquired chattel property.

§ 1871.37 Reports of inventory transactions—acquired chattel property.

(a) *County Office reports and records.* (1) County Supervisors will submit an annual inventory report, by County Office Units, of acquired chattel property and reports of acquisitions and dispositions pertaining thereto, on Form FHA 455–15, "Report of Inventory Transactions." Form FHA 455–15 will be prepared as of June 30 of each year and forwarded from the County Office not later than 10 days after the close of each reporting period. FHA and SRRC inventory property will be reported on the same Form FHA 455–15. However, in the event no property is on hand on the reporting dates and none has been acquired or disposed of during the reporting period, it will not be necessary to prepare and submit a report.

(2) Between reporting dates, copies of Forms FHA 455–13, FHA 455–14, and FHA 455–16, "Statement of Loss of Acquired Security Property," involving acquired chattel property will be maintained in the County Office acquired property liquidation file.

(3) In July of each year the Finance Office will furnish the State Office with a schedule of differences, if any, between the inventory records of the Finance Office and each County Office unit as reported on Form FHA 455–15. Upon receipt of the copies of Form FHA 455–15 from County Offices and the schedules of inventory differences from the Finance Office, the State Office will make an analysis of the inventories and will take administrative action to correct any irregularities.

(4) A special report on Form FHA 455–15 will be prepared and submitted when a County Supervisor in charge of a County Office is transferred or when there is any change in jurisdiction. The new County Supervisor in charge of a County Office or other receiving officer will verify the accuracy of the special report by signing Form FHA 455–15 in the space provided and promptly inform the Finance Office of any discrepancies.

(b) *Increases and losses.* (1) Any additions to inventory resulting from natural increase of livestock in inventory will be identified as "Natural Increase" on the Form FHA 455–14 prepared in accordance with § 1871.36(a)(2) at the time of its sale or on Form FHA 455–15 at the time of the next inventory report. Reference will be made on Form FHA 455–14 or Form FHA 455–15 to the advice and line number of the Form on which the parent stock was reported originally.

(2) County Supervisors will report losses of inventory through death, spoilage, damage, or otherwise on Form FHA 455–16. If the property was in the hands of a custodian at the time of loss, the custodian should sign Form FHA 455–16. Form FHA 455–16 will show the item number, the book value of each item, and the advice number of the Form FHA 455–13 on which the item was reported originally. County Offices will assign a serial number to each Form FHA 455–16 in the same manner as provided for numbering Part II of Form FHA 455–13. Property lost through death, spoilage, damage or otherwise, will be carried on Form FHA 455–14 until Form FHA 455–16 is approved by the District Supervisor.

(3) The District Supervisor will review the circumstances of each case of loss. When approval is given, the District Supervisor will sign the original of Form FHA 455–16 and will forward it and a copy to the Finance Office. If Form FHA 455–16 is not approved because of questionable circumstances, the District Supervisor will obtain the facts and take appropriate action. A copy of the approved Form FHA 455–16 stamped "Posted (date)" by the Finance Office will be furnished the County Office in order that adjustment may be made of county inventory records, at which time the retained copy of the form may be destroyed.

§ 1871.38 Bankruptcy and insolvency.

If a borrower becomes involved as a debtor in proceedings under any State or Federal bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments in the case, but will take no other action unless directed to do so by the State Director or OGC. Under the Federal Bankruptcy law, after payment of fees and costs, unsecured FHA claims (including SRRC trust claims) and the amount of any claim in excess of any security therefor, with interest to the date of filing the petition in bankruptcy, are entitled to priority of payment over unsecured claims of other creditors. Upon receipt of the file and related material, the State Director will determine whether the case is a "no asset" case, that is, a case in which FHA has no security for the debt and the debtor has no other assets out of which FHA could make a substantial collection, considering its priority rights described above, or whether it is an "asset" case, that is, a case in which FHA has security or the debtor has other assets, or both, out of which FHA could make a substantial collection, considering its priority rights described above. If the State Director is uncertain as to whether the case is a "no asset" case, he will obtain the advice of OGC.

(a) *No asset cases.* If the State Director determines that the case is a "no asset" case, he will return the file and related material to the County Office under cover memorandum indicating such determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If the County Supervisor learns of such assets before the time for filing claims has expired (within 6 months from the first date set for the first meeting of creditors), he will resubmit the case to the State Director.

(b) *Asset cases.* If the State Director determines that the case is an "asset" case, he will proceed as follows:

(1) *Liquidation without filing proof of claim.* (i) If the value of FHA's security does not exceed the amount of its secured debt and the borrower has no other assets out of which FHA can make a substantial collection considering its priority rights described above, the security property may be liquidated by foreclosure sale in the usual manner without preparation of a proof of claim if the referee in bankruptcy advises that he has no objection to foreclosure by FHA.

(ii) If FHA has no security or if it has security out of which full collection cannot be expected, but the borrower has other assets out of which FHA can make a susbtantial collection considering its priority rights mentioned above, any security property may be liquidated by foreclosure sale under the same conditions as set forth in Subdivision (i) of this subparagraph, if the sale can be held in time to file a proof of claim for the deficiency.

(2) *Filing proof of claim.* A proof of claim on an insured loan will not be executed or filed and foreclosure proceedings will not be commenced until the note has been assigned to FHA. If liquidation is not to be accomplished under paragraph (a) of this section without filing a proof of claim, the State Director will prepare and execute a proof of claim covering all indebtedness to FHA, except any judgments obtained by a U.S. attorney. If the County Supervisor or the State Director knows that a judgment obtained by a U.S. attorney is involved, even though charged off, the State Director will notify OGC which in turn will inform the U.S. attorney so that he may prepare and file a proof of claim or take other action on the judgment. The State

Director will use Form FHA 455–18, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by OGC, and will send the executed proof of claim together with the required attachments to OGC. The OGC will refer the claim and any necessary petition for abandonment (release) of security property to the U.S. attorney or to the Department of Justice, as appropriate, for handling. The State Director, upon advice from OGC, will instruct the County Supervisor concerning any actions to be taken by him with respect to meetings of creditors.

(3) *Security released to FHA.* Ordinarily, when the value of security does not exceed the amount of FHA liens and any prior liens against it plus any homestead or other exemptions applicable to it as specified in regulations issued by the State Office or as determined by OGC, an effort will be made to get the security released to FHA. A petition for abandonment (release) may be referred by OGC to the U.S. attorney or to the Department of Justice, as appropriate, for filing in any such case, with or without filing a proof of claim, as determined by OGC. When the referee orders security released to FHA, it will be liquidated unless the State Director approves continuation with the borrower.

(i) *Liquidation.* Chattel security will be liquidated in accordance with this Instruction. Real estate security will be liquidated in accordance with Subpart A, Part 1872 of this chapter. When property is liquidated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt, and if there are additional proceeds, to the interest accrued from the date of filing the petition in bankruptcy to the date of payment. When the receipts are transmitted to the Finance Office, the County Supervisor will furnish the date of filing the petition in bankruptcy.

(ii) *Continuation with borrower.* If the State Director approves continuation of the loan and retention of the security by the borrower, the borrower will be required to execute a new promise to pay all his indebtedness to FHA which is secured by the property released to FHA in accordance with the terms of the existing instrument(s) evidencing such indebtedness. The new promise to pay will be made by execution of Form FHA 460–10, "New Promise To Pay." The borrower also will be required to execute any security or other instruments deemed necessary by OGC. The new promise and other required instruments will be executed as soon as possible after release of the security to FHA and the borrower's adjudication in bankruptcy, unless under State law and in accordance with State regulations, the new promise to be effective must be made after discharge in bankruptcy.

(c) *Other parties liable.* When a joint obligor has been discharged in bankruptcy and continuation with him has not been approved, but other parties remain liable, the County Supervisor will notify the Finance Office as to which parties remain liable and the address to which the statement of account will be mailed. Notification will be made on Form FHA 450–10, "Advice of Borrower's Change of Address or Name."

§ 1871.39 Deceased borrowers.

Immediately on learning of the death of any person liable to FHA, the County Supervisor will prepare Form FHA 455–17, "Report on Deceased Borrower," for use in determining whether any special servicing action is necessary unless he recommends settlement of the indebtedness under Part 1864 of this chapter. If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, or administrator, if any, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting deceased cases to State Director.* The borrower's case files including Form FHA 455–17 will be forwarded promptly to the State Director for use in deciding the action to be taken if and when any of the following conditions exist: (When it is necessary to send an incomplete Form FHA 455–17 to the State Director, any additional information which may affect the State Director's decision will be sent to him as soon as it is available on a supplemental Form FHA 455–17 or in a memorandum.)

(1) Probate or other administration proceedings have been instituted or are contemplated.

(2) The debts owed to FHA are inadequately secured and the estate has other assets out of which collection could be made.

(3) FHA's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to FHA which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

(5) The County Supervisor recommends, but does not have authority to approve, liquidation of security.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings*—(1) *Institution of probate or administration proceedings.* Generally, probate or administration proceedings are instituted by relatives or heirs of the deceased or creditors other than FHA. Ordinarily, FHA will not institute probate or administration proceedings because of the problems of designation of an administrator or other similar official, posting his bond, and payment of costs. However, when it appears: that such proceedings will not be instituted by other parties; that FHA's interests could best be protected by filing a proof of claim in such proceedings; and, that public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond, the State Director may request OGC to recommend the institution of probate or administration proceedings by the U.S. attorney. If probate or administration proceedings are instituted by other parties or at the request of FHA, and any security is to be thereafter liquidated by FHA instead of by the administrator or executor or other similar official, the liquidation will be accomplished in accordance with the advice of OGC.

(2) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared and executed by the State Director and transmitted to OGC. The proof of claim will be on a form approved by OGC, and will be filed by OGC or by an FHA official as directed by OGC, or it will be referred by OGC to the U.S. attorney for filing if it is anticipated that representation of FHA by counsel will be required. If a judgment claim is involved, the notification to the U.S. attorney will be the same as for judgment claims in bankruptcy (see § 1871.38(a)(1)). If an insured loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed in any case in which probate or administration proceedings are instituted, unless:

(i) After considering liens and priority rights of FHA and other parties, costs of administration, and charges against the estate, there are no assets in the estate which could be reached by FHA except its security and FHA will liquidate the security, by foreclosure or otherwise, if that is necessary to collect its claim, or

(ii) Continuation with an individual under paragraph (e) of this section or transfer to and assumption by another party under § 1871.40 approved, and either the debt owed to FHA is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(iii) The debt owed to FHA by the estate is settled under the provisions of Part 1864 of this chapter well ahead of the deadline for filing proof of claim.

(3) *Priority of claims*—(i) *Secured claims.* Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. Secured claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower on real or personal property. However, tax, judgment, attachment, garnishment, laborer's mechanic's, materialsmen's, landlord's statutory liens, and other noncontractual lien claims may or may not constitute secured claims. Therefore, if any claims referred to in the preceding sentence are allowed as secured claims and the FHA claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities.

(ii) *Unsecured claims.* The remaining assets of the estate, including any value of security property in excess of the

amount of the secured claims against it are to be applied first to payment of costs of administration and charged against the estate, and second to unsecured debts of the deceased.

(a) If the total of such remaining assets in the estate being administered is insufficient to pay all costs of administration, charges against the estate, and unsecured debts of the deceased, the Government's unsecured claims against such remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. In other words, under such circumstances unsecured claims are payable in the following order of priority:

(1) *First.* Costs of administration and charges against the estate, unless under State law they are payable after the Government's unsecured claims. (Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.)

(2) *Second.* Government's unsecured claims.

(iii) *Regulations issued by the State Office.* State regulations will be issued to supplement this paragraph as needed, taking into consideration, among other things, the Federal priority statute, lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(c) *Withdrawal of claim.* In some cases it may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or is compromised. However, when it is necessary to withdraw a claim to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn upon receipt of cash or security, or both, of a value determined by the State Director to be at least equal to the amount he estimates could be recovered under the claim against the estate. When existing security is being retained by FHA, arrangements must be made to assure that withdrawal of the claim will not affect FHA's rights under the existing notes or security instruments with respect to the retained security. In some cases, with the advice of OGC, it may be possible to properly handle the claim without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. attorney for appropriate handling.

(d) *Liquidation of security property when no probate or administration proceedings are instituted and no continuation with other individuals or transfer and assumption is approved.* When probate or administration proceedings have not been instituted and continuation with a survivor or transfer and assumption by another party will not be approved, any chattel security will be liquidated in accordance with this subpart and any real estate security will be liquidated in accordance with Subpart A of Part 1872 of this chapter as expeditiously as feasible. In such liquidation cases if the proceeds from the sale of security are insufficient to pay in full the indebtedness owned to FHA, and other assets are available in the estate or in the hands of heirs from which collection can be made, the State Director will request OGC to take appropriate action to effect collection.

(e) *Continuation of secured debt and transfer of security property for benefit of deceased borrower's family.* When a surviving member of a deceased borrower's family, a relative or other person is interested in continuing the loan and taking over the security property for the benefit of all or a part of the deceased borrower's family who were directly dependent upon the borrower for their support at the time of his death, continuation may be approved subject to the following:

(1) *Individuals who are joint debtors.* Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided he can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments, and so long as liquidation is not necessary to protect the interest of FHA. When an individual who is liable for the indebtedness is to continue with the account, Form FHA 450–10 will be sent to the Finance Office to change the account to that individual's name. The deceased borrower's case number will not be used for the continuing individual. A new case number will be assigned or if the continuing individual already has a case number that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased. Notwithstanding § 1871.40(d), Form FHA 460–9, "Assumption Agreement—(Same Terms—Eligible Transferee)," will be executed and sent to the Finance Office when under State law the wife of the borrower or other individual who has signed the note could not be held personally liable for the debt without assumption of liability after the borrower's death. In such a case, Form FHA 450–10 will not be processed and the account will not be reamortized and the terms of the note will remain the same unless the State Director determines otherwise.

(2) *Individuals who are not joint debtors.* When a surviving member of a deceased borrower's family, a joint operator with the deceased borrower, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to him and his assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent upon the borrower for their support at the time of his death.

(ii) The amount to be assumed and the repayment rates and terms will be in accordance with § 1871.40(b) (1) and (2) and docket submissions and processing of assumption agreements will be the same as provided in § 1871.40 (f) and (g) for eligible applicants.

(iii) The State Director determines that the continuation will not adversely affect the repayment of the loan.

(iv) In all cases in which the wife joins with her husband in executing an assumption agreement or other evidence of indebtedness, the purpose and effect will be as expressed in § 1871.40(d).

(3) *Considerations in continuing with joint debtors and transferees under subparagraph (1) and (2) of this paragraph.* In determining whether to continue with an individual, whether he is already liable or assumes the indebtedness, all pertinent factors will be taken into consideration including the following:

(i) Whether probate or administration proceedings have been or will be instituted and, with the advice of OGC, whether the filing of a claim on the debt owed to FHA in such proceedings is necessary to protect the interests of FHA.

(ii) Whether it is possible to make the necessary arrangements with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security property to the continuing individual and to avoid liquidation of the assets so that the individual can continue with the loan on a feasible basis.

(4) *Vesting title in joint debtors or transferees.* If continuation is approved, all reasonable and practical steps, short of foreclosure or other litigation, will be taken to vest title to the security property in the joint debtor or transferee.

(5) *Release of liability.* The deceased borrower's estate may be released from liability for the FHA indebtedness if title to the security property is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected out of the assets of the estate of the deceased borrower, including the value of any security or EO property and the County Committee recommends release of liability by executing the memorandum statement required by § 1872.16(g)(6).

(f) *Special servicing of deceased EO borrower cases.* Paragraphs (a), (b), and (c) of this section are applicable to all EO deceased borrower cases. In addition, if EO loans are secured, paragraphs (d) and (e) of this section are applicable. If the EO loan is unsecured, the following additional applicable requirements will be followed:

(1) If an individual who is liable for the indebtedness of the deceased borrower wishes to continue with the EO debt and the EO property, he may be permitted to do so in accordance with the applicable provisions of paragraph (e) (1) of this section.

(2) If a surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative or other individual who is not liable for the EO debt desires to continue with the farming or other operation, he may be permitted to do so in accordance with the applicable provisions of paragraph (e)(2) of this section, but in addition he will be required to execute a loan agreement in addition to the assumption agreement, and secure the EO debt with a lien on the remaining EO property when title to the property is vested in him and the County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or FHA.

(3) If the actions referred to in subparagraphs (1) and (2) of this paragraph cannot be accomplished but a member of the borrower's family turns over to FHA the EO property in which the estate has an equity except that which is determined essential for minimum family living needs, the County Supervisor will take possession of EO property in accordance with § 1871.28 and sell it in accordance with § 1871.32, or, if this cannot be done, or if real property is involved, the case will be referred to OGC in accordance with §§ 1871.22(b) and 1871.35. If the property is to be sold in accordance with § 1871.32, the notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

§ 1871.40 Transfer of chattel security and EO property and assumption of debts not provided for in § 1871.39 and release of liability.

Transfer of chattel security and EO property and assumption of chattel debts may be accomplished in accordance with the provisions of this paragraph including transfer and assumption of indebtedness when one of the joint borrowers or the former spouse and coobligor of a divorced borrower withdraws from the operation and transfers his interest in the security or EO property to the remaining borrower who desires to assume the total indebtedness as between himself and the other party. However, transfer of one or more accounts, all of which are secured by both chattels and real estate, will be accomplished in accordance with § 1872.16.

(a) *Authority*—(1) *Transfer and assumption.* County Supervisors, District Supervisors, and State Directors are authorized to approve transfers with assumption of FHA accounts to eligible or ineligible transferees in accordance with this section, and releases of liability when the debts are within their respective loan approval authorities and limitations. Current information regarding limitations on loan approval authorities of various officials of the FHA may be obtained from any county or State Office of the FHA or from its National Office at 14th and Independence Avenue SW., Washington, DC 20250. State Directors also are authorized to approve such transfers to and assumptions by ineligible transferees regardless of the amount of the outstanding FHA debts or the amount of prior liens. Proposed transfers to and assumptions by eligible transferees which will exceed the authorities and limitations of the State Directors for loans of the same type will be submitted to the National Office for review prior to approval.

(b) *Transfer to eligibles.* Transfer of chattel security and EO property to, and assumption of chattel debts by, a transferee who meets the eligibility requirements for the kind of loan being assumed or whose situation after the transfer will satisfy such eligibility requirements may be approved provided:

(1) The transferee assumes the total outstanding balance of the FHA debts; or that portion of the outstanding balance equal to the present market value of the chattel security or EO property as determined by the County Supervisor, less any prior liens, if the property is worth less than the entire debt.

(2) Ordinarily, the debts assumed will be scheduled for payment in accordance with the rates and terms of the existing notes or assumption agreements and any delinquency will be scheduled for payment on or before the date the transfer is closed. In such cases, Form FHA 460–9 will be used. However, if an extension of the existing loan repayment period is necessary to enable the transferee to be successful, the debt being assumed may be rescheduled, in which case Form FHA 460–5, "Assumption Agreement (New Terms)," will be used. The new repayment period may not exceed the repayment period for a new loan of the type involved. In such cases, if the current interest rate for such loans is higher than the rate specified in the note(s) being assumed, the current interest rate for a new loan of the type involved will be used.

(3) Livestock or other Emergency-type loans for which there are no present authorizations or eligibility requirements currently stated in FHA regulations may be transferred to an applicant who meets the Emergency loan requirements.

(c) *Transfer to ineligibles.* Transfer of chattel security or EO property to, and assumption of chattel debts by, a transferee who does not meet the eligibility requirements for the kind of loan being assumed may be approved, provided:

(1) It is to the best financial interests of FHA to approve transfer of the security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the FHA debt, or an amount substantially in excess of the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) A downpayment will be made by the transferee of at least 20 percent of the amount of the debts assumed, calculated before such payment. The balance of FHA debts assumed will be scheduled for repayment in not to exceed five equal annual installments with interest to the borrower at the rate of 6 percent per annum. The transferred property (including EO property) will be made subject to any existing lien in favor of FHA or by execution of new lien instruments. In such cases Form FHA 460–5 will be used.

(4) The transferee has ability to repay the FHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(d) In all cases in which the wife joins with her husband in executing an assumption agreement or other evidence of indebtedness, the purpose and effect of the wife's signature shall, in addition to any other purpose and effect for which her signature is obtained, be to engage her separate and individual personal liability regardless of any State law to the contrary.

(e) *Release of liability.* When the transfer with assumption if approved to eligible or ineligible applicants in accordance with paragraph (b) or (c) of this section the transferor will be released from personal liability in accordance with § 1872.16.

(f) *Docket submission.* The County Supervisor will submit to the State Office the County Office file and the following in cases requiring the State Director's approval:

(1) A statement of the current amount of the indebtedness involved.

(2) A description of the security or EO property to be transferred and a statement concernings its value.

(3) Form FHA 410–1, "Application for FHA Services."

(4) Form FHA 440–2, "County Committee Certification or Recommendation," for an eligible transferee, with the memorandum statement of the County Committee if the transferor is to be released from liability.

(5) County Committee statement for ineligible transferee with the additional memorandum statement if the transferor is to be released from liability.

(6) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.

(7) Transferee's plan of operation reflected on Form FHA 431–2, "Farm and Home Plan," Form FHA 431–3, "Family Budget," or Form FHA 431–4, "Business Analysis—Nonagricultural Enterprise."

(8) Form FHA 460–5, "Assumption Agreement (New Terms)," or Form FHA 460–9, "Assumption Agreement (Same Terms—Eligible Transferee)," as appropriate, and

(9) Form FHA 465–8, "Release from Personal Liability," when appropriate.

(g) *Processing assumption agreements.* In processing the Assumption Agreement, any additional security instruments will be obtained if required by OGC.

(1) Upon receipt of Form FHA 460–5 the Finance Office will establish an account in the name of the assuming transferee. When Form FHA 460–5 is processed in the Finance Office, the County Supervisor will be notified.

(2) A Form FHA 405–1, "Management System Card—Individual," will be prepared for the assuming transferee and the loan records cards of the transferor

will be attached. If a collection is received from the assuming transferee after the assumption agreement is approved but prior to Finance Office notification to the County Office, Form FHA 451–1 will be prepared in accordance with § 1872.16(g)(3).

§ 1871.41 Setoffs.

(a) *Policy.* (1) It is the policy of FHA to request setoff only when ordinary collection efforts by voluntary means including assignments have not been effective, and if the borrower has cooperated reasonably with FHA in the servicing of the loan, only if the setoff will not cause undue hardship on the borrower and his family. The filing of a request for setoff will not constitute a justification for relaxation of other collection efforts.

(2) Debts of nominal amounts and debts discharged in bankruptcy, will not be collected by setoff under this subpart. Under the provisions of § 1871.22(b), cases will not be referred for court action until after any possible setoff actions are taken in accordance with this section. However, there may be situations in which funds may become available against which setoffs might be possible after the case has been referred for court action. Setoffs will not be requested in cases which have been referred to the U.S. attorney for collection or on which he has obtained a judgment without prior approval of the U.S. attorney.

(b) Agricultural Stabilization and Conservation Service (ASCS) Setoffs. The Secretary of Agriculture's order on setoffs authorizes the collection of debts owed to FHA by setoff against amounts approved for payment to the debtor by ASCS Committees.

(1) *County Office actions.* (i) Inquiry may be made by FHA County Office personnel at the ASCS County Office as to whether the debtor has evidenced an intention, with respect to a particular crop year, to participate in one or more of the programs administered by the ASCS under which funds might be available for setoff.

(ii) Recommendations for such setoffs will be forwarded by the County Supervisor to the State Director. Each recommendation will include information concerning the efforts which have been made to effect collection by other means and any other pertinent information.

(iii) If, after a setoff has been recommended, the borrower pays his indebtedness to FHA, moves to a new location or his circumstances change in such a manner as to affect the setoff, such information will be sent to the State Director.

(2) *State Office actions.* Recommendations for setoffs will be given careful consideration by the State Director to determine whether there is adequate justification for the setoff and whether the proposed setoff is in accordance with the policy outlined in this subpart.

(i) Requests for setoffs will be prepared in memorandum form by the State Director. The original and a signed copy of the request will be submitted to the ASCS State Office. A copy will be forwarded to the County Supervisor for filing in the borrower's case file. Such a request will contain the following:

(*a*) The full name, address, and FHA case number of the debtor.

(*b*) The County and State under which the amount of the indebtedness should be set up on the debt register.

(*c*) The principal amount of the indebtedness, the accrued interest, the date through which interest was computed, and the daily interest factor to be applied thereafter.

(*d*) The address of the FHA County Office to which the check is to be delivered.

(*e*) The identification of any court judgment involved.

(*f*) The following certification:

The undersigned hereby certifies that the above-described indebtedness of _____ to the United States (Farmers Home Administration) is subject to setoff under the Secretary's Order.

_____
(Date)

_____
(Signature of Authorized Representative)

_____
(Title)

Farmers Home Administration.

(ii) The State Director may withdraw a request for setoff by giving notice to the ASCS State Office at any time prior to the processing of setoff voucher and will send a copy of the request for withdrawal to the County Supervisor. However, setoffs may be withdrawn only if: The borrower pays his indebtedness in full or makes substantial payment on his debt; the debt is settled; or, it is determined that future collections can be made through other methods.

(iii) If the account of the borrower for whom a request for setoff has been submitted is transferred to another FHA County Office jurisdiction, either within or outside of the State, the State Director will notify the ASCS State Office of the address of the FHA County Office to which the account has been transferred in order that any payments may be sent to such office.

(3) *Check delivery.* Setoffs will be made by means of checks or sight drafts drawn payable to FHA and delivered to the County Supervisor. Such remittances will be receipted for and scheduled in accordance with Part 1862 of this chapter, except that if the claim has been forwarded to OGC, the remittance will be sent to OGC and the instructions of that office as to application will be followed.

(4) *Deletion from debt registers.* (i) The names of FHA borrowers for whom requests for setoffs have been submitted and who have quit farming, or cannot be located in the counties for which the debts were reported, will be deleted by the ASCS County Office from their debt registers without a request from FHA. Notices of such deletions will be furnished to the FHA State Office in which the request for the setoff originated.

(ii) Upon receipt by the FHA State Office of notification of such deletions from debt registers, the State Director will inform the appropriate FHA County Office of the deletions.

(iii) In the event that borrowers whose names have been deleted resume farming operations or can be located, the County Supervisor, if it is deemed advisable, may submit to the State Director a recommendation for a new request for setoff.

(c) *Federal employee setoffs.* Salary and lump sum payments which may be due borrowers upon their separation or retirement from Federal Government employment may be setoff against debts owed to FHA. Any sum a borrower has to his credit in the Civil Service Commission retirement fund also may be setoff.

(1) *County Office actions.* If the efforts to collect the debt out of current income from Federal employment fail the County Supervisor will submit the case to the State Director. The submission will include information necessary for the State Director to report the case to the National Office in accordance with the requirements of subparagraph (2) of this paragraph.

(2) *State Office actions.* If the State Director determines that the facts in the case justify a setoff against the borrower's salary and lump sum payments or Civil Service retirement, he will submit the case to the National Office. The submission will include the following:

(i) The full name, address, and FHA case number of the borrower. If the borrower is a member of the military establishment or Coast Guard, his title and serial number, if available, should be submitted.

(ii) Date of birth of borrower.

(iii) The exact name of the employing agency, military establishment, or Coast Guard and location of such agency.

(iv) Approximate income of borrower and spouse.

(v) Financial circumstances of the borrower documented on Form FHA 456–1.

(vi) Number of dependents.

(vii) Detailed information concerning the efforts made by FHA to collect.

(viii) Detailed statement of account.

(ix) The identification of any court judgment involved.

(x) If the borrower is retired, a recommendation, based upon his financial circumstances, should be made as to whether all or only a part of the monthly annuity check should be setoff.

§ 1871.42 Releases and satisfactions.

Release and satisfaction necessary in connection with liquidation action will be executed in accordance with authorities contained in Subpart A of this part.

Dated: January 8, 1971.

JOSEPH HASPRAY,
Acting Administrator,
Farmers Home Administration.

[FR Doc.71-996 Filed 1-22-71;8:49 am]

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[AL's 928(440), 934(440), and 740(441)]

PART 1890K—OPERATING LOANS FOR TOBACCO AND PEANUT ACREAGE ALLOTMENTS

PART 1890I—OPERATING LOANS FOR FAMILY FARMING OPERATIONS IN HAWAII

New Parts 1890k and 1890l, administrative directives supplementing certain preceding parts of this chapter, are added to Chapter XVIII, Title 7, Code of Federal Regulations to read as follows:

Sec.
1890k.1 General.
1890k.2 Responsibility.
1890k.3 Loan policies.
1890k.4 Repayment terms.

AUTHORITY: The provisions of this Part 1890k issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650, 33 F.R. 9677.

§ 1890k.1 General.

This part supplements Subpart A of Part 1831 of this chapter. The purpose of this part is to prescribe the policies for using Operating loans to provide increased income through lease or purchase of tobacco acreage allotments in the States of Indiana, Kentucky, Tennessee, and Virginia; and, of peanut acreage allotments in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The Agricultural Adjustment Act of 1938, as amended, and further amended by Public Law 90–51 authorizes the transfer, by sale or lease, of fire-cured, dark air-cured, and Virginia sun-cured tobacco allotments. The same Act, further amended by Public Law 90–211, authorizes the transfer, by sale or lease, of peanut acreage allotments. These amendments will enable many Farmers Home Administration (FHA) borrowers and applicants who need and can use additional tobacco or peanut acreage to increase their allotments to an economic level of operation.

§ 1890k.2 Responsibility.

(a) *State Director.* It will be the responsibility of the State Director to keep in touch with his State Agricultural Stabilization and Conservation Service (ASCS) Office on policy matters concerning the sale or lease of tobacco or peanut acreage allotments, and to consult with District and County Supervisors on sale prices and lease costs for peanut allotments to assure that per acre rates paid by FHA borrowers are consistent with those being paid by other buyers and lessees in the area.

(b) *County Supervisor.* It will be the responsibility of the County Supervisor to:

(1) Familiarize himself with the program and the manner in which it will be administered in the County ASCS Office(s) serving his area.

(2) Periodically contact the ASCS County Office Manager to keep informed of persons who have tobacco or peanut allotments for sale or lease.

(3) Prepare a list of FHA borrowers and applicants who need to lease or purchase tobacco or peanut acreage allotments.

(4) Assist borrowers and applicants in the analysis of their resources and operations to determine the feasibility of purchasing or leasing tobacco or peanut acreage allotments, the acreage they need to lease or purchase, and the price they can afford to pay.

(5) Assist borrowers and applicants to get in touch with owners who have tobacco or peanut acreage allotments to lease or sell.

(6) Urge County ASCS Committees to fully inform small operators concerning the program, including small operators who need additional tobacco or peanut acreage allotments to strengthen their operations.

(7) Encourage landlords whom they contact in connection with tenant-landlord discussions to refrain from selling tobacco or peanut acreage allotments that are necessary for their tenants and encourage them to purchase or lease additional tobacco or peanut acreage allotments if needed by their tenants.

§ 1890k.3 Loan policies.

It will be the policy of FHA to assist its borrowers and applicants under the following guidelines:

(a) Operating loan funds may be used to finance the lease or purchase of tobacco or peanut acreage allotments referred to in this part.

(b) The acreage to be leased or purchased and the amount loaned per acre will be determined by individual analysis of the applicant's situation, ability and need, the proposed price, indicated increase in net income with the additional tobacco or peanut acreage allotment, and other relevant factors.

(c) Loans to tenant operators for leasing tobacco or peanut allotments will be made for 1 year's lease only except when:

(1) The tenant's lease on the farmland where the leased tobacco or peanut acreage allotment will be planted is for a term equal to or greater than the period for which the tobacco or peanut acreage allotment is leased and cannot be terminated for the period of the allotment lease except for the breach of one of the covenants.

(2) The farm lease provides for compensating the tenant for any unexhausted value of a tobacco or peanut acreage allotment lease for which the tenant has paid or agreed to pay.

(d) Loans will not be made to tenant operators for the purchase of tobacco or peanut acreage allotments.

§ 1890k.4 Repayment terms.

(a) Loan funds advanced for the purchase of allotments should be scheduled for repayment over a period consistent with that provided for the purchase of capital items with Operating loans.

(b) Loan funds advanced for the leasing of allotments will be scheduled for repayment in approximately equal annual installments. The date of the final installment should not be later than the time the income from the tobacco or peanut produced on the leased allotment will be received.

Sec.
1890l.1 Purpose.
1890l.2 Eligibility.
1890l.3 Loan purposes.

AUTHORITY: The provisions of this Part 1890l issued under sec. 339, 75 Stat. 318, 7 U.S.C. 1989; Orders of Secretary of Agriculture, 29 F.R. 16210, 32 F.R. 6650, 33 F.R. 9677.

§ 1890l.1 Purpose.

This part supplements and modifies subpart A of Part 1831 of this chapter with respect to the making of Operating loans in Hawaii for family farming operations as defined in § 1831.4(a).

§ 1890l.2 Eligibility.

Operating loans for the purpose of establishing such crops as coffee, sugarcane, and pineapple or any similar crop which requires more than two full crop years from planting to initial harvest time may be made to otherwise qualified applicants, in accordance with applicable Farmers Home Administration (FHA) regulations as hereinafter modified and supplemented.

(a) *Applicant.* (1) Off-farm employment before farm comes into production. After the loan is made, the borrower must be engaged in agriculture as farmowner, tenant, or farm laborer. However, before his farm comes into full production an applicant who, for example, will work full-time on a sugarcane plantation in the production or harvesting of sugarcane would be considered as engaged in agricultural employment and would be eligible for a loan if he otherwise qualified. But, if he will work full-time in nonagricultural employment such as in a sugarcane processing mill or for a construction company, he would not qualify for a loan. The loan docket must indicate reasonable assurance that work will be available and that the applicant will have the time and means of adequately caring for his plantings.

§ 1890l.3 Loan purposes.

(a) *Drying equipment—trellis.* Necessary coffee-drying equipment and trellis for passion fruit may be purchased with Operating loan funds under provisions of this paragraph, provided such equipment does not become a part of the real estate and thereby prevent FHA from obtaining an enforceable chattel lien on such equipment. Consideration should be given to the acquisition of such equipment through the use of group services where possible.

(b) *Operating loans for farm buildings.* Subject to the limitations prescribed in § 1831.10(e), Operating loans may be made for erecting necessary farm buildings and making essential repairs

and improvements to existing farm buildings; provided the buildings, repairs, or improvements for which the loan is made are normally considered a part of the cost of operating the farm and will enable the applicant to establish or reorganize an approved farming enterprise.

(c) *Land improvement.* Subject to the limitations prescribed in § 1831.10(e), Operating loans may be made for the establishment and improvement of pastures, hay crops, coffee, pineapple, banana, and similar perennial-type crops and for the construction of terraces, water ways, and farm ponds, the clearing, levelling, and drainage of land, and the payment for other Soil and Water Conservation and improvement measures.

(d) *Operating loans to tenants.* When Operating loans are made to tenants for real estate improvements authorized in § 1831.9(p) (1) and (2), and as supplemented by paragraphs (a), (b), and (c) of this section, the following additional requirement must be met:

(1) The lease must provide for an assignment of the lease to the Government or to someone designated by the Government.

Dated: January 8, 1971.

JOSEPH HASPRAY,
Acting Administrator,
Farmers Home Administration.

[FR Doc.71-999 Filed 1-22-71;8:50 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER A—LABORATORY ANIMAL WELFARE

PART 2—REGULATIONS

Inspection for Missing Animals

Pursuant to the provisions of the Act of August 24, 1966 (Public Law 89-544), as amended by the Animal Welfare Act of 1970 (Public Law 91-579), § 2.128 of Part 2 of Subchapter A, Chapter I, Title 9, Code of Federal Regulations, is hereby amended to read as follows:

§ 2.128 Inspection for missing animals.

(a) Each dealer, exhibitor, research facility, and each operator of an auction sale shall, upon request, during ordinary business hours, permit, under the following conditions, police or law officers of legally constituted law enforcement agencies with general law enforcement authority (not those agencies whose duties are limited to enforcement of local animal regulations) to enter the place of business of such dealer, exhibitor, research facility, or operator of an auction sale to inspect their animals and records for the purpose of seeking any animal that is missing:

(1) The police or law officer shall furnish to the dealer, exhibitor, research facility, or operator of an auction sale a written description of the missing animal and the name and address of its owner; and

(2) The police or law officer shall abide by all security measures required by the dealer, exhibitor, research facility, or operator of an auction sale to prevent the spread of disease, including the use of sterile clothing, footwear, and masks where required.

(b) (1) Such inspection shall not extend to animals that are undergoing actual research or experimentation as determined by such research facility.

(2) For the purposes of this section, an "operator of an auction sale" means "any person engaged in operating an auction at which animals, as defined in the Animal Welfare Act of 1970, are purchased or sold, affecting commerce"; and the terms "affecting commerce", "research facility", "dealer", "animal", and "exhibitor" shall be construed to have the same meaning as is given to those terms in section 3 of the Animal Welfare Act of 1970.

(Secs. 17, 21, 80 Stat. 352, 353, 7 U.S.C. 2147, 2151; Sec. 18, 84 Stat. 1564)

The purpose of the foregoing amendment is to require exhibitors and operators of auction sales, as well as dealers and research facilities, to permit inspection of their animals and records at reasonable hours upon request by legally constituted law enforcement agencies in search of lost animals, in accordance with the provisions of the Animal Welfare Act of 1970.

Insofar as the amendment imposes certain requirements necessary to prevent the sale or use of animals which have been stolen, it should be made effective promptly in order to effectuate the purposes of the Act. Therefore, under the administrative procedure provisions of 5 U.S.C. 553, good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

The foregoing amendment shall become effective January 23, 1971.

Done at Washington, D.C., this 20th day of January 1971.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[FR Doc.71-1000 Filed 1-22-71;8:50 am]

Chapter II—Packers and Stockyards Administration, Department of Agriculture

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Poultry Packers and Live Poultry Dealers and Handlers

On July 21, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 11634) regarding proposed amendments to the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), relating to business dealings with poultry growers and sellers by packers and live poultry dealers and handlers. All interested parties were afforded an opportunity to submit written data, views, or arguments concerning the proposed amendments by no later than September 19, 1970. Upon request of interested parties the time for filing such comments and views was extended to and including November 18, 1970. Notice of such action was published in the FEDERAL REGISTER on September 16, 1970 (35 F.R. 14511).

Statement of Considerations. The marketing system for poultry has changed dramatically within the last 20 years. One important structural change has been vertical integration, resulting from a firm acquiring or controlling successive stages involved in the production of poultry. At present, nearly all broilers and half or more of all turkeys are produced by farmers under contracts with integrated firms. An estimated 40,000 farmers now produce poultry under various contractual arrangements with integrators.

The poultry farmer is entitled to full and complete disclosure, in writing, of all terms and conditions affecting his payment for the production or marketing of poultry.

Nearly all live poultry produced under contract or otherwise entering the marketing channel must be weighed for the purpose of arriving at the proceeds due the farmer or seller. A complete record of accurate weighing should be entered on the scale ticket. The packer or live poultry dealer or handler should furnish a copy to the farmer or seller of the live poultry.

Consideration has been given to all data, views, and arguments filed pursuant to the notices of rulemaking and to all other relevant information in the Department. As would be expected, sharply opposed views and arguments were presented.

The need for the regulations was emphasized in many of the comments. No showing has been made that would indicate an undue or unreasonable burden on the regulated segment of the industry by complying with the regulations. Even comments presented in opposition emphasized that many integrators are presently supplying growers with substantially the same information required by the regulations.

We do not agree with the jurisdictional arguments presented by opponents of the regulations. It is our view that "live poultry dealers and handlers" are subject to sections 202 and 401-407 of the Packers and Stockyards Act (7 U.S.C. 192, 221-228), and sections 6, 8, 9, and 10 of the Federal Trade Commission Act (15 U.S.C. 46, 48, 49, and 50), which are incorporated in the Packers and Stockyards Act by virtue of section 402 of the latter Act (7 U.S.C. 222). See United States v. Tyson's Poultry, Inc., 216 F. Supp. 53, 59-60 (W.D. Ark.), appeal dismissed, 319 F. 2d 860 (C.A. 8); United States v. Marshall Durbin and Co. of Haleyville, Inc., 363 F. 2d 1 (C.A. 5); Arkansas Valley Industries, Inc. v. Freeman, 415 F. 2d

713 (C.A. 8). These sections provide the statutory basis for promulgating the regulations. Cf. United States v. Donahue Bros., 59 F. 2d 1019, 1021–1022 (C.A. 8). Enforcement, as to live poultry dealers and handlers, is provided for in section 402 of the Act (see 7 U.S.C. 222; 15 U.S.C. 49) and in section 404 of the Act (7 U.S.C. 224). See Arkansas Valley Industries, Inc v. Freeman, 415 F. 2d 713, 716–717, 719 (C.A. 8). As to the "access proposal," see Federal Trade Commission v. Harrell, 313 F. 2d 854, 855 (C.A. 7); Federal Trade Commission v. Tuttle, 244 F. 2d 605, 615 (C.A. 2), cert. denied, 354 U.S. 925.

The 1935 amendments relating to poultry were enacted to protect producers against unfair practices occurring anywhere in commerce. The law states that (7 U.S.C. 218):

> The handling of the great volume of live poultry required as an article of food for the inhabitants of large centers of population is attendant with various unfair, deceptive, and fraudulent practices and devices, resulting in the producers sustaining sundry losses and receiving prices far below the reasonable value of their live poultry in comparison with prices of other commodities and in unduly and arbitrarily enhancing the cost to the consumers. Such practices and devices are an undue restraint and unjust burden upon interstate commerce and are a matter of such grave concern to the industry and to the public as to make it imperative that steps be taken to free such commerce from such burden and restraint and to protect producers and consumers against such practices and devices.

In the 1935 amendments (49 Stat. 649), Congress added the words "or any live poultry dealer or handler" after the word "packer" in section 202 of the Act (7 U.S.C. 192). Section 202, which already specified all of the practices that were unlawful if engaged in by packers anywhere in commerce, was thus extended to the poultry industry.

The legislative history of the Wholesome Poultry Products Act (Public Law 90–492, 82 Stat. 791–808), which extensively amended the original provisions for poultry inspection (Public Law 85–172, as amended by the Act of June 25, 1962, 71 Stat. 110), clearly reveals the intent of Congress that inspection documents may be furnished to the grower (See Cong. Rec. July 29, 1968, S. 9630–9631; Cong. Rec., June 13, 1968, H. 4941–4942).

It should be noted that the regulations do not dictate the form of the contract or the substantive provisions of the contract. The parties are free to negotiate contract terms as they see fit. The regulations merely require that they reach some agreement as to the duration of the contract, the conditions of its termination, and the terms relating to payment. Elements of the agreement specified in a written contract may be incorporated by reference on a settlement sheet. If the contract provides for payment to the grower to be based on the integrator's "actual cost of feed," that fact would not have to be restated on the settlement sheet, but the settlement sheet would, of course, have to specify the monetary amount of the feed cost.

The regulations (§ 201.101) require records to be retained by a packer or live poultry dealer or handler only if they "contain, explain, or modify transactions in his business under the Act relating to poultry." Such regulation is consistent with the provisions of section 401 of the Act (7 U.S.C. 221). See also 15 U.S.C. 50; 7 U.S.C. 222.

As a result of careful consideration of all the views, comments, and arguments received and all other relevant information in the Department, the Packers and Stockyards Administration has determined that the proposed regulations should be issued. Therefore, the regulations under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), are hereby amended by adding a new subtitle and new §§ 201.100 through 201.110 reading as follows:

POULTRY—PACKERS AND LIVE POULTRY DEALERS AND HANDLERS

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Contracts; contents.* Each packer or live poultry dealer or handler who enters into a grow-out (feeding) contract with a poultry grower shall furnish the grower a true written copy of the grow-out (feeding) contract. The contract shall clearly specify:

(1) The duration of the contract and conditions for the termination of the contract by each of the parties;

(2) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:

(i) The party liable for condemnations, including those resulting from plant errors;

(ii) The method for figuring feed conversion ratios;

(iii) The formula or method used to convert condemnations to live weight;

(iv) The per unit charges for feed and other inputs furnished by each party;

(v) The factors to be used when grouping or ranking poultry growers; and

(3) The time at which final payment to the grower is to be made.

(b) *Settlement sheets; contents; supporting documents.* Each packer or live poultry dealer or handler, who acquires poultry pursuant to a contract with a poultry grower, shall prepare a true and accurate settlement sheet (final accounting) and furnish a copy thereof to the poultry grower at the time of settlement. The settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all contracts in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound.

(c) *Condemnation and grading certificates.* Each packer or live poultry dealer or handler, who acquires poultry pursuant to a contract with a poultry grower which provides that official U.S. Department of Agriculture condemnations or grades, or both, are a consideration affecting payment to the grower, shall obtain an official U.S. Department of Agriculture condemnation or grading certificate, or both, for the poultry and furnish a copy thereof to the poultry grower prior to or at the time of settlement.

(d) *Grouping or ranking sheets.* Where the contract between the packer or live poultry dealer or handler and the poultry grower provides for payment to the poultry grower based upon a grouping or ranking of poultry growers delivering poultry during a specified period, the packer or live poultry dealer or handler shall furnish the poultry grower, at the time of settlement, a copy of a grouping or ranking sheet which shows the grower's precise position in the grouping or ranking for that period. The grouping or ranking sheet need not show the names of other growers, but shall show the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(e) *Live poultry purchases.* Each packer or live poultry dealer or handler who purchases live poultry shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture condemnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

§ 201.101 Records; disposition.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, no packer or live poultry dealer or handler shall, without the consent in writing of the Administrator, destroy or dispose of any books, records, documents, or papers which contain, explain, or modify transactions in his business under the Act relating to poultry.

(b) The following categories of records relating to poultry, made or kept by a packer or live poultry dealer or handler, may be disposed of after they have been retained for a period of 2 full calendar years:

Contracts.
Settlement sheets.
Ranking or grouping sheets.
Scale tickets.
Invoices for feed.
Invoices for medications.
Invoices for litter.
Invoices for chicks or poults.
Invoices for miscellaneous services or supplies.
Condemnation certificates.
Deposit slips.
Bank statements.
Cancelled checks and drafts.
Sales invoices.
Credit memos.
Receiving reports.
Scale test reports.
Invoices for equipment sold to growers.
Purchase invoices.
Invoices for catching and hauling.
Grading certificates.
Freight invoices and bills of lading.
Routine correspondence.
Servicemen's reports.

(c) The retention period specified in paragraph (b) of this section shall be extended, if necessary, to comply with any Federal, State, or local law, or if the packer or live poultry dealer or handler is notified in writing by the Administrator that specified records should be retained pending the completion of any investigation or proceeding under the Act.

§ 201.102 Live and dressed poultry market conditions and prices.

No packer or live poultry dealer or handler shall knowingly make, issue, or circulate any false or misleading report, record, or representation concerning live or dressed poultry market conditions, or the price of sale of any live or dressed poultry.

§ 201.103 Inspection of records and property of packers and live poultry dealers and handlers.

Each packer and live poultry dealer and handler shall, upon proper request during ordinary business hours, permit authorized representatives of the Secretary to enter his place of business and examine records requested pertaining to the business of the packer or live poultry dealer or handler as such, and to make copies thereof, and inspect such property of persons subject to the Act as is necessary to carry out the provisions of the Act and these regulations. Any necessary facilities for such examination of records and inspection of property shall be extended to authorized representatives of the Secretary by the packer or live poultry dealer or handler, his agents and employees.

§ 201.104 Packers, live poultry dealers, or handlers; information concerning business not to be divulged.

No agent or employee of the United States shall, without the consent of the packer, live poultry dealer, or handler concerned, divulge or make known in any manner, except to such other agent or employee of the United States as may be required to have such knowledge in the regular course of his official duties or except insofar as he may be directed by the Secretary or by a court of competent jurisdiction, any facts or information regarding the business of any packer, live poultry dealer, or handler which may come to the knowledge of such agent or employee through any examination or inspection of the business or records of the packer, live poultry dealer, or handler or through any information given by the packer, live poultry dealer, or handler pursuant to the act and regulations.

§ 201.105 Accurate weights.

All scales owned or controlled by packers and live poultry dealers and handlers and used for the purpose of weighing live poultry purchased, sold, or acquired by them shall be installed, maintained and operated so as to insure accurate weights.

§ 201.106 Scales: Testing, repairs, adjustments, replacement and use.

(a) Packers and live poultry dealers and handlers shall cause scales used by them to weigh live poultry which they purchase, acquire, or sell to be tested by a competent scale testing agency in accordance with instructions of the Administrator,[1] at least twice during each calendar year at intervals of approximately 6 months, and shall submit to the area supervisor a fully executed copy of a report of each of the tests on forms which will be furnished by the Administrator on request. Test and inspection forms used by State and other Governmental agencies will be acceptable provided they contain substantially the same information as that required by the official form referred to above. No scale shall be used by any packer or any live poultry dealer or handler to weigh live poultry for purposes of purchase, sale, acquisition or settlement unless it has been tested and meets the accuracy requirements prescribed by the Administrator.[2] If a scale is inaccurate, or if repairs, adjustments or replacements are made, it shall not be used until it has been retested and found to be accurate.

(b) All scales used to weigh live poultry shall be equipped with a type-registering weighbeam, a dial with a mechanical ticket printer, or a similar device for printing or stamping the weight values on scale tickets. Vehicle scales used in such transactions shall be of sufficient length and capacity to weigh an entire vehicle as a unit: *Provided*, That, a trailer may be uncoupled from a tractor and weighed as a single unit. The gross weight and tare weight of such a vehicle or unit shall be determined on the same scale or scales meeting the requirements specified in paragraphs (a) and (b) of this section.

§ 201.107 Requirements regarding scale tickets evidencing weighing of live poultry.

(a) When live poultry is weighed for purposes of purchase, sale, acquisition, or settlement by a packer or live poultry dealer or handler, a scale ticket shall be issued which shall show: (1) the name of the agency performing the weighing service; (2) the name of the packer or live poultry dealer or handler; (3) the name and address of the grower, purchaser, or seller; (4) the name or initials of the person operating the scale when the weighing is done; (5) the location of the scale; (6) the gross weight, tare weight, and net weight; (7) the date and times that the gross weight and tare weight are determined; (8) the number of poultry weighed; (9) the weather conditions; (10) whether the driver was on or off truck at time of weighing; and (11) the license number of the truck or the truck number: *Provided*, That, when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in subparagraphs (9), (10), and (11) of this paragraph (a).

(b) Scale tickets issued under this section shall be at least in duplicate form and serially numbered. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the packer or live poultry dealer or handler.

(c) The packer or live poultry dealer or handler shall be responsible for the accurate weighing of live poultry and the execution and issuance of scale tickets.

§ 201.108 Scale operators to be competent.

Packers and live poultry dealers and handlers shall employ only competent persons of good character and known integrity to operate scales for weighing live poultry for purposes of purchase, sale, acquisition or settlement and shall require such employees to operate the scales in accordance with the instructions of the Administrator, copies of which will be furnished by the Administration to each packer and live poultry dealer and handler. Any agent, officer, or other person acting for or employed by any packer or live poultry dealer or handler found to be operating scales incorrectly, carelessly, in violation of weighing instructions, or in such a manner as to favor or injure any party through incorrect weighing or incorrect weight recording, shall be removed from his weighing duties.

§ 201.109 Reweighing.

Packers and live poultry dealers and handlers, or their employees, shall reweigh live poultry on request of duly authorized representatives of the Secretary.

§ 201.110 Time of weighing.

Whenever live poultry is weighed on a vehicle by a packer or live poultry dealer or handler, the gross weight shall be determined on the scale normally used for such purpose as promptly as possible after the poultry is loaded on the vehicle.

(Sec. 402, 42 Stat. 168, as amended, 7 U.S.C. 222; sec. 407(a), 42 Stat. 169, as amended, 7 U.S.C. 228(a); sec. 6(g), 38 Stat. 721, 15 U.S.C. 46(g); 29 F.R. 16210, as amended, 32 F.R. 7186, 35 F.R. 18262)

Due to the nature of the poultry industry, a reasonable period of time is necessary for the adoption of required changes by firms not now in compliance with the regulations. Therefore, the foregoing regulations shall become effective on June 1, 1971.

NOTE: The reporting and recordkeeping requirements of the revised regulations have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., this 19th day of January 1971.

RICHARD LYNG,
Assistant Secretary.

[FR Doc.71-1005 Filed 1-22-71;8:50 am]

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[1] Instructions governing the testing of scales used to weigh live poultry for the purpose of purchase, sale, acquisition, or settlement will be made available to packers and live poultry dealers and handlers upon request to the Administrator.

[2] Accuracy requirements for scales used to weigh live poultry for the purpose of purchase, sale, acquisition, or settlement will be made available to packers and live poultry dealers and handlers upon to request to the Administrator.

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 71-SW-3, Amdt. 39-1147]

PART 39—AIRWORTHINESS DIRECTIVES

Aerostar Models 600 and 601 Airplanes

There have been failures of the main cabin door resulting in the top half separating from the aircraft on Aerostar Models 600 and 601 airplanes that could result in structural damage to the left engine propeller and airframe. Since this condition could exist on other airplanes of the same model, an airworthiness directive is being issued to require inspection of the door attachment and to make necessary adjustments.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

AEROSTAR. Applies to Models 600 and 601 airplanes, Serial Numbers 60-0001 through 60-0056 and 61-0001 through 61-0070.

Compliance required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished. To prevent possible separation of the main cabin door from the airframe, inspect the cabin door lock pins, replace any missing washers, adjust pins and torque lock nut in accordance with the Instructions in Aerostar Service Letter No. 600-19 dated September 22, 1970, or by an equivalent method approved by the Chief, Engineering and Manufacturing Branch, Southwest Region, FAA, Fort Worth, Tex.

This amendment becomes effective January 23, 1971.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421 and 1423, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on January 13, 1971.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.71-986 Filed 1-22-71;8:49 am]

[Docket No. 10669; Amdt. 39-1150]

PART 39—AIRWORTHINESS DIRECTIVES

Ratier-Figeac FH.146 Propellers

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the reduction of the life limits of specified components of the Ratier-Figeac FH.146 propeller installed on, but not necessarily limited to, Nord Aviation NORD 262A-12 airplanes, was published in the FEDERAL REGISTER, 35 F.R. 17427.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

RATIER-FIGEAC. Applies to Ratier-Figeac FH. 146 propellers installed on, but not necessarily limited to, Nord Aviation NORD 262A-12 airplanes.

To prevent fatigue cracks and possible failures in service, the propeller components listed in Bulletin Ratier-Figeac Service No. 61-107, dated August 19, 1970, must be removed from service in accordance with the hours' time in service life limits specified in that Bulletin, or later SGAC-approved revision, or an equivalent approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region.

This amendment becomes effective February 22, 1971.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, and 1423, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on January 18, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

[FR Doc.71-987 Filed 1-22-71;8:49 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-658; Amdt. 8]

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Miscellaneous Amendments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of January 1971.

In ER-653, 35 F.R. 17177, the Board amended § 208.11 of Part 208 by authorizing single limit liability insurance coverage as well as multiple limits liability insurance coverage for supplemental carriers. The amendatory language of the regulation reads in part: "1. Amend § 208.11 by redesignating present § 208.11 as § 208.11(a) and adding paragraphs (b), (c), and (d). * * *" However, the rule which followed added only paragraphs (b) and (c), and the Board did not intend that a paragraph (d) be included in § 208.11 as amended. Therefore, we shall editorially correct this inadvertence by modifying the amendatory language of ER-653.

This regulation is issued by the undersigned pursuant to a delegation of authority from the Board to the General Counsel in 14 CFR 385.19, and shall become effective on January 19, 1971. Procedures for review of this amendment by the Board are set forth in Subpart C of Part 385 (14 CFR 385.50-385.54).

Accordingly, the Board hereby modifies the amendatory language of ER-653, Amendment No. 7 to Part 208, to read as follows:

1. Amend § 208.11 by redesignating present § 208.11 as 208.11(a) and adding paragraphs (b) and (c). As amended, § 208.11 will read as follows:

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

Adopted: January 19, 1971.

Effective: January 19, 1971.

By the Civil Aeronautics Board.

[SEAL] R. TENNEY JOHNSON,
General Counsel.

[FR Doc.71-916 Filed 1-22-71;8:45 am]

[Reg. ER-657; Amdt. 4]

PART 224—ACCESS TO AIRCRAFT FOR SAFETY PURPOSES; FREE TRANSPORTATION FOR SECURITY GUARDS AND FOR CERTAIN FEDERAL AVIATION ADMINISTRATON, NATIONAL TRANSPORTATION SAFETY BOARD, AND NATIONAL WEATHER SERVICE EMPLOYEES

Miscellaneous Amendments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of January 1971.

On October 3, 1970, the name of the "Weather Bureau" was changed to "National Weather Service." Accordingly, Part 224 is being amended to reflect the new title.

This amendment involves a mere change in terminology, and does not impose a burden upon any person; therefore, the Board finds that notice and public procedure thereon are unnecessary, and the amendment may become effective immediately.

Accordingly, the Board hereby amends Part 224 of the Economic Regulations (14 CFR Part 224), effective January 19, 1971, as follows:

1. Amend the title of Part 224 to read as set forth above.

2. Amend the Table of Contents to add the following section:

Sec.
224.4 Responsibility of the Federal Aviation Administration, the National Transportation Safety Board, and the National Weather Service.

3. Amend § 224.2 to read as follows:

§ 224.2 Traffic control and communications personnel and aviation weather forecasters.

Any air carrier may carry without charge on any aircraft which it operates any traffic controller or aircraft communicator of the Federal Aviation Administration or any aviation weather

forecaster of the National Weather Service (including supervising officers of such persons) for the purpose of more fully and adequately acquainting such persons with the problems affecting inflight use of air traffic control and communications and weather forecast services provided by the U.S. Government: *Provided, however,* That no request for free transportation under this section shall be made for the same individual upon any one air carrier more than once in each calendar year (round trips are regarded as one trip for the purposes of this section) unless the individual is an air traffic controller who is a member of the Washington or Regional Air Traffic Service Evaluation Staff of the Federal Aviation Administration or unless the request for such additional transportation is accompanied by the statement in writing prescribed in § 224.3(c).

4. Amend § 224.3 to read as follows:

§ 224.3 Requests for access to aircraft and free transportation.

* * * * *

(a) The person to be transported shall present to the appropriate agents of the air carrier credentials or a certificate indicating that he is entitled to request access to aircraft or free transportation and signed by the Chairman, National Transportation Safety Board, the Administrator of the Federal Aviation Administration, or the Director, National Weather Service, or any official on their staff they may designate, and signed also by the person presenting such credentials or certificate.

* * * * *

(c) When free transportation is requested pursuant to § 224.2 involving more than one free trip within a calendar year by the same individual on the same carrier, the person to be transported, unless he is a member of the Washington or Regional Air Traffic Service Evaluation Staff of the Federal Aviation Administration, shall, at the time of performance of each such additional trip, present to the appropriate agent of the air carrier a statement in writing by the Administrator of the Federal Aviation Administration, or the Director, National Weather Service, or any official on their staff they may designate, that the additional trip or trips by the person named, between the points designated and on the type of aircraft specified therein, is solely for the purpose specified in § 224.2 and is essential to the effective performance of Federal Aviation Administration or National Weather Service functions.

5. Amend § 224.4 to read as follows:

§ 224.4 Responsibility of the Federal Aviation Administration, the National Transportation Safety Board, and the National Weather Service.

The Federal Aviation Administration, the National Transportation Safety Board, and the National Weather Service shall be responsible for:

(a) The issuance of proper credentials or certificates to personnel eligible thereunder; and

(b) The promulgation of such internal rules as may be required to obtain compliance by such personnel with this part.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

Adopted: January 19, 1971.

Effective: January 19, 1971.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.71-991 Filed 1-2-71;8:49 am]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C—DRUGS

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

PART 148o—PAROMOMYCIN

A. Effective on publication in the FEDERAL REGISTER (1-23-71), Part 148o is republished as follows to incorporate editorial and nonrestrictive technical changes. This order revokes all prior publications.

Sec.
148o.1 Paromomycin sulfate.
148o.2 Paromomycin sulfate capsules.
148o.3 Paromomycin sulfate syrup.

AUTHORITY: The provisions of this Part 148o issued under sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.

§ 148o.1 Paromomycin sulfate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Paromomycin sulfate is the sulfate salt of a kind of paromomycin or a mixture of two or more such salts. It is a creamy-white to light-yellow powder. It is so purified and dried that:

(i) Its potency is not less than 675 micrograms per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its loss on drying is not more than 5.0 percent.

(iv) The pH of a 3.0 percent aqueous solution is not less than 5.0 and not more than 7.5.

(v) Its specific rotation at 25° C. in water is not less than +50° and not more than +55° on an anhydrous basis.

(vi) Its residue on ignition is not more than 2.0 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3(b) of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, loss on drying, pH, specific rotation, and residue on ignition.

(ii) Samples of the batch: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Further dilute the stock solution with solution 3 to the reference concentration of 1.0 microgram of paromomycin per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 141.5 of this chapter.

(3) *Loss on drying.* Proceed as directed in § 141.501(b) of this chapter.

(4) *pH.* Proceed as directed in § 141.503 of this chapter, using a 3.0 percent aqueous solution.

(5) *Specific rotation.* Accurately weigh approximately 1.25 grams of the sample into a 25-milliliter volumetric flask. Dissolve in a few milliliters of water, add water to volume, and mix. Proceed as directed in § 141.520 of this chapter, using a 2.0-decimeter polarimeter tube. Calculate the specific rotation on an anhydrous basis.

(6) *Residue on ignition.* Proceed as directed in § 141.510(a) of this chapter.

§ 148o.2 Paromomycin sulfate capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Paromomycin sulfate capsules are paromomycin sulfate enclosed in a suitable and harmless gelatin capsule. Each capsule contains 250 milligrams of paromomycin. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of paromomycin that it is represented to contain. The loss on drying is not more than 7.0 percent. The paromomycin sulfate used conforms to the standards prescribed therefor by § 1480.1(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The paromomycin sulfate used in making the batch for potency, safety, loss on drying, pH, specific rotation, and residue on ignition.

(*b*) The batch for potency and loss on drying.

(ii) Samples required:

(*a*) The paromomycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Blend a representative number of capsules for 3 to 5 minutes in a high-speed glass blender with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Further dilute the stock solution with solution 3 to the

reference concentration of 1.0 microgram of paromomycin per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 141.501(b) of this chapter.

§ 148o.3 Paromomycin sulfate syrup.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Paromomycin sulfate syrup contains the equivalent of 25 milligrams of paromomycin per milliliter. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of paromomycin that it is represented to contain. It may contain one or more suitable and harmless solvents, flavorings, colorings, preservatives, and buffers in water. Its pH is not less than 7.5 and not more than 8.5. The paromomycin sulfate used conforms to the requirements of § 148o.1(a)(1) (i), (ii), (iv), (v), and (vi).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays for:

(*a*) The paromomycin sulfate used in making the batch for potency, safety, pH, specific rotation, and residue on ignition.

(*b*) The batch for potency and pH.

(ii) Samples required:

(*a*) The paromomycin sulfate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 5 immediate containers.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Remove an appropriate aliquot of the syrup and transfer to an appropriate-sized volumetric flask. Dilute to volume with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), and mix well. Further dilute with solution 3 to the reference concentration of 1.0 microgram of paromomycin per milliliter (estimated).

(2) *pH.* Proceed as directed in § 141.503 of this chapter, using the undiluted sample.

B. Also regarding paromomycin and also effective upon publication, minor technical changes are made in § 141.110 by deleting the item "Paromomycin" from the table in paragraph (a) and by revising said item in the table in paragraph (b) to read as follows:

§ 141.110 Microbiological agar diffusion assay.

* * * * *

(b) * * *

Antibiotic	Working standard stock solutions					Standard response line concentrations	
	Drying conditions (method number as listed in § 141.501)	Initial solvent	Diluent (solution number as listed in § 141.102(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Paromomycin	1		3	1 mg	3 weeks	3	0.64, 0.80, 1.00, 1.25, 1.56 μg.
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: January 11, 1971.

H. E. SIMMONS,
Director, Bureau of Drugs.

[FR Doc.71-935 Filed 1-22-71;8:45 am]

PART 148e—ERYTHROMYCIN

Erythromycin Stearate

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), § 148e.6 *Erythromycin stearate* is amended in paragraph (a)(1) as follows:

1. In subdivision (i), the minimum potency is changed from "500" to "550" micrograms of erythromycin per milligram.

2. In subdivision (iii), the moisture content is changed from "5.0" to "3.0" percent.

3. In subdivision (v), the residue on ignition is changed from "2.0" to "1.0" percent.

This order improves the standards for certifying the subject antibiotic drug, is in the public interest, and presents no points of controversy; therefore, notice and public procedure are not prerequisites to this promulgation.

Effective date. This order shall become effective 30 days after its date of publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 21, 1970.

H. E. SIMMONS,
Director, Bureau of Drugs.

[FR Doc.71-968 Filed 1-22-71;8:48 am]

Title 23—HIGHWAYS

Chapter II—National Highway Traffic Safety Administration, Department of Transportation

PART 204—UNIFORM STANDARDS FOR STATE HIGHWAY SAFETY PROGRAMS

Change in Name

The Highway Safety Act of 1970 (Public Law 91-605) effected a legislative reorganization of those organizations within the Department of Transportation charged with the duty of carrying out the responsibilities of the Secretary of Transportation which are related to motor vehicle and traffic safety. Section 202 (a) and (b) of the Act abolished the National Highway Safety Bureau and established as its successor the National Highway Traffic Safety Administration as a separate operating administration within the Department of Transportation. The Secretary is authorized to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 through the new administration and the Administrator authorized to be appointed under the Act. He is further authorized to carry out through the new administration and its Administrator all of the provisions of the Highway Safety Act of 1966 except those highway safety programs, research and development relating to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety.

The purpose of this amendment is to reflect the legislative organizational changes in the status of the National Highway Safety Bureau, including the change in name and the division of responsibility relating to the administration of highway safety programs. In those highway program standards administered by the NHTSA, each reference to the Nationl Highway Safety Bureau is therefore changed to "National Highway Traffic Safety Administration."

(Sec. 202, Highway Safety Act of 1970, Public Law 91-605, secs. 315, 401, and 402, Title 23, U.S.C.; and delegation of authority at 49 CFR 1.51, 35 F.R. 4955)

In consideration of the foregoing, 23 CFR 204.4 is amended as follows, effective January 27, 1971:

I. By amending the chapter heading of Chapter II to read as set forth above.

II. Paragraph II of Highway Safety Program Standard No. 1, paragraph III of Standard No. 2, paragraph II of Standard No. 3, paragraph V of Standard No. 4, paragraph VIII of Standard No. 5, paragraph V of Standard No. 8, paragraph VI of Standard No. 10, paragraph VIII of Standard No. 11, paragraph VII of Standard No. 14, paragraph II of Standard No. 15, and paragraph II of Standard No. 16 are amended

by changing the words "National Highway Safety Bureau" to "National Highway Traffic Safety Administration."

Issued on January 19, 1971.

DOUGLAS W. TOMS,
Acting Administrator.

[FR Doc.71-964 Filed 1-22-71;8:47 am]

Title 31—MONEY AND FINANCE: TREASURY

Chapter VI—Bureau of Engraving and Printing, Department of the Treasury

PART 605—REGULATIONS GOVERNING CONDUCT ON BUREAU OF ENGRAVING AND PRINTING BUILDING AND GROUNDS AND BUREAU OF ENGRAVING AND PRINTING ANNEX BUILDING AND GROUNDS

Miscellaneous Amendments

These amendments revise §§ 605.7 and 605.8 of Part 605 regarding (1) gambling and (2) intoxicating beverages, narcotics, hallucinogenic and dangerous drugs, and marijuana, respectively. Section 605.7 is revised to conform with recent amendments to the Standards of Conduct for Treasury employees (35 F.R. 16244) to make possession on Government property of certain gambling records prima facie evidence of participating in an illegal form of gambling on such property. Section 605.8 is revised to make it applicable to narcotics, hallucinogenic, and dangerous drugs, and marijuana, and similar to 31 CFR 91.8 which governs conduct on property of the Bureau of the Mint. In accordance with 5 U.S.C. 553(a), notice and public procedure thereon are found to be impractical, unnecessary and not required since the amendments pertain to the management of public property.

1. Section 605.7 is redesignated paragraph (a) of the section and a new paragraph (b) is added to read as follows:

§ 605.7 Gambling.

* * * * *

(b) Possession in or on the property of any numbers slip or ticket, record, notation, receipt or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facie evidence that there is participation in an illegal form of gambling in or on such property.

2. Section 605.8 is revised to read as follows:

§ 605.8 Intoxicating beverages, narcotics, and drugs.

Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of intoxicating beverages, narcotics, hallucinogenic, or dangerous drugs, or marijuana, or the consumption of such beverages or the use of such drugs or marijuana in or on the property is prohibited.

Effective date. These amendments shall become effective upon publication in the FEDERAL REGISTER (1-23-71).

Dated: January 22, 1971.

[SEAL] JAMES A. CONLON,
Director,
Bureau of Engraving and Printing.

[FR Doc.71-1007 Filed 1-22-71;8:50 am]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER E—ORGANIZED RESERVES

PART 564—NATIONAL GUARD REGULATIONS

Enlisted Men

In Part 564, § 564.14(b) (2)(vii) and (3) is amended; in § 564.15 paragraph (h) (1) and (2) is revised; in paragraph (j), subparagraph (11) is revised and a new subparagraph (23) is added, and paragraph (k) (2) and (3) is revised, as follows:

§ 564.14 General.

* * * * *

(b) *Policy.* * * *

(2) * * *

(vii) *Priority 7.* Nonprior service applicants who have undergone random selection for induction.

(3) Enlistments will be accomplished only to fill authorized vacancies in the active Army National Guard except as indicated in § 564.16(e) and in AR 135-91. ARNG units will not establish criteria for the initial enlistment of individuals other than those now prescribed in this section. Individual applicants for assignment will be placed on waiting lists as the applications are received. Waiting lists will be established and maintained in accordance with AR 135-91.

* * * * *

§ 564.15 Qualification for enlistment, reenlistment, or extension of enlistment.

* * * * *

(h) *Applicants with records of conviction by civil court.* * * *

(1) Persons who have been convicted by a civil court for other than the commission of a felony and those who have been adjudicated juvenile delinquents by a civil court. (Those with less than six traffic offenses during a 1-year period may be enlisted without waiver.) See tables 2-5, 2-5a, 2-5b, and 2-5c in AR 601-210 for guide list of typical offenses other than felonies for which the State Adjutant General may grant waivers.

(2) Persons who, subsequent to date of last discharge, have been convicted by a civil court for other than the commission of a felony and those who have been adjudicated a juvenile delinquent by a civil court. (Those with less than six traffic offenses during a 1-year period may be enlisted without waiver.)

* * * * *

(j) *Classes ineligible for enlistment, reenlistment, or extension—no waivers granted.* * * *

(11) *Persons entitled to retired pay.* Persons entitled to retired pay from the United States by reason of physical disability, age, or length of service, except persons entitled to retired pay under chapter 67 of title 10, United States Code.

* * * * *

(23) *Individuals who are pursuing a course of graduate study in one of the health professions.* (Medicine, dentistry, veterinary medicine, osteopathy or optometry.)

(k) *Enlistment of members of reserve components of other Armed Forces.* * * *

(2) Upon enlistment or reenlistment of the applicant, the State Adjutant General will notify the losing command by letter, which will include date, unit, and place of enlistment.

(3) Nonunit members of the USAR assigned to the IRR, Standby or Retired Reserve may be enlisted in the ARNG pending receipt of final clearance from CG, USAAC, St. Louis, Mo. Subsequent to enlistment, DA Form 2376 will be prepared by the enlisting unit and forwarded through the Adjutant General of the State to CG, USAAC. The DA Form 2376 properly authenticated by CG, USAAC, together with separation papers or MPRJ, will be returned to the State Adjutant General concerned. In the event the clearance for enlistment is not granted, the individual will be discharged immediately from the ARNG of the State only, citing this subdivision as authority for this action.

* * * * *

[NGR 601-200, Change 1, Jan. 1, 1971] (Sec. 110, 70A Stat. 600; 32 U.S.C. 110)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71-933 Filed 1-22-71;8:45 am]

Chapter VII—Department of the Air Force

SUBCHAPTER G—BOARDS

PART 865—PERSONNEL REVIEW BOARDS

Miscellaneous Amendments

Part 865 of Title 32 of the Code of Federal Regulations is amended as follows:

1. Subpart A is amended by revising §§ 865.2, 865.3, 865.7, 865.8(e), 865.10(a), and 865.16(c) to read as follows:

§ 865.2 Establishment, function, and jurisdiction of the Board.

(a) *Establishment and composition.* Pursuant to 10 U.S.C. 1552, the Air Force Board for the Correction of Military Records has been established in the Office of the Secretary of the Air Force. The Board consists of civilians of the executive part of the Department of the Air Force in such number, not less than

three, as may be appointed by the Secretary of the Air Force. Three members present shall constitute a quorum of the Board. The Secretary designates one member as chairman. In the absence or incapacity of the chairman an acting chairman chosen by the Board shall act as chairman for all purposes.

(b) *Function.* The function of the Board is to consider all applications properly before it to determine the existence of an error or an injustice and, when appropriate, to make recommendations to the Secretary of the Air Force.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 865.3 Application for correction.

(a) *General requirements*—(1) *Submission.* The application for correction should be submitted on DD Form 149, "Application for Correction of Military or Naval Record," or exact facsimile thereof and should be addressed to: USAFMPC/DPMDRA5, Randolph AFB, TX 78148. Forms and explanatory matter may be obtained from the same activity.

(2) *By whom signed.* Except as provided in subparagraph (3) of this paragraph, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287, 1001).

(3) *When a person is unable to submit application himself.* When the record in question is that of a person incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the application before the Board, the application may be made by the spouse, parent, heir, or legal representative. Proof of proper interest shall be submitted as may be required by the Board.

§ 865.7 Review of application.

(a) *Review.* Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing, recommend that the records be corrected without a hearing, or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason the applicant has not exhausted all other effective administrative remedies available to him, or for the reason the applicant did not file his application within 3 years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse the failure to file the application within the prescribed 3 years.

(b) *Denial of application.* The Board may deny an application if it determines that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him, that effective relief cannot be granted, or that the applicant did not file his application within 3 years after he discovered the alleged error or injustice and insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed 3 years. The Board will not deny an application on the sole ground that the record was made by or at the direction of the President or Secretary in connection with proceedings other than proceedings of a board for correction of military or naval records. Denial of an application on the grounds of insufficient relevant evidence to demonstrate probable material error or injustice is without prejudice to further consideration if new relevant evidence is submitted. The applicant will be informed of his privilege to submit newly discovered relevant evidence for consideration.

(c) *Written findings.* When an application is denied without a hearing, written findings and decisions are not required.

§ 865.8 Entitlement to hearing, notice, counsel, witnesses, and access to records.

* * * * *

(e) *Access to records*—(1) *Official records.* The applicant shall have access to such official records as are deemed necessary to adequately present his case. It is the responsibility of the applicant to procure such evidence not contained in official records of the Department of the Air Force as he desires to present in support of his case.

(2) *Classified or privileged matter.* Classified or privileged matter shall not be disclosed or made available without express finding of the chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure shall not be contrary to existing law and departmental regulations concerning privileged or classified material. When appropriate, the applicant may be supplied only with a summary or extract of classified matter.

(3) *Copies of records.* This part does not authorize the Board to furnish copies of official records. Request for copies of official records should be submitted in accordance with regulations governing release of information.

§ 865.10 Conduct of hearing.

(a) *By chairman.* The hearings shall be conducted by the chairman, and shall be subject to his rulings that will be designed, insofar as practicable, to accord the applicant an opportunity to make a full and fair presentation of his case. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bonds of competency, relevancy, and materiality.

* * * * *

§ 865.16 Settlement of claims.

* * * * *

(c) *Settlement*—(1) *Basis for settlement.* Settlement of claims shall be based on the decision of the Secretary of the Air Force. Computations of amounts due shall be made by the Comptroller of the Air Force, Hq USAF, or his representative, according to applicable law and regulations. In no case will the amount found due exceed the amount which would otherwise have been paid or become due had no error or injustice occurred. Earnings received from civilian employment during any period for which active duty pay and allowances are payable may be deducted from the settlement. Amounts found due may be reduced by the amount of any existing indebtedness to the Government, arising from military service.

(2) *Nature and amount of various benefits.* Prior to or at the time of payment, the person to whom payments are to be made shall be advised by the Comptroller of the Air Force, Hq USAF, or his representative, as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release of the claimants involved of any claim against the United States on account of the correction of records.

* * * * *

2. Subpart B is revised to read as follows:

Subpart B—Air Force Discharge Review Board

Sec.

AUTHORITY: The provisions of this Subpart B issued under sec. 8012, 70A Stat. 488; sec. 1553, 72 Stat. 1267; 10 U.S.C. 8012, 1553.

Subpart B—Air Force Discharge Review Board

§ 865.100 Organization and purpose.

The Air Force Discharge Review Board (hereinafter called the "Board") is a part of the Secretary of the Air Force Personnel Council, is administered and supervised by the Council's director. An administrative agency, it reviews the discharge or dismissal (other than a discharge or dismissal by sentence of a general court martial) of former military personnel, on its own motion or at the request of a former military member or his appropriate representative.

§ 865.101 Jurisdiction and authority.

The Board has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the service, were members of the U.S. Army aviation components (Aviation Section, Signal Corps; Air Service; Air Corps; or Air Forces) or the U.S. Air Force. The Board does not

have jurisdiction and authority concerning personnel of other arms and services who, at the time of their separation, were assigned to duty with the Army Air Forces or the U.S. Air Force.

(a) The Board's review is based on available military records pertaining to the former member and such other evidence as may be presented to the Board. The Board determines whether the type of discharge or dismissal the former serviceman or woman received is equitable and proper; if not, the Board instructs the Air Force Military Personnel Center (AFMPC) to change the discharge or dismissal or issue a new discharge according to the Board's findings. The Board's determination is subject to review by the Secretary of the Air Force.

(b) The Board is not authorized to revoke any discharge or dismissal, to reinstate any person in the military service subsequent to his separation, or to recall any person to active duty.

(c) The Board may make an applicant eligible for enlistment who was last separated from the Air Force by a discharge or condition that is a bar to enlistment. The action by the Board does not waive any physical or moral bars to enlistment unknown to it.

(d) The Board may on its own motion consider a case that appears likely to result in a decision favorable to the former military member, without his knowledge or presence. If the decision is favorable, the Board directs AFMPC to notify the former member at his last known address. If the decision is unfavorable, the Board returns the case to the files without record of formal action. It will reconsider the case without prejudice if the former member subsequently files an application for review.

(e) The Board does not reconsider a case after it has rendered a formal decision unless new, pertinent, and material evidence is found which might change the original decision. If new evidence is discovered, the former member (or his appropriate agent) may request a rehearing. The request for rehearing must be written (a letter is permissible) and be submitted within a reasonable time. It must include the new evidence and show that: (1) The applicant diligently tried to obtain and present all available evidence at the original hearing, and (2) the delay in discovering the new evidence was not the applicant's fault.

§ 865.102 Application for review.

An application for review must be submitted within 15 years after the effective date of the former member's discharge or dismissal.

(a) The applicant will submit a single copy of DD Form 293, "Applicability for Review of Discharge or separation from the Armed Forces of the United States," with supporting affidavits and other evidence. The application must show:

(1) Member's full name, grade, service number, and Social Security Account Number.

(2) Organization or assignment at date of separation.

(3) Date and place of separation.

(4) Type and nature of the discharge or dismissal.

(5) Basis of the claim for review.

(6) Conclusive action desired of the Board.

(7) Whether the applicant wants to appear personally before the Board; to be represented by counsel before the Board; if so, the name and address of the designated counsel.

(8) The mailing address for receipt of correspondence concerning the review.

(b) The spouse, next of kin, or legal representative of a former member may submit the application for the review as agent for the member, but proof of the member's death or mental incompetency must accompany the request.

(c) Applicants will forward their requests for review to the National Personnel Records Center—mailing address: NPRC (MPR–AF), 9700 Page Boulevard, St. Louis, MO 63132.

(d) The agency receiving an application for review assembles the originals or official copies of all available military records pertaining to the former serviceman or woman and transmits the records, application, and supporting documents to the Board.

§ 865.103 Convening the Board.

(a) The president convenes, recesses, and adjourns the Board. If the president is absent, the next senior member acts as president.

(b) The president indicates the time and place the Board will convene, usually in Washington, D.C.

(c) The Board, consisting of five members, assembles in either open or closed session to consider cases presented to it. It considers cases in closed session when the applicant has not asked to appear in person or to have properly designated counsel appear in his behalf, or when applicant or his counsel fails to appear when scheduled. Such cases are decided on the basis of documentary evidence, including briefs submitted by or for the applicant.

§ 865.104 Procedures for hearings.

(a) The law entitles the applicant for a review to appear, at his request, before the Board in open session. He may appear in person or be represented by counsel of his own selection, and he may present any witnesses he wishes. In this part, "counsel" includes members in good standing of the Federal or a State bar, accredited representatives of veterans organizations recognized by the Veterans Administration under chapter 59 of title 38 United States Code, and any other person the Board considers to be competent to present the applicant's claim equitably and comprehensively. The Government does not compensate or pay the expenses of the applicant's witnesses or counsel. The applicant may submit any documents he wishes as evidence for the Board's consideration. The documents may include, but are not limited to, police clearances, character references, and employers' statements.

(1) When an applicant has requested a personal appearance, the Board will send him (and his designated counsel, if any) written notice of the hearing time and place. The notice will be mailed at least 30 days before the hearing date. If the applicant wishes, he may waive the time limit and in such case the Board may set an earlier hearing date. Evidence will be placed in the record to show how and when the notice was given.

(2) If an applicant has requested a personal appearance and, after being notified of the hearing time and place, fails to appear at the appointed time, either in person or by counsel, he waives his right to be present.

(b) The Director, Secretary of the Air Force Personnel Council, insures that hearings are conducted to afford full and fair inquiries by the Board. The president and the recorder of the Board are authorized to administer oaths. The recorder will swear in the voting membership of the Board, the reporter, the applicant, and witnesses. The president of the Board will swear the recorder. The Board and the applicants or their counsel will not be allowed access to any classified reports of investigation or any document received from the Federal Bureau of Investigation. When necessary to inform an applicant about the substance of such a document, the Board requests an appropriate official to prepare an unclassified summary of or extract from the document without including references to sources of information and other matter that would be detrimental to public interest if disclosed. The unclassified summary may be made available to the applicant or his counsel.

(c) The Board, in conducting its inquiries, is not limited by the rules of evidence applicable in judicial proceedings.

(d) Witnesses may present evidence to the Board either in person or by affidavit. If a witness testifies under oath or affirmation, he is subject to examination by Board members. At the request of applicant or his counsel, and at the discretion of the Board, witnesses may be allowed to make unsworn statements in respondent's behalf, in which case they will not be examined by Board members.

(e) The Board may continue an inquiry on its motion or, at its discretion, grant an applicant's (or his counsel's) request for continuance if this appears necessary to insure a full and fair hearing.

(f) The Board, at its discretion and for good cause, may permit an applicant to withdraw his request without prejudice at any time before the Board begins its deliberations.

§ 865.105 Findings and conclusions.

(a) The Board, in closed session, prepares written findings and conclusions in each case. The conclusions state whether the Air Force should change the discharge or dismissal, or issue a new discharge.

(b) The findings and conclusions of a majority of the Board members constitute the Board findings and conclusions. Dissenting Board members may file minority reports.

§ 865.106 Disposition of proceedings.

(a) When the Board has concluded its proceedings in any case, the recorder prepares a complete record. The record includes the application for review; a transcript of the hearing, if any; documentary evidence considered including, by reference only, the Master Personnel Record of the applicant; the findings; conclusions, and instructions; minority reports of dissenting Board members; and all other documents necessary to a true and complete history of the proceedings. The Board president signs the record and the recorder authenticates it as true and complete. If the recorder is absent or incapacitated, a voting member of the Board may authenticate the record.

(b) The Board transmits a record of its proceedings, including a transcript of testimony, and directions in each case to USAFMPC (AFMPC), Randolph AFB TX 78148. This office administratively carries out the Board's directions and reports the results to the applicant and his counsel, if any. The applicant, his guardian, or other authorized representative, may request in writing that AFMPC furnish a copy of the Board proceedings, findings, and conclusions. Information that appears to be potentially injurious to the applicant's physical or mental health is furnished only to the guardian or other authorized representative.

(c) Unclassified records of Board proceedings are open to perusal by the Administrator of Veterans Affairs or his authorized representative.

§ 865.107 Approval of exceptions.

Exceptions to the provisions of this part may be authorized or approved only by the Secretary of the Air Force.

By order of the Secretary of the Air Force.

ALEXANDER J. PALENSCAR, Jr.,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[FR Doc.71-932 Filed 1-22-71;8:45 am]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 169—POST OFFICE BOXES

Renting and Closing Post Office Boxes

In the daily issue of November 17, 1970 (35 F.R. 17662), the Department published a notice of proposed rule making relating to regulations then codified in 39 CFR 151.3(h). Those regulations related to restrictions applicable to the rental and use by postal patrons of post office boxes, as well as to the grounds for closing such boxes by the Postal Service. The cited notice proposed to expand and improve the regulations, and also to provide for an appellate procedure in those cases where an application to rent a box is refused, or where a box closing is under consideration. Interested members of the public were given 30 days within which to submit written data, views, and arguments concerning the proposed regulations. No comments were received. The Department has determined to adopt the regulations, without substantive change.

Accordingly, the following amendments to the Department's regulations are hereby made, to be effective on the 30th day following the date of this publication in the FEDERAL REGISTER. Rules of practice governing proceedings arising under these regulations are set out in this issue on page 1142.

In § 169.1 *Use*, make the following changes: In paragraph (b), add subparagraphs (4) and (5); in paragraph (c) add subparagraph (8); amend paragraph (d); and add paragraph (e), all to read as follows:

§ 169.1 Use.

* * * * *

(b) *How to rent a box.* * * *

(4) *Minors.* Boxes may not be rented to minors if parents or guardians object.

(5) *Insane persons.* Boxes may not be rented to persons declared by a court to be of unsound mind.

(c) *Conditions of use.* * * *

(8) *For forwarding.* Boxes may not be rented when the sole purpose is to have mail forwarded or transferred, unless an agent of the addressee plans to remove the matter regularly.

(d) *Restrictions on use*—(1) *Grounds for refusal to rent or renew.* A postmaster shall refuse to rent or renew the rental of a box to any person if he has reason to believe that such person has falsified the application or has, within the previous 2 years, physically abused a box or violated any regulation or contractual provision relating to the care and use of a box, or is likely to use the box in connection with a scheme or enterprise in violation of this paragraph. An order of the Judicial Officer closing a post office box or affirming the refusal to grant an original or renewal application for such box shall bar the granting of any similar application wherever made, by or on behalf of the person involved, until such order has been revoked, amended or modified by the Judicial Officer.

(2) *Appeal from refusal to rent or renew.* Whenever the rental or renewal of a post office box is refused, the postmaster shall, upon written request made within 10 days, furnish the applicant with the reasons for such refusal in writing. Where the refusal to rent or renew is based in whole or in part upon the grounds specified in subparagraph (1) of this paragraph, an appeal may be taken in the same manner and subject to the same time limitations as where a "Notice of Intent to Close A Post Office Box" has been issued under paragraph (e) (2) of this section.

(e) *Procedures in closing a box; notice and hearing*—(1) *Duties of postmasters and postal employees.* Postmasters or other postal officials who have reason to believe that any regulation or contractual provision governing the rental or use of a post office box has been or is being violated shall send a report of the facts together with any supporting documents to the General Counsel.

(2) *Notice of intent to close a post office box.* Whenever the General Counsel is in receipt of substantial evidence which he believes warrants the closing of a post office box, he may issue a "Notice of Intent to Close Post Office Box." Such notice shall state clearly the reasons for the contemplated action and inform the boxholder of his right to appeal this determination to the Judicial Officer, U.S. Postal Service, Washington, DC 20260.

(3) *Misuse.* Only matter which has passed through the mail, or official postal notices, may be placed in a post office box. (See paragraph (a) of this section.) Boxholders shall remove mail promptly from their boxes. If mail is to be accumulated for more than 30 days specific arrangements must be made in advance with the postmaster.

(4) *Unlawful activity.* No post office box may be used for or in connection with a scheme or enterprise which—

(i) Violates any Federal, State, or local law;

(ii) Breaches an agreement with a Federal, State, or local agency whereby the boxholder has agreed to discontinue a specified activity; or

(iii) Violates or attempts to evade any order of a court or administrative body.

(5) *Grounds for closing a box.* A box may be closed whenever the boxholder has falsified the application for the box or has violated, or is violating, any of the regulations or contractual terms or conditions relating to its care and use.

(3) *Service of notice of intent upon boxholder.* The "Notice of Intent to Close a Post Office Box" may be served on the boxholder by certified mail, with delivery restricted to addressee only, addressed to his post office box or other address. A return receipt therefor shall be obtained and forwarded immediately to the General Counsel. If restricted delivery cannot be made, the notice shall be deposited in the box for delivery as ordinary mail and shall constitute valid service. A post office delivery receipt, Form 3849, shall be filled out and sent to the General Counsel. Both the Form 3849 and the return receipt for the certified mail shall be endorsed to show that restricted delivery could not be made and that the notice was delivered as ordinary mail.

(4) *Timely appeal.* No appeal may be taken from a "Notice of Intent to Close a Post Office Box" issued under subparagraph (2) of this paragraph unless it is postmarked no later than 20 days after service of such notice.

(5) *Failure to appeal; consequences.* If no appeal is taken within 20 days after service of the "Notice of Intent to Close a Post Office Box," the box may be closed by order of the General Counsel without further notice to the boxholder.

(6) *Disposition of mail.* When a box has been closed pursuant to subparagraph (5) of this paragraph or by order of the Judicial Officer, the postmaster shall notify the boxholder and transfer mail addressed to the box to General Delivery. The mail will be held at General Delivery for a period of 10 days following the notification to the boxholder, during which period he may claim his mail at General Delivery. If a Change of Address Order is received during this period, or any Change of Address Order is received prior to the effective date of this subparagraph, it shall be honored not to exceed the current time limitation for forwarding orders. At the end of this applicable period all mail addressed to the box shall be handled as undeliverable. However, this shall not preclude compliance with sender's request in accordance with § 122.3(b) of this chapter.

(5 U.S.C. 301, 39 U.S.C. 501, 708)

DAVID A. NELSON,
General Counsel.

[FR Doc.71-936 Filed 1-22-71;8:45 am]

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE REFUSAL TO RENT OR RENEW POST OFFICE BOXES AND THE CLOSING OF POST OFFICE BOXES

The Acting Judicial Officer of the Post Office Department has adopted the rules of practice set out below to govern appeals in cases in which the General Counsel has issued a Notice of Intent to Close a Post Office Box, or in which a postmaster has refused to rent or renew the rental of a post office box, pursuant to 39 CFR 169.1, and a timely appeal has been filed.

These rules shall become effective at the same time as the amendments to Part 169 of Title 39, Code of Federal Regulations, published concurrently with these rules.

DAVID A. NELSON,
General Counsel.

Sec.

AUTHORITY: The provisions of this Part 958 issued under 5 U.S.C. 301, 39 U.S.C. 501.

§ 958.1 Authority for rules.

The Acting Judicial Officer promulgates the rules in this part pursuant to authority delegated by the Postmaster General.

§ 958.2 Scope of rules.

The rules in this part shall be applicable only to cases in which the General Counsel has issued a Notice of Intent to Close a Post Office Box, or in which a postmaster has refused to rent or renew the rental of a post office box, pursuant to § 169.1 of this chapter, and a timely appeal has been filed.

§ 958.3 Notice of appeal; notice of hearing; answer.

(a) *Notice of appeal.* Any person to whom the rental or renewal of rental of a post office box has been refused by a postmaster and any person who has been served by the General Counsel with a Notice of Intent to Close a Post Office Box may make an appeal from such refusal or Intent to Close by filing a written complaint with the Docket Clerk within 20 days from the receipt of notice of such refusal or Notice of Intent to Close. The complaint shall be filed in triplicate and shall state the reasons why the person believes the action taken by the Postmaster or proposed to be taken by the General Counsel is erroneous. The complaint shall also allege facts showing compliance with each provision of law and regulation on which the person's claim to entitlement to box office rental is based. The appellant shall attach to his appeal a copy of the notice of refusal to rent or renew or Notice of Intent to Close the post office box. The appeal shall be sent to the Judicial Officer, United States Postal Service, Washington, D.C. 20260. The appeal shall be signed by the appellant or by his attorney.

(b) *Notice of hearing.* Upon receipt of the appeal the Docket Clerk shall send a copy thereof to the General Counsel and shall set the matter down for hearing not later than 30 days from the date of receipt by the Docket Clerk of the appeal. The notice of hearing shall be sent to the appellant by certified mail with return receipt requested.

(c) *Answer.* The General Counsel shall file answer to the appeal within 10 days after the receipt of the appeal by the Docket Clerk.

§ 958.4 Hearings.

Hearings are held at the Headquarters Office of the United States Postal Service, Washington, D.C., or such other location as may be designated by the presiding officer. Not later than 5 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining: (a) The evidence to be offered in such place; (b) the names and addresses of the witnesses who will testify; (c) the reasons why such evidence cannot be produced at Washington, D.C. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

§ 958.5 Election as to hearing.

If both parties so elect, they may waive an oral hearing and submit the matter for decision on the basis of the appeal and answer, with the approval of the presiding officer and subject to the right of the presiding officer to require the parties to furnish such further evidence or such briefs as the presiding officer may deem necessary. The request to waive oral hearing shall be mailed to the presiding officer not later than 10 days prior to the date set for the hearing.

§ 958.6 Default.

If a person who has not waived oral hearing fails, without notice or without adequate cause, satisfactory to the presiding officer, to appear at the hearing, the presiding officer shall issue an order dismissing the appeal. If no protest to such order of dismissal is received within 10 days from the date of issuance of the order, such order shall become final. Any protest to the order of dismissal received within 10 days from the date of its issuance shall be given such consideration as the presiding officer deems to be warranted by the facts and circumstances alleged in the protest. An order of dismissal issued under this section by a Hearing Examiner may be appealed to the Judicial Officer within 10 days from the date of the order.

§ 958.7 Presiding officers.

The presiding officer at any hearing shall be a Hearing Examiner qualified pursuant to the Administrative Procedure Act (5 U.S.C. 1010) or the Judicial Officer (74 Stat. 554, Public Law 86-676). The Chief Hearing Examiner shall assign cases to Hearing Examiners by rotation so far as practicable. The Judicial Officer may, for good cause shown, and with his concurrence, preside at the reception of evidence in proceedings where expedited hearings are requested by either party. When the Judicial Officer presides at the hearing, he shall, in his sole discretion, render a tentative or final decision after the conclusion of the hearing. Exceptions may be filed to a tentative decision in accordance with § 958.10.

§ 958.8 Proposed findings of fact and conclusions of law.

Unless otherwise ordered by the presiding officer, proposed findings of fact and conclusions of law and supporting arguments shall be submitted orally or in writing at the conclusion of the hearing.

§ 958.9 Initial decision.

Unless given orally at the conclusion of the hearing, the Hearing Examiner shall render an initial decision as expeditiously as practicable following the conclusion of the hearing, and the receipt of the proposed findings, if any. The initial decision shall become the final agency decision if a timely appeal is not taken.

§ 958.10 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 958.11 Final agency decision.

The Judicial Officer shall render a final agency decision or he shall refer the matter to the Postmaster General or the Deputy Postmaster General for such final decision. The decision shall be served upon the parties and upon the postmaster at the office where the box is located.

§ 958.12 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 958.13 Petition to revoke, amend or modify.

A party against whom an order has been issued may file a petition for the revocation, amendment or modification thereof. The Docket Clerk shall transmit a copy of the petition to the General Counsel, who may file a written reply. A copy of the reply shall be sent to the petitioner by the Docket Clerk. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[FR Doc.71-937 Filed 1-22-71;8:45 am]

Title 42—PUBLIC HEALTH

Chapter IV—Environmental Protection Agency

PART 458—GRANTS FOR RESOURCE RECOVERY SYSTEMS AND IMPROVED SOLID WASTE DISPOSAL PROJECTS

The Resource Recovery Act of 1970 (Public Law 91–512), enacted October 26, 1970, amended the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) by adding, among other things, a new section 208 which authorizes the Secretary of Health, Education, and Welfare to award grants for the demonstration of resource recovery systems and for the construction of new or improved solid waste disposal facilities. The functions vested by law in the Secretary under the Act, as amended, were transferred to the Administrator, Environmental Protection Agency by Reorganization Plan No. 3 of 1970.

Section 208 directs, that within 90 days after the date of enactment, the Administrator shall promulgate regulations establishing a procedure for awarding grants under the section.

Notice of proposed rulemaking, public rulemaking procedures and postponement of effective date have been omitted in the issuance of the following Part 458 which relates solely to grants for the demonstration of resource recovery systems and the construction of new or improved solid waste disposal facilities under section 208 of the Act. While these regulations become effective on the date of their publication in the FEDERAL REGISTER, comments concerning the regulations are invited from interested persons particularly those eligible for section 208 grants, i.e., State, municipal, interstate, and intermunicipal agencies. All comments, views, and arguments concerning the regulations should be submitted in triplicate within 30 days after the publication of this document in the FEDERAL REGISTER to the Solid Wastes Office, Environmental Protection Agency, 5600 Fishers Lane, Rockville, MD 20852. Consideration will be given such submissions with a view to making any amendments to the regulations that are found to be necessary or desirable as fully as though such submissions had been received in response to a proposal.

To insure, as directed by section 208 (d), that projects will be carried out in communities of varying sizes, the regulations provide that 30 percent of the funds designated or appropriated for carrying out section 208 projects will be reserved for applicants located outside standard metropolitan statistical areas provided a sufficient number of acceptable applications are received by the last deadline date in any fiscal year. This 70–30 distribution is based upon the 1970 census which indicates that approximately 70 percent of the country's population resides in standard metropolitan statistical areas.

Section 203(10) of the Act, as amended defines "resource recovery system" as "a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues." Section 458.7 of the regulations lists the categories of resource recovery systems for which applications are solicited and § 458.8 sets forth the special requirements for grant support of a resource recovery system which must be demonstrated at full-scale. Section 458.9 establishes special requirements for funding the construction of new or improved solid waste disposal facilities. Such a project must, among other things, advance the "state of the art" (as defined in § 458.2(1)) by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials. Section 458.10 sets forth the criteria which the Administrator will utilize in approving section 208 projects.

A new Part 458 is added as follows:

Sec.

AUTHORITY: The provisions of this Part 458 issued under sec. 208, 84 Stat. 1230; Public Law 91–512.

§ 458.1 Applicability.

The provisions of this part apply to grants for the demonstration of resource recovery systems and for the construction of certain new or improved solid waste disposal facilities as authorized by section 208 of the Act.

§ 458.2 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act.

(a) "Act" means the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Recovery Act of 1970 (Public Law 91–512).

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Adopted State Plan" means a comprehensive statewide plan for solid waste management which has been recognized by the Governor, in writing, as the official solid waste management plan for the State and has been published and made available to all political subdivisions of the State.

(d) "Adopted Interstate Plan" means a comprehensive solid waste management plan for an interstate area which has been published, approved by the participating States and made available to the constituent political sub-divisions and to the heads of the appropriate State agencies in the affected States along with a letter from the head of the interstate agency expressing responsibility for the plan. The head of the interstate agency will insure that the Governors of the participating States are aware of the plan.

(e) "Applicant" means any State, municipal, interstate or intermunicipal agency which files an application for a grant under section 208 of the Act.

(f) "Rural Applicant" means any agency located outside a "standard metropolitan statistical area" as listed by the Office of Management and Budget in Standard Metropolitan Statistical Areas (1967 edition) and any amendments thereto.

(g) "Areawide" means an economic and socially related geographical region, which in the opinion of the Administrator takes into consideration such factors as population trends, patterns of urban growth, location of transportation facilities and systems, distribution of municipal, industrial, commercial, residential, governmental, institutional, and other activities, and is appropriate for purposes of the grant.

(h) "Demonstration" means a full-scale field activity designed to show the technical and economic feasibility of a resource recovery system.

(i) "Project" means all work outlined in the applicant's proposal, including but not limited to design, construction, operation, maintenance, evaluation, reports,

plans, and specifications in connection therewith.

(j) "Project Period" means the period of time which the Administrator finds is reasonably required to carry out a project meriting support under section 208 of the Act.

(k) "Grant Period" means the period during which the grantee is authorized to obligate granted Federal funds for the purposes specified in the grant.

(l) "State of the Art" means solid waste management technology which the Administrator, after evaluation of pertinent technical and economic factors, determines has been successfully demonstrated at full-scale.

§ 458.3 Funds available for grants.

(a) The Administrator may, from time to time and for such periods as he may deem appropriate, reserve a portion or portions of the available grant funds for categories of projects.

(b) Not more than 70 percent of funds designated or appropriated to carry out section 208 of the Act will be awarded to applicants located in Standard Metropolitan Statistical Areas. The remaining 30 percent will be reserved for rural applicants. Notwithstanding this allocation, if an insufficient number of acceptable applications are received from rural applicants by the last deadline date in any fiscal year, as established pursuant to § 458.4(d), the 70 percent figure may be exceeded.

§ 458.4 Application for grants.

(a) An application for a grant shall be submitted on such forms and in such manner as the Administrator may prescribe.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the regulations of this part and any additional conditions of the grant.

(c) In addition to any other pertinent information which the Administrator may require, each applicant shall submit as part of the application a full and adequate description of the proposed project in sufficient detail to indicate the nature, costs and schedule, objectives, justification, and proposed method of conducting and evaluating the project. The description shall, as applicable, describe and indicate the possession of, or set forth a schedule for obtaining qualified personnel, contractors, consultants, equipment, facilities, and other necessary resources (including non-Federal funds) for the conduct of the project.

(d) Applications may be submitted at any time; the Administrator will establish at least two deadline dates per fiscal year and applications accepted prior to any deadline date will be considered and acted upon no later than 90 days following such date.

§ 458.5 Grant limitations; general.

(a) No grant shall be made:

(1) With respect to any costs which are not incurred within the approved project period.

(2) Unless the applicant gives assurance satisfactory to the Administrator that open-dumping and open-burning of solid waste are prohibited by a law enforced within the jurisdiction in which the applicant proposed to conduct the project.

(3) For any project unless the application sets forth plans for the expenditure of such grant, which assure, to the satisfaction of the Administrator, that the project as planned will carry out the purposes of section 208 of the Act.

(4) With respect to any costs for land acquisition.

(5) Until the applicant has given assurance satisfactory to the Administrator as to the availability of funds from non-Federal sources for the cost of the project.

(6) Unless the applicant has made provision satisfactory to the Administrator for assuring proper and efficient operation and maintenance of the project following the project period.

(b) Not more than 15 percent of the total of funds authorized to be appropriated under 216(a)(3) for any fiscal year to carry out section 208 of the Act shall be granted under this section for projects in any one State. For the purposes of this paragraph, grants to an interstate agency will be considered to be to the States involved in proportion to the amounts of non-Federal funds expended for the project by the participating States or by the participating municipalities located in the respective States.

§ 458.6 Grant conditions; general.

(a) In addition to any other requirements imposed by or pursuant to these regulations, each grant awarded pursuant to this part shall be subject to the following conditions:

(1) Any funds granted shall be expended solely for carrying out the approved project.

(2) The grantee shall submit to the Administrator for review and prior approval changes in the project that substantially alter its scope or purpose or will change costs.

(3) Any grant award shall be subject to any regulations of the Environmental Protection Agency relating to inventions and patents and shall comply with the requirements of section 204(c) of the Act. Such requirements shall apply to any activity for which grant funds are in fact used. Appropriate measures shall be taken by the grantee and by the Administrator to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data, and information pertaining to inventions or discoveries shall be maintained for such periods and filed with or otherwise made available to the Administrator or to those he may designate at such times and in such manner as he may determine are necessary to carry out such requirements.

(4) Any grant for a project which involves a federally assisted construction contract, as defined in Executive Order 11246, September 24, 1965 (30 CFR 12319), relating to equal employment opportunities, shall be subject to the condition that the grantee shall comply with the requirements of said Executive Order and with applicable rules, regulations, and procedures prescribed pursuant thereto.

(5) No grant for a project which involves construction shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act as amended (40 U.S.C. 276a to 276a-5) will be paid at rates not less than those prevailing on similar work in the locality, as determined by the Secretary of Labor in accordance with that Act.

(6) The grantee shall provide for and maintain such accounting, budgetary, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the project. The fiscal records shall be so designed as to show currently the amount and disposition of Federal funds received, the total cost of the project in connection with which such funds were provided, the amount of the cost supplied by non-Federal sources, the expenditures for the solid waste management program of the grantee not included in the project, and such other records as will facilitate an effective audit. Such records and any other books, documents or papers of the grantee pertinent to the grant received under section 208 of the Act shall be accessible for audit by representatives of the Administrator and of the Comptroller General of the United States and shall be maintained until the grantee is notified in writing that the final audit has been completed.

(7) Publications and reports:

(i) Grantees shall submit periodic reports of progress on a schedule designated by the Administrator as well as any special or interim reports as the Administrator may specifically request. In addition, in conjunction with the termination of a grant or completion of the project, the grantee shall prepare a final project report which sets forth the grantee's findings, conclusions, and results. They shall include but not be limited to the engineering effectiveness and economic feasibility of the method investigated or demonstrated and shall contain sufficient scientific and engineering detail to permit an evaluation of the method's applicability to similar problems elsewhere. In all reports, supplemental information and data suitable for project documentation purposes shall be included. The number of copies of these reports will be specified by the Administrator. Prior to submission of the final project report, a preliminary copy shall be furnished to the Administrator for review and approval to proceed with preparation of the project final report.

Unless otherwise agreed to by the Administrator, the United States may authorize others or may itself, without additional compensation to the grantee, duplicate, use, and disclose in any manner and for any purpose whatsoever, all information derived from the project and all technical data and reports required under the grant.

(*ii*) Any publication or film produced by the grantee regarding the project in general, and in particular, reporting the findings, conclusions, or results of work performed under a grant, including performance and cost data (other than contracts for procurement of supplies or equipment from the commercial open market) must be approved by the Administrator, in advance of dissemination. Any publication resulting from work performed under a grant shall acknowledge the participation of the Environmental Protection Agency in financing the work by stating: "This project has been supported and financed, in part, by the Environmental Protection Agency, pursuant to the Solid Waste Disposal Act."

(*iii*) Any copyrighted publication resulting from work performed under a grant shall be subject to a royalty-free, nonexclusive, and irrevocable license throughout the world, to the United States and to its officers, agents, and employees acting within the scope of their official duties, to reproduce, translate, publish, use, and dispose of such publication, and authorize others so to do.

(8) Any application for a grant shall constitute the consent of the applicant to inspections at reasonable times by persons designated by the Administrator, of the facilities, equipment, and other resources of the applicant and to interviews with project staff members. The acceptance of the grant award shall constitute the consent of the grantee to inspections and fiscal audit by such persons of the supported activity and of progress and fiscal records relating to the approved project. The grantee shall also permit the Administrator or his authorized agents and appropriate interested parties to have access to any facility constructed as part of a project and to records pertaining to the operation of such facility at any reasonable time after such facility is constructed.

(9) Grantees shall establish a plan acceptable to the Administrator, to conduct, for appropriate interested parties, periodic on-site briefings on the project, including tours of facilities and systems constructed under the authority of section 208.

(10) Any grant award pursuant to this part shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; Public Law 88–352) which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance (section 601), and to any implementing regulations issued by the Administrator.

(11) No grant shall be made until the Administrator has received the following assurances from the applicant:

(i) That the applicant will follow procurement practices subject to approval by the Administrator in carrying out contracting activities for the project including competitive bidding procedures, when appropriate.

(ii) That the applicant shall provide and maintain competent and adequate engineering and technical supervision, technical operation, and inspection at the project to assure that the project and construction related thereto conforms to the approved plans and specifications and that the activities meet the objectives of the grant project.

(iii) That the applicant has or will have such an interest in the site of the project, which in the judgment of the Administrator will permit proper and efficient operation and maintenance of the project for a reasonable period of time following the termination date of the project.

(b) The Administrator may, with respect to any grant award, impose additional conditions or requirements prior to or at the time of the award when in his judgment they are necessary to carry out the purposes of section 208 of the Act.

§ 458.7 Categories of resource recovery systems.

Applications will be solicited for projects to demonstrate the following categories of resource recovery systems or combinations thereof:

(a) Recover and use energy from solid waste.

(b) Recover specific components of solid waste for recycling.

(c) Chemically, physically and/or biologically convert solid waste into materials suitable for recycling.

§ 458.8 Resource recovery systems; special requirements.

Grants for the demonstration of resource recovery systems shall, in addition to all other requirements of this part, be subject to the following limitations or conditions:

(a) The Federal share shall not be more than 75 percent of the estimated necessary cost of the project including design, construction, operation and maintenance; this limitation applies to each grant period.

(b) No grant will be approved unless:

(1) The system is consistent with any plan which meets the requirements of section 207(b)(2) of the Act.

(2) The system is consistent with any applicable guidelines recommended pursuant to section 209 of the Act.

(3) The system is designed to provide areawide resource recovery, consistent with the purposes of the Act.

(4) The project includes provisions for the equitable distribution of the costs associated with design, construction, operation and maintenance of the system among its users.

(5) The system provides for substantial recovery of materials or energy or both from solid wastes entering the system.

(c) No grant will be awarded for operating and maintenance costs beyond 1 year. The year will not begin until the constructed facility is deemed by the Administrator to be fully operational.

(d) Any income derived during the project period must be accounted for by the grantee. Disposition of grant-related income must be made in accordance with a method approved by the Administrator and may involve one or both of the following:

(1) Reduce the level of expenditures from grant funds by an amount equal to the Federal share of grant-related income.

(2) Payment to miscellaneous receipts account of the Treasury.

For purposes of this section, the Federal share of grant-related income is the proportion equal to the Federal participation in the total project cost.

§ 458.9 New or improved solid waste disposal facilities; special requirements.

Grants for the construction of new or improved solid waste disposal facilities shall, in addition to all other requirements of this part, be subject to the following limitations or conditions:

(a) The Federal share shall not be more than 50 percent of the estimated necessary cost of the project including design and construction (excluding operating and maintenance) where only one municipality is served, and not more than 75 percent in any other case; these limitations apply to each grant period.

(b) The project must advance the state of the art by applying new and improved techniques with one or more of the following effects:

(1) Reducing the environmental impact of solid waste disposal;

(2) Achieving recovery of energy or resources;

(3) Recycling material.

(c) A State or interstate plan for solid waste management must be adopted for the area in which the construction is proposed and the facility shall be:

(1) Consistent with the plan;

(2) Included in a comprehensive solid waste management plan for the area involved which is satisfactory to the Administrator for the purposes of the Act;

(3) Consistent with any applicable guidelines recommended under section 209.

(d) Any such grant shall be subject to the review system established pursuant to Office of Management and Budget Circular No. A–95.

§ 458.10 Approval of projects; Federal financial aid, and criteria.

(a) In determining the desirability, extent of funding and priority of a project the Administrator will take into consideration:

(1) The extent to which the project furthers the purposes of section 208 of the Act.

(2) The public benefits to be derived by the construction and the propriety of Federal aid in making such grant.

(3) To the extent applicable, the economic and commercial viability of the

project (including contractual arrangements with the private sector to market any resources recovered).

(4) The potential of such project for general application to community solid waste management problems.

(5) The extent to which a project would not duplicate a resource recovery system or solid waste disposal facility, which has already been developed, and is operating in an effective manner.

(6) The use by the applicant of all aspects of planning essential to area-wide planning for proper and effective solid waste management consistent with the protection of the public health and welfare.

(7) The extent to which the applicant takes into consideration such factors as population growth, urban and metropolitan development, land use planning, the feasibility of regional disposal and resource recovery programs, and the impact of the project upon the overall environment.

(8) In the case of resource recovery systems, the quantity and quality of materials or energy recovered from solid wastes entering the system.

(9) The competency of the proposed staff including contractors and consultants in relation to the type and scope of the project involved, the length of the proposed project period, the adequacy of the applicant's facilities and resources available for the project and the total amount of grant funds necessary for project completion.

(b) With respect to any project approved for Federal financial aid, the Administrator shall determine the project period during which the project may be supported.

§ 458.11 Grant awards.

(a) Within the limits of funds available for such purposes, the Administrator shall make grant awards, in such amounts as he may determine, to applicants whose projects have been approved for Federal financial aid under § 458.10.

(b) A grant award shall be made by the Administrator for either the project period or for such lesser period as he may prescribe in making the grant.

(c) Neither the approval of any project nor a grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or renewal award with respect to any approved project or portion thereof.

§ 458.12 Supplemental, continuation, and renewal grants.

The Administrator may from time to time within the project period, on the basis of an application therefor, make additional grant awards with respect to any approved project when he finds on the basis of such progress, fiscal, or other reports he has required that:

(a) The amount of any prior award was less than the amount necessary to carry out the approved project within the period with respect to which the prior award was made. This constitutes a supplemental grant.

(b) The progress made within the period with respect to which any prior awards were made justifies support for an additional specified portion of the project period. This is a continuation grant.

(c) The progress made during the project period warrants continued support beyond the last continuation year. This is a renewal grant.

§ 458.13 Payments.

(a) Payments with respect to an approved project shall be made periodically, either in advance or by way of reimbursement, as the Administrator may determine, based on the estimated requirements or actual expenditures, respectively, for such period. Such payments shall be increased or decreased by the amount that prior payments are less than or exceed the Federal share of the costs of the approved project.

(b) Federal support for the project, not to exceed 10 percent, will be withheld until the grantee is notified in writing that all grant conditions and requirements have been met.

(c) Supplemental payments in any period may be made by the Administrator upon receipt of an application therefor accompanied by a satisfactory justification.

(d) No payment shall be made for any period during which, in the judgment of the Administrator, the applicant fails to comply substantially with any conditions or any other requirement imposed by or pursuant to these regulations, unless the Administrator finds that the payment of any amount otherwise payable, or any portion thereof, will be consistent with the purposes of section 208 of the Act and the applicant has undertaken to comply with such requirement or condition.

§ 458.14 Termination of grant award.

(a) Any grant award may be terminated by the Administrator in whole or in part at any time after affording the grantee reasonable notice and opportunity to present its views and evidence whenever the Administrator finds that in his judgment the grantee has failed in a substantial respect to comply with the conditions of the grant or the requirements and conditions of this part, or both.

(1) The views and evidence of the grantee shall be presented in writing unless the Administrator determines that an oral presentation is desirable.

(2) Such views and evidence shall be confined to matters relevant to whether the grantee has failed in a substantial respect to comply with the conditions of the grant or the requirements and conditions of this part, or both.

(b) Upon termination pursuant to paragraph (a) of this section the grantee shall render an accounting and final statement as provided in this part. The Administrator may allow credit for the amount required to settle at minimum costs any noncancellable obligations properly incurred by the grantee prior to receipt of notice of termination.

§ 458.15 Termination date; final accounting.

In addition to such other accounting as the Administrator may require, the grantee shall render with respect to each approved project a full account as provided herein, no later than 120 days following the project period, as of the termination date which shall be either the end of the project period, or the date of any termination of grant support, as provided in § 458.14, whichever occurs first.

§ 458.16 Accounting for grant payments.

(a) With respect to each approved project, the grantee shall account for the total of all amounts paid under § 458.13 by presenting, or otherwise making available, vouchers and fiscal records or other evidence satisfactory to the Administrator of actual expenditures for the project.

(b) Total grant expenditures shall not exceed 75 percent of the acceptable actual costs of the approved project with respect to which the grant is made as evidence in the final accounting except that for grants for the construction of facilities where the area includes only one municipality the total grant expenditures shall not exceed 50 percent of the acceptable actual costs.

§ 458.17 Accounting for equipment, materials, or supplies.

Expenditures of grant funds for movable or fixed equipment, materials or supplies, termed in this section "materials," may be charged to grant funds only to the extent such materials are required for the conduct of the approved project during the period for which Federal financial support is provided. Any materials on hand on the termination date of the project (excluding expendable supplies within such limitations as the Administrator may prescribe) shall be accounted for by one or both of the following methods:

(a) Materials may at the discretion of the Administrator be used by the grantee, without adjustment of accounts, for purposes within the grantee's solid waste management program and no other accounting for such materials shall be required provided:

(1) That during such period of use no charge for depreciation, amortization or for other use of the materials shall be made against any existing or future Federal grant or contract.

(2) If within the period of their useful life the materials are transferred by sale or otherwise for use outside the scope of the solid waste management program, the proportionate fair market value at the time of transfer shall be payable to the United States.

(b) The materials may be sold by the grantee and the proportion of net proceeds of sale equal to the proportion of Federal participation in the cost of the materials paid to the United States, or they may be used or disposed of in any manner by the grantee by paying to the United States such proportion of their fair market value as they had on the termination date. To the extent materials purchased from grant funds have been used for credit or "trade-in" on the

purchase of new materials, the accounting obligation shall apply to the same extent to such new materials.

§ 458.18 Final settlement.

There shall be payable to the United States as final settlement with respect to each approved project the total sum of any amount not accounted for pursuant to § 458.16 and of any amounts payable to the United States as provided in § 458.17. Such total sum shall constitute a debt owed by the grantee to the United States and if not paid to the United States shall be recovered from the grantee or its successors by setoff or other action as provided by law.

Dated: January 19, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc.71-951 Filed 1-22-71;8:46 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 17159; RM-909]

PART 1—PRACTICE AND PROCEDURE

Records Maintained for Public Inspection; Correction

Report and Order, FCC 70-1042, Docket No. 17159, adopted September 23, 1970, and published at 35 F.R. 15383 is corrected with respect to the introductory text of paragraph (a) of § 1.526, to read as follows: [1]

§ 1.526 Records to be maintained locally for public inspection by applicants, permittees and licensees.

(a) *Records to be maintained.* Every applicant for a construction permit for a new station in the broadcast services shall maintain for public inspection a file for such station containing the material in subparagraph (1) of this paragraph, and every permittee or licensee of a station in the broadcast services shall maintain for public inspection a file for such station containing the material in subparagraphs (1), (2), (3), (4), and (5) of this paragraph: *Provided, however,* That the foregoing requirements shall not apply to applicants for or permittees or licensees of television broadcast translator stations, FM broadcast translator stations, or FM broadcast booster stations. The material to be contained in the file is as follows:

* * * * *

Released: January 20, 1971.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-992 Filed 1-22-71;8:49 am]

[1] The correction is to add to the introductory text a reference to subparagraph (5), which was formerly in the rule but was inadvertently omitted in the revision made in the cited report and order.

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter V was added to Title 49 CFR on March 26, 1970 (35 F.R. 5118), to organize the regulations of the Department of Transportation which were under the jurisdiction of the National Highway Safety Bureau. At that time, as a result of Departmental reorganization, the Bureau was separated from the Federal Highway Administration and established as a separate operating administration within the Department. Motor Vehicle Safety Regulations and related regulations were transferred from Chapter III to Chapter V, and the Parts redesignated by changing the first digit from a 3 to a 5.

The purpose of this amendment is to amend Chapter V to reflect legislative formalization of the reorganization which separated the Bureau from the Federal Highway Administration. Sections 202 (a) and (b) of the Highway Safety Act of 1970 (Public Law 91-605) abolished the National Highway Safety Bureau and established as its successor the National Highway Traffic Safety Administration. Under the Act, the NHTSA is a separate operating administration within the Department of Transportation, with the responsibility of carrying out highway and traffic safety authority delegated by the Secretary of Transportation.

Since this amendment relates to Departmental organization management and merely makes minor changes in existing regulatory material, notice and public procedure thereon are unnecessary and good cause exists for making it effective with less than 30 days' notice.

(Sec. 202, Highway Safety Act of 1970, Public Law 91-605; secs. 103 and 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51, 35 F.R. 4955)

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended, effective January 27, 1971, as follows:

I. By amending the chapter heading of Chapter V to read as set forth above.

PART 551—PROCEDURAL RULES

II. By amending Part 551 as follows:

a. Section 551.33 is amended to read as follows:

§ 551.33 Address of Communication.

Unless otherwise specified, communications shall be addressed to the Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20591. Communications may not be addressed to a staff member's private address.

b. Paragraph (b) of § 551.45 is amended by striking out the first two sentences thereof and inserting the following in place thereof: "The designation shall be addressed to the Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20591."

PART 553—RULE MAKING PROCEDURES: MOTOR VEHICLE SAFETY STANDARDS

III. By amending Part 553 as follows:

a. Subpart A is amended to read as follows:

Subpart A—General

Sec.
553.1 Applicability.
553.3 Definitions.
553.5 Regulatory docket.
553.7 Records.

AUTHORITY: The provisions of this Subpart A issued under sec. 202, Highway Safety Act of 1970, Public Law 91-605; secs. 103 and 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51, 35 F.R. 4955.

Subpart A—General

§ 553.1 Applicability.

The part prescribes rule making procedures that apply to the issue, amendment, and revocation of rules under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966.

§ 553.3 Definitions.

"Act" means the National Traffic and Motor Vehicle Safety Act of 1966, Public Law 80-563, 15 U.S.C. 1391, et seq.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or a person to whom he has delegated final authority in the matter concerned.

"Rule" includes any order, regulation, or Federal motor vehicle safety standard issued under the Act.

§ 553.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rule making actions, including notices of proposed rule making; comments received in response to notices; petitions for rule making and reconsideration; denials of petitions for rule making and reconsideration; records of additional rule making proceedings under § 553.25; and final rules are maintained in the Docket Room, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20591.

(b) Any person may examine any docketed material at the Docket Room at any time during regular business hours after the docket is established, except material ordered withheld from the public under sections 112 and 113 of the Act (15 U.S.C. 1401, 1402) and section 552(b) of title 5 of the United States Code, and may obtain a copy of it upon payment of a fee.

§ 553.7 Records.

Records of the National Highway Traffic Safety Administration relating to rule making proceedings are available for inspection as provided in section 552

(b) of title 5 of the United States Code and Part 7 of the regulations of the Secretary of Transportation (Part 7 of this title).

b. Subpart B, §§ 553.11, 553.13, 553.17, 553.25, 553.27, 553.29, 553.31, 553.33, 553.35, and 553.37 are amended by changing the word "Director" to "Administrator."

c. Subpart B, §§ 553.27, 553.29, and 553.33 are amended by changing the words "General Counsel" to "Chief Counsel."

d. Subpart B, §§ 553.31, 553.35 are amended by deleting the words "Room 4223."

PART 555—APPLICATION FOR TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS FOR LIMITED PRODUCTION MOTOR VEHICLES

IV. By amending Part 555 as follows:

a. Sections 555.1, 555.5(a), 555.5(b), 555.11(b), and 555.19 are amended by changing the words "Director, National Highway Safety Bureau," to "Administrator, National Highway Traffic Safety Administration."

b. Section 555.11 is amended by changing the words "National Highway Safety Bureau" in paragraph (a) to "National Highway Traffic Safety Administration," and by changing the word "Director" in paragraph (c) to "Administrator."

c. Section 555.13 is amended by changing the designation "NHSB" to "NHTSA."

d. Section 555.15 is amended by changing the words "National Highway Safety Bureau" in paragraph (a) to "National Highway Traffic Safety Administration," and by changing the words "Director, National Highway Safety Bureau" to "Administrator, National Highway Traffic Safety Administration."

e. Section 555.17 is amended by deleting the words "National Highway Safety Bureau, Room 4223," and inserting the words "National Highway Traffic Safety Administration" in place thereof.

PART 567—CERTIFICATION

V. By amending Part 567 as follows:

Section 567.4 is amended by deleting the words "Director, National Highway Safety Bureau" from paragraph (c) and inserting the words "Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW.," in place thereof.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

VI. By amending Part 571 as follows:

a. Section 571.5 is amended by deleting the words "National Highway Safety Bureau, Room 4223" and inserting the words "National Highway Traffic Safety Administration" in place thereof.

b. Section 571.21 is amended by:

1. Changing the words "National Highway Safety Bureau" to "National Highway Traffic Safety Administration" in paragraph S6.2 of Motor Vehicle Safety Standard No. 109 (as amended, 35 F.R. 16734, Oct. 29, 1970).

2. Changing the words "National Highway Safety Bureau" to "National Highway Traffic Safety Administration" in Appendix A of Motor Vehicle Safety Standard No. 109.

3. Changing the words "National Highway Safety Bureau" to "National Highway Traffic Safety Administration" in Appendix A of Motor Vehicle Safety Standard No. 110.

PART 575—CONSUMER INFORMATION REGULATIONS

VII. By amending § 575.6 by changing the words "Director, National Highway Safety Bureau" to "Administrator, National Highway Traffic Safety Administration."

Issued on January 19, 1971.

DOUGLAS W. TOMS,
Acting Administrator.

[FR Doc.71-965 Filed 1-22-71;8:47 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Income Effectively Connected With Conduct of a Banking, Financing, or Similar Business in the United States

On January 23, 1969, notice of proposed rule making was published in the FEDERAL REGISTER in regard to regulations under section 864(c) of the Internal Revenue Code of 1954, relating to rules for determining income effectively connected with the U.S. business of nonresident alien individuals or foreign corporations, as added by section 102(d) of the Foreign Investors Tax Act of 1966 (34 F.R. 1030). Notice is hereby given that so much of the proposed regulations as is contained in paragraph (c)(5) of § 1.864–4, paragraph (b)(2)(i) of § 1.864–5, and paragraph (b)(2)(ii) of § 1.864–6, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is hereby withdrawn.

Further, notice is hereby given that, in lieu of the proposed rules which are so withdrawn, the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T. Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

On January 23, 1969, notice of proposed rule making was published in the FEDERAL REGISTER (34 F.R. 1030) regarding the amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 864(c) of the Internal Revenue Code of 1954, relating to rules for determining income effectively connected with the U.S. business of nonresident alien individuals or foreign corporations, as added by section 102(d) of the Foreign Investors Tax Act of 1966 (80 Stat. 1544). So much of such proposed regulations as is contained in paragraph (c)(5) of § 1.864–4, paragraph (b)(2)(i) of § 1.864–5, and paragraph (b)(2)(ii) of § 1.864–6, as set forth in paragraph 2 of the appendix to the notice of proposed rule making, is hereby withdrawn. The following rules are hereby prescribed in lieu of the rules which are so withdrawn:

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) *Fixed or determinable income and capital gains.* * * *

(5) *Special rules relating to banking, financing, or similar business activity*—(i) *Definition of banking, financing, or similar* business. A nonresident alien individual or a foreign corporation shall be considered for purposes of this section to be engaged in the active conduct of a banking, financing, or similar business in the United States if at some time during the taxable year the taxpayer is engaged in business in the United States and the activities of that business consist of any one or more of the following activities carried on, in whole or in part, in the United States in transactions with persons situated within or without the United States:

(*a*) Receiving deposits of money from the public,

(*b*) Making personal, mortgage, industrial, or other loans to the public,

(*c*) Purchasing, selling, discounting, or negotiating, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness,

(*d*) Issuing letters of credit and negotiating drafts drawn thereunder,

(*e*) Accepting trust accounts from the public, or

(*f*) Handling foreign exchange transactions.

Although the fact that the taxpayer is subjected to the banking and credit laws of a foreign country shall be taken into account in determining whether he is engaged in the active conduct of a banking, financing, or similar business, the character of the business actually carried on during the taxable year in the United States shall determine whether the taxpayer is actively conducting a banking, financing, or similar business in the United States.

(ii) *Effective connection of income from stocks or securities with active conduct of a banking, financing, or similar business.* Notwithstanding the rules in subparagraphs (2) and (3) of this paragraph with respect to the asset-use test and the business activities test, any dividends or interest from, or gain or loss from the sale or exchange of, stocks or securities, which is from sources within the United States and derived by a nonresident alien individual or a foreign corporation in the active conduct during the taxable year of a banking, financing, or similar business in the United States shall be treated as not effectively connected for such year with conduct of that business unless the stocks or securities giving rise to such income, gain, or loss are attributable to the U.S. office through which such business is carried on and—

(*a*) Were acquired—

(*1*) As a result of, or in the course of, making loans to the public,

(*2*) In the course of distributing such stock or securities to the public, or

(*3*) For the purpose of meeting the reserve requirements, or other similar requirements, established by a duly constituted banking authority in the United States, or

(*b*) Consist of securities (as defined in subdivision (v) of this subparagraph) which are—

(*1*) Payable on demand or at a fixed maturity date not exceeding 1 year from the date of acquisition,

(*2*) Issued by the United States, or any agency or instrumentality thereof, or

(*3*) Not described in subdivision (*1*) or (*2*) of this subdivision (*b*).

However, the amount of interest from securities described in subdivision (*b*)(*3*) of this subdivision which shall be treated as effectively connected for the taxable year with the active conduct of a banking, financing, or similar business in the United States shall be an amount (but not in excess of the entire interest for the taxable year from sources within the United States from such securities) determined by multiplying the entire interest for the taxable year from sources within the United States from such securities by a fraction the numerator of which is 10 percent and the denominator of which is the same percentage, determined on the basis of a monthly average for the taxable year, as the book value of the total of such securities held by the U.S. office through which such business is carried on bears to the book value of the total assets of such office. The amount of gain or loss, if any, for the taxable year from the sale or exchange of such securities which shall be treated as effectively connected for the taxable year with the active conduct of a banking, financing, or similar business in the United States shall be an amount (but not in excess of the entire gain or loss

for the taxable year from sources within the United States from the sale or exchange of such securities) determined by multiplying the entire gain or loss for the taxable year from sources within the United States from the sale or exchange of such securities by the fraction described in the immediately preceding sentence. The monthly average for purposes of applying subdivision (*b*)(3) of this subdivision shall be determined by taking into account the total securities and the total assets held on the last day of each month in the taxable year.

Example. Foreign corporation M, created under the laws of foreign country Y, has in the United States a branch, B, which during the taxable year is engaged in the active conduct of the banking business in the United States within the meaning of subdivision (i) of this subparagraph. During the taxable year M derives from sources within the United States through the activities carried on through B, $7,500,000 interest from securities described in subdivision (*b*)(3) of this subdivision, and $7,500,000 gain from the sale of exchange of such securities. The monthly average, determined as of the last day of each month in the taxable year, of such securities held by B divided by the monthly average, as so determined, of the total assets held by B equals 15 percent. Under this subdivision, the amount of interest income from such securities that shall be treated as effectively connected for the taxable year with the active conduct by M of a banking business in the United States is $5 million ($7,500,000 interest × 10%/15%), and the amount of gain from the sale or exchange of such securities that shall be treated as effectively connected for such year with the active conduct of suh business is $5 million ($7,500,000 gain × 10%/15%).

(iii) *Stocks or securities attributable to U.S. office—(a) In general.* For purposes of subdivision (ii) of this subparagraph, a stock or security shall be deemed to be attributable to a U.S. office only if—

(*1*) Such office actively participates in soliciting, negotiating, or performing other activities required to arrange the acquisition, sale, or exchange of, such stock or security, and

(*2*) Such stock or security is held at such office and recorded on its books or records as having been purchased or acquired by such office or for its account.

(*b*) *Exceptions.* A stock or security shall not be deemed to be attributable to a U.S. office merely because such office conducts one or more of the following activities:

(*1*) Collects or accounts for the dividends, interest, gain, or loss from such stock or security,

(*2*) Exercises general supervision over the activities of the persons directly responsible for carrying on the activities described in (*a*)(*1*) of this subdivision,

(*3*) Performs merely clerical functions incident to the acquisition, sale, or exchange of such stock or security, or

(*4*) Exercises final approval over the execution of the acquisition, sale, or exchange.

(iv) *Acquisitions in course of making loans to the public.* For purposes of subdivision (ii) of this subparagraph—

(*a*) A stock or security shall be considered to have been acquired in the course of making a loan to the public where, for example, such stock or security was acquired as additional consideration for the making of the loan,

(*b*) A stock or security shall be considered to have been acquired as a result of making a loan to the public if, for example, such stock or security was acquired by foreclosure upon a bona fide default of the loan and is held as an ordinary and necessary incident to the active conduct of the banking, financing, or similar business in the United States, and

(*c*) A stock or security acquired on a stock exchange or organized over-the-counter market shall be considered not to have been acquired as a result of, or in the course of, making loans to the public.

(v) *Security defined.* For purposes of this subparagraph, a security is any bill, note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing items.

(vi) *Limitations on application of subparagraph—(a) Other business activity.* This subparagraph provides rules for determining when income from stocks or securities is effectively connected with the active conduct of a banking, financing, or similar business in the United States. Any dividends, interest, gain, or loss from sources within the United States which by reason of the application of subdivision (ii) of this subparagraph is not effectively connected with the active conduct by a nonresident alien individual or a foreign corporation of a banking, financing, or similar business in the United States may be effectively connected for the taxable year with the conduct by such taxpayer of another trade or business in the United States, such as, for example, the business of selling or manufacturing goods or merchandise or of trading in stocks or securities for the taxpayer's own account.

(*b*) *Other income.* For rules relating to income, gain, or loss from sources within the United States (other than dividends or interest from, or gain or loss from the sale or exchange of, stocks or securities) derived in the active conduct of a banking, financing, or similar business in the United States, see subparagraphs (2) and (3) of this paragraph.

(vii) *Illustrations.* The application of this subparagraph may be illustrated by the following examples:

Example (*1*). Foreign corporation F, which is created under the laws of foreign country X and engaged in the banking business in country X and a number of other foreign countries, has in the United States an agency, B, which during the taxable year is engaged in the active conduct of the banking business in the United States within the meaning of subdivision (i) of this subparagraph. In the course of its banking business, F receives at its branches located in country X and other foreign countries substantial deposits in U.S. dollars which are transferred to the accounts of B in the United States. During the taxable year B actively participates in negotiating loans to residents of the United States, such as call loans to U.S. brokers, which are financed from the U.S. dollar deposits transferred to B by F. In addition, B uses these deposits to purchase on the New York stock exchange and over-the-counter markets long-term bonds and notes issued by the U.S. Government, U.S. Treasury bills, and long-term interest-bearing bonds issued by domestic corporations and having a maturity date of less than 1 year from the date of acquisition. Pursuant to subdivisions (ii) and (vi)(*b*) of this subparagraph, the interest received by F during the taxable year on these loans, bonds, notes, and bills is effectively connected for such year with the active conduct by F of a banking business in the United States.

Example (*2*). The facts are the same as in example (1) except that B also uses part of the U.S. dollar deposits, which are transferred to it by F, to purchase on the New York stock exchange shares of common stock issued by various domestic corporations, some of which are sold by B on the exchange during the taxable year. None of the shares so purchased are acquired for the purpose of meeting reserve or other similar requirements. Pursuant to subdivision (ii) of this subparagraph, the dividends and gains received by F during the taxable year on these shares of stock are not effectively connected with the conduct by F of a banking business in the United States.

Example (*3*). The facts are the same as in example (1) except that B also uses part of the U.S. dollar deposits, which are transferred to it by F, to make a loan to domestic corporation M. As part of the consideration for the loan, M gives to B a number of shares of common stock issued by M. During the taxable year one-half of the shares of stock received from M is sold by B on the New York stock exchange. Pursuant to subdivision (ii) of this subparagraph, the dividends and gains received by F during the taxable year on these shares of stock are effectively connected for such year with the active conduct by F of a banking business in the United States.

Example (*4*). The facts are the same as in example (1) except that during the taxable year the home office of F in country X actively participates in negotiating loans to residents of the United States, such as call loans to U.S. brokers, which are financed by the U.S. dollar deposits received at the home office and are recorded on the books of the home office. Pursuant to subdivision (vi)(*b*) of this subparagraph the interest received by F during the taxable year on these loans made by the home office in country X is not effectively connected with the conduct by F of a trade or business in the United States.

Example (*5*). Foreign corporation N, created under the laws of foreign country Y, has in the United States a branch, B, which is engaged in the active conduct of a banking business in the United States within the meaning of subdivision (i) of this subparagraph. A substantial portion of the funds which are acquired by B arise from its international trade financing activities, including the issuing of letters of credit and discounting or negotiating notes, drafts, checks, bills of exchange, and acceptances. During the taxable year B actively participates in negotiating loans to residents of the United States, such as call loans to U.S. brokers, which are financed from these funds arising from its trade financing activities. In addition, B is actively engaged in the business of trading in stocks and corporate securities on the stock exchange and over-the-counter markets, particularly for the purpose of facilitating the purchase and sale of stocks and securities for the account of customers in country Y. None of the stocks or securities so purchased are acquired for the purpose of meeting reserve or other similar requirements, and none of such securities are

securities described in subdivision (ii)(b)(1) of this subparagraph. Pursuant to subdivision (vi)(b) of this subparagraph, the interest received by B during the taxable year on these loans is effectively connected for such year with the active conduct by N of a banking business in the United States. Pursuant to subdivision (ii) of this subparagraph, the dividends and gains received by N during the taxable year on these stocks are not effectively connected with the conduct by N of a banking business in the United States but the interest and gains received by N on these securities are effectively connected, to the extent provided in that subdivision, with the active conduct by N of a banking business in the United States.

* * * * *

§ 1.864–5 Foreign source income effectively connected with U.S. business.

* * * * *

(b) *Income other than income attributable to U.S. life insurance business.* * * *

(2) *Dividends or interest, or gains or loss from sales of stocks or securities*—(i) *In general.* Dividends or interest from any transaction, or gain or loss on the sale or exchange of stocks or securities, realized by (*a*) a nonresident alien individual or a foreign corporation in the active conduct of a banking, financing, or similar business in the United States or (*b*) a foreign corporation engaged in business in the United States whose principal business is trading in stocks or securities for its own account. Whether the taxpayer is engaged in the active conduct of a banking, financing, or similar business in the United States for purposes of this subparagraph shall be determined in accordance with paragraph (c)(5)(i) of § 1.864–4.

* * * * *

§ 1.864–6 Income, gain, or loss attributable to an office or other fixed place of business in the United States.

* * * * *

(b) *Material factor test.* * * *

(2) * * *

(ii) *Dividends or interest, or gain or loss from sales of stocks or securities*—(*a*) *In general.* Dividends or interest from any transaction, or gains or losses from the sale or exchange of stocks or securities, specified in paragraph (b)(2) of § 1.864–5, if the office or other fixed place of business either actively participates in soliciting, negotiating, or performing other activities required to arrange, the issue, acquisition, sale, or exchange, of the asset from which such income, gain, or loss is derived or performs significant services incident to such issue, acquisition, sale, or exchange. An office or other fixed place of business in the United States shall not be considered to be a material factor in the realization of income, gain, or loss for purposes of this subdivision merely because the office or other fixed place of business (*1*) collects or accounts for the dividends, interest, gains, or losses, (*2*) exercises general supervision over the activities of the persons directly responsible for carrying on the activities or services described in the immediately preceding sentence, (*3*) performs merely clerical functions incident to the issue, acquisition, sale, or exchange, or (*4*) exercises final approval over the execution of the issue, acquisition, sale, or exchange.

(*b*) *Effective connection of income from stocks or securities with active conduct of a banking, financing, or similar business.* For purposes of this section, the determination as to whether any dividends or interest from, or gain or loss from the sale or exchange of, stocks or securities, which is from sources without the United States and derived by a nonresident alien individual or a foreign corporation in the active conduct during the taxable year of a banking, financing, or similar business in the United States, shall be treated as effectively connected for such year with the conduct of that business shall be made by applying the same rules as are provided in paragraph (c)(5)(ii) of § 1.864–4 for determining whether income, gain, or loss of such type from sources within the United States is effectively connected for such year with the conduct of that business.

(*c*) *Security defined.* For purposes of this subdivision, a security is any bill, note, bond, debenture, or other evidence of indebtedness, or any evidence of an interest in, or right to subscribe to or purchase, any of the foregoing items.

(*d*) *Limitations on application of rules on banking, financing, or similar business*—(*1*) *Trading for taxpayer's own account.* Subdivision (*b*) of this subdivision applies for purposes of determining when income, gain, or loss from stocks or securities is effectively connected with the active conduct of a banking, financing, or similar business in the United States. Any dividends, interest, gain, or loss from sources without the United States which by reason of the application of (*b*) of this subdivision is not effectively connected with the active conduct by a foreign corporation of a banking, financing, or similar business in the United States may be effectively connected for the taxable year with the conduct by such taxpayer of a trade or business in the United States which consists of trading in stocks or securities for the taxpayer's own account.

(*2*) *Other income.* For rules relating to dividends or interest from sources without the United States (other than dividends or interest from stocks or securities) derived in the active conduct of a banking, financing, or similar business in the United States, see (*a*) of this subdivision.

* * * * *

[FR Doc.71-976 Filed 1-22-71;8:48 am]

[26 CFR Part 1]

TREATMENT OF LIVESTOCK

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC: LR: T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to certain amendments made by sections 212 and 704 of the Tax Reform Act of 1969 (83 Stat. 487), relating to livestock, such regulations are amended as follows:

PARAGRAPH 1. The following new sections are added immediately after § 1.1031(d)–2:

§ 1.1031(e) Statutory provisions; exchange of property held for productive use or investment; exchanges of livestock of different sexes.

SEC. 1031. *Exchange of property held for productive use or investment.* * * *

(e) *Exchange of livestock of different sexes.* For purposes of this section, livestock of different sexes are not property of a like kind.

[Sec. 1031(e) as added by sec. 212(c), Tax Reform Act 1969 (83 Stat. 571)]

§ 1.1031(e)–1 Exchanges of livestock of different sexes.

Section 1031(e) provides that livestock of different sexes are not property of like kind. Section 1031(e) and this section are applicable to taxable years to which the Internal Revenue Code of 1954 applies.

PAR. 2. Paragraph (c)(1) of § 1.1231–1 is amended by revising subdivision (iii) to read as follows:

§ 1.1231–1 Gains and losses from the sale or exchange of certain property used in the trade or business.

* * * * *

(c) *Transactions to which section applies.* * * *

(1) * * *

(ii) Livestock held for draft, breeding, dairy, or sporting purposes, except to the extent included under paragraph (4) of this paragraph, or poultry.

* * * * *

PAR. 3. Paragraphs (a) and (b) of § 1.1231–2 are amended to read as follows:

§ 1.1231–2 Livestock held for draft, breeding, dairy, or sporting purposes.

(a) (1) In the case of cattle, horses, or other livestock acquired by the taxpayer after December 31, 1969, section 1231 applies to the sale, exchange, or involuntary conversion of such cattle, horses, or other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him—

(i) For 24 months or more from the date of acquisition in the case of cattle or horses, or

(ii) For 12 months or more from the date of acquisition in the case of such other livestock.

(2) In the case of livestock (including cattle or horses) acquired by the taxpayer on or before December 31, 1969, section 1231 applies to the sale, exchange, or involuntary conversion of such livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from the date of acquisition.

(3) For the purposes of section 1231, the term "livestock" is given a broad, rather than a narrow, interpretation and includes cattle, hogs, horses, mules, donkeys, sheep, goats, fur-bearing animals, and other mammals. However, it does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, reptiles, etc.

(b) Whether or not livestock is held by the taxpayer for draft, breeding, dairy, or sporting purposes depends upon all of the facts and circumstances in each case. The purpose for which the animal is held is ordinarily shown by the taxpayer's actual use of the animal. However, a draft, breeding, dairy, or sporting purpose may be present if an animal is disposed of within a reasonable time after its intended use for such purpose is prevented or made undesirable by reason of accident, disease, drought, unfitness of the animal for such purpose, or a similar factual circumstance. Under certain circumstances, an animal held for ultimate sale to customers in the ordinary course of the taxpayer's trade or business may be considered as held for draft, breeding, dairy, or sporting purposes. However, an animal is not held by the taxpayer for draft, breeding, dairy, or sporting purposes merely because it is suitable for such purposes or merely because it is held by the taxpayer for sale to other persons for use by them for such purposes. Furthermore, an animal held by the taxpayer for other purposes is not considered as held for draft, breeding, dairy, or sporting purposes merely because of a negligible use of the animal for such purposes or merely because of the use of the animal for such purposes as an ordinary or necessary incident to the other purposes for which the animal is held.

* * * * *

PAR. 4. Section 1.1245 is amended by revising subsection (a)(2), by adding subparagraphs (C) and (D) to section 1245(a)(2), by revising subsection (a)(3), by adding a subparagraph (D) to section 1245(a)(3), and by amending the historical note. This amended provision reads as follows:

§ 1.1245 Statutory provisions; gain from dispositions of certain depreciable property; recomputed basis.

SEC. 1245. *Gain from dispositions of certain depreciable property*—(a) *General rule.* * * *

(2) *Recomputed basis.* For purposes of this section, the term "recomputed basis" means—

(A) With respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) With respect to any property referred to in paragraph (3)(C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963,

(C) With respect to livestock, its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) With respect to any property referred to in paragraph (3)(D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under section 169 or 185,

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168, 169, 184, 185, or 187. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168, 169, 184, 185, or 187, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(3) *Section 1245 property.* For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

(A) Personal property,

(B) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) Was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) Constituted research or storage facilities used in connection with any of the activities referred to in clause (i),

(C) An elevator or an escalator, or

(D) So much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169 or 185.

* * * * *

[Sec. 1245 as added by sec. 13(a), Rev. Act 1962 (76 Stat. 1032); amended by sec. 203(d), Rev. Act 1964 (78 Stat. 35); amended by secs. 212(a) and 704(b)(4), Tax Reform Act 1969 (83 Stat. 571, 670)]

PAR. 5. Paragraph (a)(2) of § 1.1245–1 is amended to read as follows:

§ 1.1245–1 General rule for treatment of gain from dispositions of certain depreciable property.

(a) *General.* * * *

(2) Section 1245(a)(1) applies to dispositions of section 1245 property in taxable years beginning after December 31, 1962, except that—

(i) In respect of section 1245 property which is an elevator or escalator, section 1245(a)(1) applies to dispositions after December 31, 1963, and

(ii) In respect of section 1245 property which is livestock (described in subparagraph (4) of § 1.1245–3(a)), section 1245(a)(1) applies to dispositions made in taxable years beginning after December 31, 1969.

* * * * *

PAR. 6. Paragraph (a) of § 1.1245–2 is amended by revising subparagraphs (2), (6), and (7) to read as follows:

§ 1.1245–2 Definition of recomputed basis.

(a) *General rule.* * * *

(2) *Definition of adjustments reflected in adjusted basis.* The term "adjustments reflected in the adjusted basis" means—

(i) With respect to any property other than an elevator, escalator, or livestock, the amount of the adjustments attributable to periods after December 31, 1961,

(ii) With respect to an elevator or escalator, the amount of the adjustments attributable to periods after June 30, 1963, or

(iii) With respect to livestock (described in subparagraph (4) of §1.1245–3(a)), the amount of the adjustments attributable to periods after December 31, 1969,

which are reflected in the adjusted basis of such property on account of deductions allowed or allowable for depreciation or amortization (within the meaning of subparagraph (3) of this paragraph). For cases where the taxpayer can establish that the amount allowed for any period was less than the amount allowable, see subparagraph (7) of this paragraph. For determination of adjusted basis of property in a multiple asset account, see paragraph (c)(3) of § 1.167(a)–8.

* * * * *

(6) *Allocation of adjustments attributable to periods after December 31, 1961, after June 30, 1963, or after December 31, 1969.* (i) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of property other than an elevator, escalator, or livestock are limited to adjustments attributable to periods after December 31, 1961. Accordingly, if depreciation deducted with respect to such property of a calendar year taxpayer is $1,000 a year (the amount allowable) for each of 10 years beginning with 1956, only the depreciation deducted in 1962 and succeeding years shall be treated as reflected in the adjusted basis for purposes of determining recomputed basis.

With respect to a taxable year beginning in 1961 and ending in 1962, the deduction for depreciation or amortization shall be ascertained by applying the principles stated in paragraph (c)(3) of § 1.167(a)–8 (relating to determination of adjusted basis of retired asset). The amount of the deduction, determined in such manner, shall be allocated on a daily basis in order to determine the portion thereof which is attributable to a period after December 31, 1961. Thus, for example, if a taxpayer, whose fiscal year ends on May 31, 1962, acquires section 1245 property on November 12, 1961, and the deduction for depreciation attributable to the property for such fiscal year is ascertained (under the principles of paragraph (c)(3) of § 1.167(a)–8) to be $400, then the portion thereof attributable to a period after December 31, 1961, is $302 (151/200 of $400). If, however, the property were acquired by such taxpayer after December 31, 1961, the entire deduction for depreciation attributable to the property for such fiscal year would be allocable to a period after December 31, 1961. For treatment of certain normal retirements described in paragraph (e)(2) of § 1.167(a)–8, see paragraph (c) of § 1.1245–6. For principles of determining the amount of adjustments for depreciation or amortization reflected in the adjusted basis of property upon an abnormal retirement of property in a multiple asset account, see paragraph (c)(3) of § 1.167(a)–8.

* * * * *

(iii) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of livestock (described in subparagraph (4) of § 1.1245–3(a)) are limited to adjustments attributable to periods after December 31, 1969.

(7) *Depreciation or amortization allowed or allowable.* For purposes of determining recomputed basis, generally all adjustments (for periods after Dec. 31, 1961, June 30, 1963, or Dec. 31, 1969, as the case may be) attributable to allowed or allowable depreciation or amortization must be taken into account. See section 1016(a)(2) and the regulations thereunder for the meaning of "allowed" and "allowable". However, if a taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable for such period, the amount to be taken into account for such period shall be the amount allowed. See paragraph (b) of this section (relating to records to be kept and information to be filed). For example, assume that in the year 1967 it becomes necessary to determine the recomputed basis of property, the $500 adjusted basis of which reflects adjustments of $1,000 with respect to depreciation deductions allowable for periods after December 31, 1961. If the taxpayer can establish by adequate records or other sufficient evidence that he had been allowed deductions amounting to only $800 for the period, then in determining recomputed basis the amount added to adjusted basis with respect to the $1,000 adjustments to basis for the period will be only $800.

* * * * *

PAR. 7. Paragraph (a) of § 1.1245–3 is amended by revising so much of subparagraph (1) as precedes subdivision (i) and by revising subparagraph (4). The revised provisions read as follows:

§ 1.1245–3 Definition of section 1245 property.

(a) *In general.* (1) The term "section 1245 property" means any property (other than livestock excluded by the effective date limitation in subparagraph (4) of this paragraph) which is or has been property of a character subject to the allowance for depreciation provided in section 167 and which is either—

* * * * *

(4) Section 1245 property includes livestock, but only with respect to taxable years beginning after December 31, 1969. For purposes of section 1245, the term "livestock" includes horses, cattle, hogs, sheep, goats, and mink and other fur-bearing animals, irrespective of the use to which they are put or the purpose for which they are held.

* * * * *

[FR Doc.71–1008 Filed 1–22–71;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

PARMESAN CHEESE, REGGIANO CHEESE

Identity Standard; Order Rejecting Proposed Amendment To Reduce Required Curing Time

In the matter of amending the definition and standard of identity for parmesan cheese, reggiano cheese (21 CFR 19.595) by reducing the required curing time from 14 months to 10 months:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of April 24, 1970 (35 F.R. 6595), based on a petition filed by Tolibia Cheese, Inc., 919 North Michigan Avenue, Chicago, Ill. 60611.

In response to the proposal, comments were received from six parmesan cheese manufacturers, a trade association, and three consumers. Of the manufacturers, two (including the petitioner) favor the proposal. The other manufacturers, the association, and the consumers oppose it.

Grounds given in support of the proposal were that current technology and production practices permit the proper curing of parmesan cheese in 10 months' time. The manufacturers opposing the proposal contend that no new art or technology is revealed in the petition that was not known and practiced at the time the parmesan cheese standard, with its 14 months' curing period requirement, was established.

On the basis of the information submitted in the petition, the comments received, and other relevant information, the Commissioner of Food and Drugs does not conclude that it will promote honesty and fair dealing in the interest of consumers to adopt the proposed amendment.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered,* That the standard for parmesan cheese not be amended as proposed in the FEDERAL REGISTER of April 24, 1970 (35 F.R. 6595).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections. If a hearing is requested, the objfiling will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing s requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

Effective date. This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: January 14, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–967 Filed 1–22–71;8:48 am]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Part 173]

[Docket No. HM–76; Notice No. 71–3]

TRANSPORTATION OF HAZARDOUS MATERIALS

Compressed Gases in Cylinders

The Hazardous Materials Regulations Board is considering amending §§ 173.34 and 173.301 of the Department's Hazardous Materials Regulations to (1) extend

the 5-year hydrostatic retest requirements for certain specification 3A and 3AA cylinders to 10-year periods; (2) authorize visual inspection for specification 4E aluminum cylinders in place of periodic hydrostatic retesting; (3) authorize visual inspection for specifications 4B and 4BA cylinders used exclusively in methylamine service; (4) authorize visual inspection for certain cylinders used exclusively in cyclopropane service; (5) apply the periodic hydrostatic retesting and reinspection requirements to specifications 3AX and 3AAX cylinders; (6) remove the service pressure restriction limiting the type of cylinders that may be visually inspected instead of being hydrostatically retested; (7) provide requalification requirements for cylinders that contained a material classified as a "corrosive liquid" prior to recharging with a compressed gas; and (8) to clarify the term "owner" in § 173.301(b) consistent with accepted industry practice and in keeping with the intent of the rule.

These proposals are based, in part, on petitions received from the Compressed Gas Association, and the Bureau of Explosives on behalf of interested shippers. Adoption of the proposals would obviate the need for numerous Special Permits that have been in existence for several years. Upon request from shippers, and receipt of substantial and appropriate cylinder history data from owners of cylinders, Special Permits were issued to various shippers authorizing the shipment of certain dry gases in specifications 3A and 3AA cylinders of not over 125 pounds water capacity for which the 5-year hydrostatic retest period was extended to 10 years. The cylinders were required to be given a visual external inspection prior to each refill to determine that there was no evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, and to be subjected to a hammer test and an odor test. Furthermore, a certain percentage of the involved cylinders were required to be subjected to the prescribed periodic hydrostatic retest to verify that there were no significant changes in cylinder life expectancy predicted by the supporting data. It is proposed to limit 10-year hydrostatic retesting to newer cylinders, i.e., cylinders which are not over 35 years old when retested. The reason for this proposal is to require increased monitoring of the effects of age upon a container by requiring more frequent inspection of its condition as it becomes older.

In the compressed gas industry there is a trend to qualify the continued use of pressure vessels, especially cylinders, by visual inspection in place of the traditional periodic hydrostatic retest. Precedence for this has already been established in the regulations where this principle applies to cylinders used exclusively in the use of certain gases, e.g., liquefied petroleum gas, and fluorinated hydrocarbons which are commercially free from corroding components. These provisions were adopted in recognition of the merits of the visual inspection method conducted in accordance with industry's standards described in the Compressed Gas Association's Pamphlet C–6. Also, a petitioner has advised that it is feasible to extend the visual inspection provisions, in place of the hydrostatic retest requirements, to (1) specifications 4B, 4BA, and 4BW cylinders used exclusively in the service of monomethylamine, dimethylamine, or trimethylamine commercially free from corroding components, (2) certain specification cylinders in the 3 and 4 series used exclusively in the service of cyclopropane commercially free from corroding components, and (3) specification 4E aluminum cylinders in the exclusive service of LPG and fluorinated hydrocarbons commercially free from corroding components.

Additionally, to be consistent with other requalification requirements for steel cylinders, it is proposed to extend the periodic hydrostatic retest for specification 4E cylinders used exclusively in the interchangeable service of certain noncorrosive gases, from 5 years to 10 years.

The proposals would also establish qualification, maintenance and use requirements for the larger specifications 3AX and 3AAX cylinders for which construction requirements were provided in the regulations 5 years ago.

It is also proposed to remove the service pressure rating limitation specified for certain cylinders that may be visually inspected thus extending the range of cylinders within the class eligible for visual inspection in place of hydrostatic retesting. It appears safe and reasonable to qualify higher service pressure cylinders for the visual inspection provisions afforded the same type cylinder marked with a lower service pressure in the services described in § 173.34(e)(10).

The Board believes that it is timely to prescribe specific requalification requirements for cylinders in the service of commodities classified as corrosive liquids prior to their use for compressed gases. The Board further believes that good operating practices should normally dictate that cylinders used for corrosive liquids per se be confined to that service. However, it is aware that under certain circumstances it is feasible to employ cylinders in dual service provided adequate safeguards are taken to ascertain the integrity of the pressure vessel in a charged condition. The regulations prescribe the use of certain specification cylinders for various corrosive liquids, e.g., § 173.247a for vanadium tetrachloride, § 173.251 for boron trichloride, and § 173.283 for bromine trifluoride. Therefore, certain retest and inspection requirements are proposed to preclude the use of cylinders that have performed satisfactorily in a nonpressure service but may be questionable as sound vessels for compressed gases.

On occasion in the past, the significance of the term "owner" as it relates to the safe shipment of compressed gas in cylinders has been questioned. The Board believes that the ownership requirement in § 173.301(b) is a positive safety factor and that a charged compressed gas cylinder must not be shipped unless it was charged by or with the consent of the owner of the cylinder. Accordingly, for the sake of clarity and to be consistent with accepted industry practice, it is proposed to specify that the term "owner" include a lessor or other similar person in legal possession of the container.

Certain editorial adjustments are also included to correlate the substantive changes proposed.

In consideration of the foregoing, it is proposed to amend 49 CFR §§ 173.34 and 173.301 as follows:

(A) In § 173.34 subparagraph (a)(1) would be amended, (a)(3) would be amended and redesignated paragraph (b); (b) would be redesignated (c)(3)(i); the introductory text of paragraph (c) would be amended; (c)(2) would be deleted; (c)(3) would be redesignated (c)(3)(ii); (c)(4) would be redesignated (c)(2); (c)(5) would be deleted; paragraph (e) table and subparagraph (e)(6) would be amended; (e)(9) would be amended by inserting "DOT–4E" following DOT–4BW in the first sentence, "§ 178.68" would be inserted following § 178.61 within the parentheses, the last sentence would be deleted; (e)(10) table would be amended and the last sentence of the paragraph would be deleted; (e)(11), (e)(15) would be amended; (e)(16) would be added as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

(a) * * *

(1) No person may charge or fill a cylinder unless it is as specified in this Part and Part 178 of this chapter. Cylinders that leak, are bulged, have defective valves or safety devices, bear evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, must not be used unless they are properly repaired and requalified as prescribed in these regulations.

* * * * *

(b) *Grandfather clause.* A cylinder in domestic use previous to the date upon which the specification therefor was first made effective in these regulations may be used if the cylinder has been properly tested and otherwise complies with the requirements applicable for the gas with which it is charged.

(c) *Cylinder marking.* All required markings on each cylinder must be maintained so that they are legible. Retest markings and illegible original markings may be reproduced by stamping on metal plates which must be permanently secured to the cylinder.

* * * * *

(2) When the space originally provided for dates of subsequent retests becomes filled, the stamping of additional test dates into the external surface of footrings of cylinders is authorized.

(3) Cylinder markings must not be changed except as follows:

(i) Marked service pressure may be changed only upon application to the Bureau of Explosives and receipt of written instructions as to the procedure to be followed. Such a change is not authorized for cylinders which have failed

to pass the prescribed periodic hydrostatic retest unless they are reheat treated and requalified in accordance with the requirements of this section.

(ii) Changes may be made in serial numbers and in the identification symbols by the owners. Identification symbols must be registered and approved by the Bureau of Explosives. Serial numbers and identification symbols may be changed only by owners upon their receipt of written approval from the Bureau of Explosives. The request for approval must identify the existing markings including serial numbers) that correspond with the proposed new markings.

* * * * *

(e) * * *

Specification under which cylinder was made	Minimum retest pressure (p.s.i.)	Retest period (years)
(change)		
DOT-3A, 3AA	5/3 times service pressure, except noncorrosive service (see § 173.34(e)(10)).	5 or 10 (see § 173.34(e)(11) and (e)(15)).
DOT-4E	2 times service pressure, except noncorrosive service (see § 173.34(e)(10)).	5.
DOT-9	400 p.s.i. (maximum 600 p.s.i.)	5.
(add)		
DOT-3AX, 3AAX	5/3 times service pressure	5.
* * *	* * *	* * *

(NOTE 1 remains unchanged.)

* * * * *

(6) Each cylinder passing reinspection and retest must be marked with the date (month and year), plainly and permanently stamped into the metal of the cylinder or on a metal plate which must be permanently secured to the cylinder. For example, "4–70" for April 1970. The dash between the month and year figures may be replaced by the mark of the testing or inspecting agency. Stamping must be in accordance with marking requirements of the specification. Dates of the previous tests must not be obliterated.

* * * * *

(10) * * *

Cylinders made in compliance with—	*Used exclusively for—*
DOT–4, DOT–3A, DOT–3AA, DOT–3A480X, DOT–4A, DOT–4AA480.	Anhydrous ammonia of at least 99.95% purity.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, ICC–26–240,[1] ICC–26–300.[1]	Butadiene, inhibited, which is commercially free from corroding components.
DOT–3A, DOT–3A480X, DOT–3AA, DOT–3B, DOT–4A, DOT–4AA480, DOT–4B, DOT–4BA, DOT–4BW.	Cyclopropane gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–240,[1] ICC–26–300.[1]	Liquefied hydrocarbon gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–240,[1] ICC–26–300.[1]	Liquefied petroleum gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW.	Anhydrous mono, di, trimethylamines which are commercially free from corroding components.

[1] Use of existing cylinders authorized, but new construction not authorized.

* * * * *

(11) Cylinders made in compliance with specification DOT–3A, DOT–3A 480X, or DOT–4AA480 used exclusively for anhydrous, ammonia, commercially free from corroding components, and protected externally by suitable corrosion resisting coatings (such as painting, etc.) may be retested every 10 years instead of every 5 years.

* * * * *

(15) Cylinders made in compliance with specification DOT–3A or 3AA, not exceeding 125 pounds water capacity and removed from any cluster, bank, group, rack, or vehicle each time they are filled, may be retested every 10 years instead of every 5 years, provided each cylinder complies with all of the following:

(i) The cylinder is not over 35 years old when it is retested;

(ii) Cylinders are used exclusively for: oxygen, nitrogen, argon, hydrogen, helium, neon, krypton, xenon, air, nitrous oxide, cyclopropane, ethylene, and permitted mixtures thereof (see § 173.301 (a)) and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide.

(iii) Cylinders are used exclusively for commodities having dewpoints at or below minus 52° F. at 1 atmosphere. Prior to each refill, cylinders must be subjected to, and pass, the hammer test specified in CGA Pamphlet C–6.

(iv) Cylinders currently in compliance with subdivisions (i), (ii), and (iii) of this subparagraph but which have not been confined to the exclusive use service specified since the last required hydrostatic retest must be retested and examined in accordance with the requirements of § 173.302(c) (2), (3), and (4) before the periodic retest interval may be extended to 10 years.

(v) Each cylinder less than 35 years old is stamped with a five pointed star at least ¼-inch high following the test date. If at any time a cylinder marked with the star is used other than as specified in this paragraph, the star following the most recent test date must be obliterated and subsequent tests made every 5 years.

(16) Cylinders that previously contained a commodity classified as a "corrosive liquid" must not be used for the transportation of any compressed gas unless the following requirements are complied with before the subsequent initial filling with the compressed gas:

(i) Each cylinder must be visually inspected, internally and externally, in accordance with CGA Pamphlet C–6.

(ii) Regardless of the previous test or retest date, each cylinder must be tested by interior hydrostatic pressure and must meet the acceptance criteria as specified in subparagraphs (1), (2), (3), and (4) of this paragraph.

(iii) In addition to the record prescribed in subparagraph (5) of this paragraph, the record of the inspection and test shall include the date (month and year) of the inspection and test; the cylinder identification (including ICC or DOT specification number, registered symbol, serial number, date of manufacture, and ownership symbol); the conditions checked (leakage, corrosion, gouges, dents, or digs in shell or heads, broken or damaged footrings, or fire damage); and the disposition of the cylinder (returned to service, returned to the manufacturer for repairs, or scrapped).

(iv) Each cylinder requalified for compressed gas service in accordance with this subparagraph may have its next retest and inspection scheduled from the date of the inspection and retest prescribed herein.

(v) Cylinders that contained any corrosive liquid, for which decontamination methods cannot remove all significant residue or impregnation by the former corrosive content, must not be used for the transportation of any compressed gas.

* * * * *

(B) In § 173.301, paragraphs (a) and (b) would be amended as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.

(a) *Gases capable of combining chemically.* Cylinders charged with compressed gas must not contain gases or materials that are capable of combining chemically with each other or with the cylinder material so as to endanger their serviceability. See § 173.34(e)(16) regarding the requalification of cylinders that previously contained a corrosive liquid.

(b) *Ownership of container.* A container charged with a compressed gas may not be shipped unless it was charged by or with the consent of the owner of the container. For the purpose of this subpart, the word "owner" includes a lessor or other similar person in legal possession of the container.

* * * * *

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590. Communications received on or before April 6, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board, both before and after the closing date for comments.

This proposal is made under the authority of sections 831–835, title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1968 (49 U.S.C. 1421–1430 and 1472(h)).

Issued in Washington, D.C. on January 19, 1971.

W. M. BENKERT,
Captain, U.S. Coast Guard, by direction of the Commandant, U.S. Coast Guard.

CARL V. LYON,
Acting Administrator, Federal Railroad Administration.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

SAM SCHNEIDER,
Board Member for the Federal Aviation Administration.

[FR Doc.71-978 Filed 1-22-71;8:48 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 71-3a; Notice 1]

INDIRECT VISIBILITY; PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, BUSES, AND MOTORCYCLES

Proposed Motor Vehicle Safety Standard

The purpose of this notice is to propose a revision of Motor Vehicle Safety Standard No. 111, "Rearview Mirrors", that would require indirect visibility systems for motor vehicles, allowing drivers to monitor the motoring environment not in their direct field of view.

Federal Motor Vehicle Safety Standard No. 111, "Rearview Mirrors", 49 CFR 571.21, establishes requirements for rearview mirrors for passenger cars and multipurpose passenger vehicles. On October 14, 1967, advance notices of proposed rulemaking were published establishing Dockets Nos. 1–14 and 1–15 (32 F.R. 14279–80). These advance notices asked for comments concerning a revision of Standard No. III, which would increase the performance levels for rearview mirrors on passenger cars and multipurpose passenger vehicles, and which would extend the applicability of the standard to trucks, buses, and motorcycles. Specific comments were also requested concerning reflectance of day-night rear vision, shatterproof rear vision systems, reflectance durability to cover deterioration and corrosion, modification of present reflectance values, increasing present field of view requirements, and extension of applicability to replacement equipment. These dockets are being consolidated into Docket No. 71–3a.

Today's standard rearview mirrors offer the driver inadequate indirect fields of view to the sides of the vehicle and a limited one to the rear. In many cars the field of view through the inside mirror is blocked by passengers. The problem is most evident on passenger cars when design combines fastback rooflines with wide "C" pillars, presenting the inside rearview mirror with a restricted field of view. Also, many inside mirrors are placed so as to block significant portions of the driver's forward direct field of view.

Analysis of the statistics published in Accident Facts (1969 ed.) indicates that 22.5 percent of all motor vehicle crashes, or approximately 6 million crashes per year, occur in the indirect field of view area to the sides and rear. Systems providing broad and clear vision to the rear, in general use, have the potential of reducing this number of accidents by over a million per year.

In recognition of differences of vehicle configuration and leadtime problems the requirements proposed today differentiate among vehicle types, and have differing effective dates.

Under the proposal, for all vehicles except motorcycles and vehicles designed for a standing driver, indirect field of view requirements are established by specifying that minimum areas of targets to the side and rear of a vehicle must be visible to the driver from eye reference points within the vehicle. The seating reference point defined in 49 CFR 571.3(b) is used for locating the eye reference loci.

Proposed passenger car indirect visibility areas are defined by vertical targets, each one traffic lane (12 feet) wide. Target Area Q is directly behind the vehicle 30 feet from the seating reference point. The horizontal angle requirements are basically the same as those now specified in Standard No. 111, but the vertical angles are increased. The bottom of the target is 2 feet above the road surface, and the top is 2 feet above the horizon line. It is believed that this will provide an adequate vertical field of view. Adjacent to Target Q on each side (i.e., in simulated adjacent traffic lanes) are symmetrical Targets SR and SL with the same height above the road surface. The upward angle, however, is one-half that of Target Q because an increased angle here is not considered critical for motor vehicle safety. Passenger cars manufactured on or after January 1, 1974, would be required to have indirect visibility devices such that at least 85 percent of the area of Target Area Q and 75 percent of Target Areas SR and SL could be viewed. As of January 1, 1976, these requirements would be increased to at least 95 percent for Target Area Q and 85 percent for the Target Areas SR and SL. In addition, two outer Target Areas TR and TL, adjacent to the outer edge of the Targets SR and SL would be added. At least 65 percent of the area of each would have to be visible to the driver of a passenger car manufactured on or after January 1, 1976. No upward angle would be required for these targets, since the important factor here is to see a vehicle a second lane away involved in lane-changing maneuvers covering two lanes. As of January 1, 1976, only one image display location would be permitted, and that location would be inside the vehicle. A "periscope" system is not specified, but this type of device may prove to be the most effective way of meeting the proposed performance requirements.

While multipurpose passenger vehicles currently are required to meet the passenger car requirements, many vehicles in this category probably could not meet the proposed passenger car requirements because of the configuration dictated by their intended end use. Therefore, different target visibility requirements are proposed for multipurpose passenger vehicles as well as for trucks and buses. Both vertical targets (denoted XR and XL) and ground targets (YR and YL) would be used, the ground targets for convex-mirror visibility requirements and the vertical targets for plane-mirror requirements. While XR and XL, and YR and YL target areas are symmetrical on either side of the vehicle, the percentage of visibility required differs because the mirrors on the right are at a greater distance from the driver and therefore provide a smaller field of view. These requirements would be effective for vehicles manufactured on or after January 1, 1973. For school buses, additional requirements are proposed for areas in front of the vehicle that may not be directly visible to the driver. Motorcycles manufactured on or after January 1, 1973, would be required to have at least two rearview mirrors.

The proposal also specifies locational limits for image displays, so that the displays will not interfere with the portions of a driver's direct field of view encompassing the road ahead, overhead traffic signals, or vehicles or pedestrians on roadways intersecting the roadway on which the driver is traveling. Requirements covering distortion, reflectance, and adjustment of visibility devices are also proposed. However, certain current requirements covering mirror breakaway and protrusion of exterior mirrors are not specified; they relate to injury reduction rather than vehicle accident prevention, and it is anticipated that they will be incorporated into appropriate injury reduction standards. In addition, sun visor requirements will be modified to accommodate the larger rearview devices.

If the proposal is adopted, it is anticipated that the new standard would be designated Standard No. 111a until January 1, 1974, when it would become Standard No. 111.

Interested persons are invited to submit data, views, and arguments concerning the proposed standard. Comments are particularly invited on the leadtime and costs directly related to compliance with the proposed standard. Comments should refer to the docket number, and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 4223, 400 Seventh Street SW., Washington, DC 20591. It is requested, but not required, that 10 copies be submitted. All comments received before the close of business on April 22, 1971, will be considered, and will be available in the docket at the above address for examination both before and after the closing date. To the extent possible, comments filed after the above date will also be considered. However, the rulemaking action may proceed at any time after the date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. Relevant material will continue to be filed, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Proposed effective date: January 1, 1973, for multipurpose passenger vehicles, trucks, buses, and motorcycles. January 1, 1974, for passenger cars, with additional requirements effective January 1, 1976.

In consideration of the foregoing it is proposed that 49 CFR 571.21 be amended by adding a new motor vehicle safety standard, Indirect Visibility—Passenger Cars, Multipurpose Passenger Vehicles, Trucks, and Buses, as set forth below. This notice of proposed rulemaking is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegations of authority at 49 CFR 1.51 (35 F.R. 4955) and 49 CFR 501.8 (35 F.R. 11126).

Issued on January 15, 1971.

RODOLFO A. DIAZ,
Acting Associate Administrator,
Motor Vehicle Programs.

§ 571.21 Federal Motor Vehicle Safety Standards.

MOTOR VEHICLE SAFETY STANDARD No. 111a

INDIRECT VISIBILITY—PASSENGER CARS, MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, BUSES, AND MOTORCYCLES

S1. *Scope.* This standard specifies requirements for systems that provide the driver with a view of the motoring environment not in his direct field of view.

S2. *Purpose.* The purpose of this standard is to reduce the number of deaths and injuries that occur because the driver has an inadequate view of the motoring environment, particularly to the sides and rear.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, and motorcycles.

S4. *Definitions.*

"Convex mirror" means a mirror that is a section of the outside surface of a sphere, with a single radius of curvature of not less than 20 inches and not more than 50 inches.

"Eye reference points" means the seven monocular points represented in Figure 1 by the letters A, B, C, D, E, F, and M, and located as follows:

(a) Point M is in the vertical plane parallel to the vehicle centerline passing through the driver's seating reference point at the height and logitudinal position specified in Table I.

TABLE I—LOCATION OF EYE REFERENCE POINT M

Torso line back angle [1] of driver's seat (degrees)		Height above driver's seating reference point (inches)	Longitudinal distance forward or rearward of the driver's seating reference point (inches)
At least	But less than		
6	11	25 1/16	6 1/16 forward.
11	16	25 7/16	4 7/16 forward.
16	22	25 3/16	2 7/16 forward.
22	28	24 1/16	7/16 forward.
28	34	23 1/16	2 1/16 rearward.

[1] Measured between a vertical line through the H-point of the two-dimensional manikin and the torso line of the manikin (described in SAE Standard J826a, "Manikins for use in Defining Vehicle Seating Accommodation," February 1970) as shown in Figure 2 of SAE Recommended Practice J941b, "Motor Vehicle Driver's Eye Range", February 1969. If the driver's seat has an adjustable back, for this determination it is positioned in the setting closest to 25° for passenger cars, and midway between the forwardmost and rearmost angles for other vehicles.

(b) Point A is 2⅜ inches directly above Point M. Point B is 2⅜ inches directly below Point M. However, if the driver's seat can be adjusted in the vertical direction throughout the range of its longitudinal travel, this 2⅜-inch distance is reduced by one-half of the smallest vertical range of adjustment at any longitudinal position, to a minimum distance of 1½ inches from Point M.

(c) Point C is 3 inches directly to the left of Point M. Point D is 3 inches directly to the right of Point M. Point E is 4¾ inches directly forward of Point M. Point F is 4¾ inches directly rearward of Point M. (See Figure 1.)

"Image brightness" means the ratio, expressed as a percentage, of the photometric brightness of an image of a subject in a target area viewed from Point M to the photometric brightness of the subject viewed directly from the same position without obstruction such as glazing.

"Test occupant" means a person weighing 164 pounds and having an erect seating height of 35.7 inches measured vertically from the buttocks to the top of the head, on a seat without cushioning, and with head length of 7.7 inches, head breadth of 6.1 inches, and head circumference of 22.5 inches.

"Unit magnification" means the condition in which the angular height and width of an object image on an image display is equal to the angular height and width of the object when viewed directly at a distance that is the sum of the distances from the eye reference point to the image display and from the eye reference point to the object.

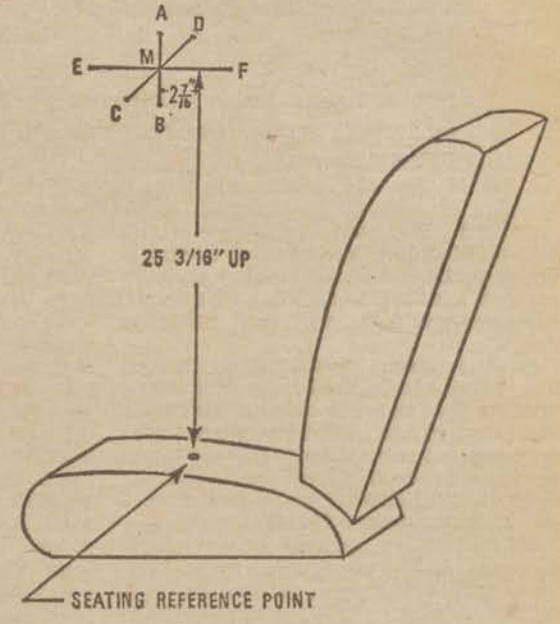


Table of Eye Reference Point Dimensions
AM=MB= 2 3/8"
CM=MD= 3"
EM=MF= 4 3/4 "

PICTORIAL EXAMPLE SHOWING LOCATION OF THE SEVEN EYE REFERENCE POINTS FROM THE SEATING REFERENCE POINT WHERE THE TORSO LINE BACK ANGLE IS 20 DEGREES.

FIGURE 1

"Visibility device height" means the highest point on the vehicle at which light from a subject in a target area to an eye reference point is changed in direction by an indirect visibility device such as a mirror or prism.

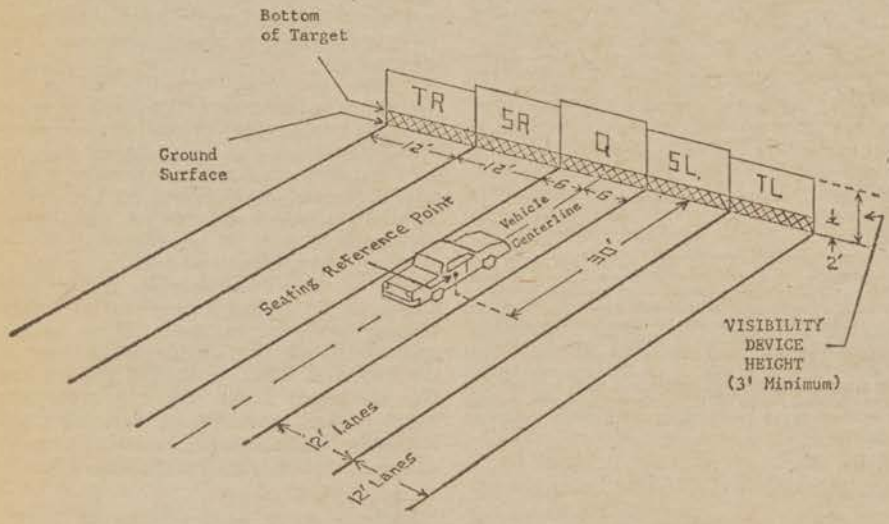
S5. *Requirements.* Each motor vehicle shall be capable of meeting the following requirements under the conditions of S6.

S5.1 *Passenger cars.*

S5.1.1 *Passenger cars manufactured from January 1, 1974, through December 31, 1975.*

S5.1.1.1 Each passenger car manufactured from January 1, 1974, through December 31, 1975, shall be provided with an indirect visibility system that presents to the vehicle operator from each eye reference point in the vehicle, when a test occupant is seated in the front outboard designated passenger seating position and in the driver's designated seating position, with head erect and back against the seat back, an image or images comprising not less than 85 percent of the area of Target Area Q, not less than 75 percent of the area of Target Area SR, and not less than 75 percent of the area of Target Area SL. (See Figure 2.)

S5.1.1.2 The image or images of the targets required to meet the area percentage requirements of S5.1.1.1 shall be displayed in not more than three separate locations. The location of at least one image display shall be inside the vehicle, in accordance with S5.1.3, and the location of another image display shall be outside the vehicle on the driver's side.



PICTORIAL EXAMPLE SHOWING PLACEMENT OF THE FIVE VERTICAL TARGETS WITH RESPECT TO THE PASSENGER CAR CENTERLINE AND THE SEATING REFERENCE POINT

FIGURE 2

S5.1.1.3 The image brightness of any portion of an image required to be visible under S5.1.1.1 shall be not less than 40 percent and not more than 95 percent, when viewed from each eye reference point.

S5.1.1.4 Each image display located inside the vehicle shall have a dimming selector that upon operation lowers the image brightness to not less than 4 percent and not more than 20 percent when viewed from each eye reference point.

S5.1.2 *Passenger cars manufactured on or after January 1, 1976.*

S5.1.2.1 Each passenger car manufactured on or after January 1, 1976, shall be provided with an indirect visibility system that presents to the vehicle operator, from each eye reference point in the vehicle, when a test occupant is seated in each designated seating position with head erect and back against the seat back, an image comprising not less than 95 percent of the area of Target Area Q, not less than 85 percent of the area of Target Area SR, not less than 85 percent of the area of Target Area SL, not less than 65 percent of the area of Target Area TR, and not less than 65 percent of the area of Target Area TL.

S5.1.2.2 The image of the targets required to meet the area percentage requirements of S5.1.2.1 shall be displayed in one location, inside the vehicle in accordance with S5.1.3.

S5.1.2.3 The image brightness of any portion of an image required to be visible under S5.1.2.1. shall be not less than 65 percent and not more than 95 percent, when viewed from each eye reference point.

S5.1.2.4 The image display shall have a dimming selector that upon operation lowers the image brightness to not less than 10 percent and not more than 20 percent when viewed from each eye reference point.

S5.1.3 *Inside image display location.*

S5.1.3.1 *Lateral.* The lateral center of an inside image display shall be located within a boundary formed by a vertical plane passing through Point D and making a 30° forward angle to the left with a vertical longitudinal plane, and by a vertical plane passing through Point C and making a 30° forward angle to the right with a vertical longitudinal plane.

S5.1.3.2 *Vertical.*

S5.1.3.2.1 *Display with virtual image.* If an image display presents a virtual image, such as that on a plane mirror, the display shall be entirely located—

(a) Above a plane that is perpendicular to a vertical longitudinal plane, is at an 11° forward angle above the horizontal, and passes through Point A; and

(b) Below a plane that is perpendicular to a vertical longitudinal plane, is at a 38° forward angle above the horizontal, and passes through Point E.

S5.1.3.2.2 *Display with real image.* If an image display presents a real image, such as a display on a screen, the display shall be entirely located—

(a) Above a plane that is perpendicular to a vertical longitudinal plane, is at a 25° forward angle below the horizontal, and passes through Point E; and

(b) Below a plane that is perpendicular to a vertical longitudinal plane, is at a 6° forward angle below the horizontal, and passes through Point B.

S5.1.4 *Unit magnification.* Each image shall be of unit magnification.

S5.2 *Multipurpose passenger vehicles, trucks, and buses manufactured on or after January 1, 1973.*

S5.2.1 *Multipurpose passenger vehicles, trucks, and buses designed for use by a seated driver.*

S5.2.1.1 Each multipurpose passenger vehicle, truck, and bus manufactured on or after January 1, 1973, and designed for use by a seated driver shall be provided with an indirect visibility system that presents to the vehicle operator, from each eye reference point in the vehicle, when a test occupant is seated in each front outboard designated seating position with head erect and back against the seat back, one or more images that either—

(a) Meet the requirements of S5.1.1; or

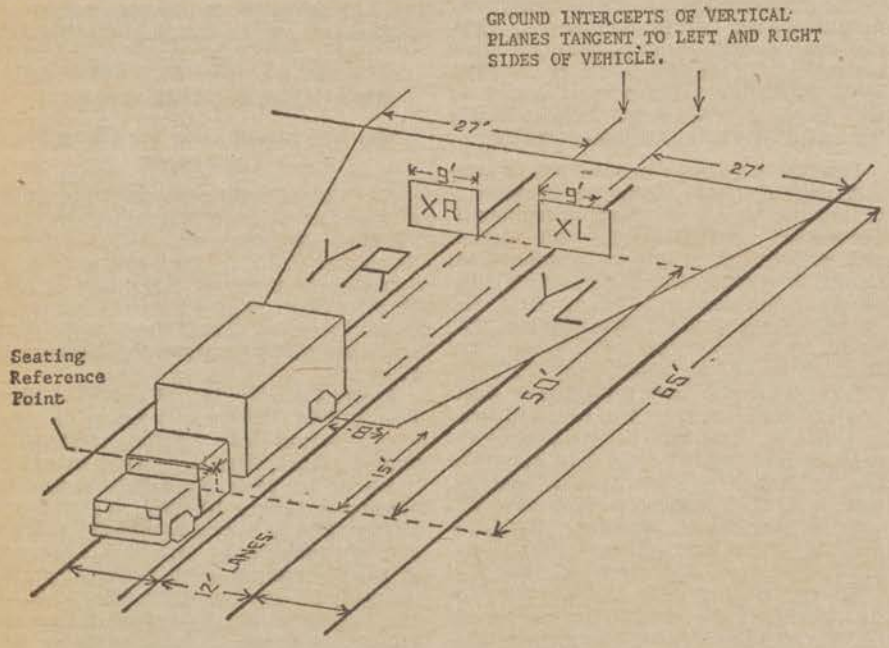
(b) Comprise not less than 95 percent of the area of Target Area XL, not less than 65 percent of the area of Target Area XR, not less than 90 percent of the area of Target Area YL, and not less than 70 percent of the area of Target Area YR. (See Figure 3.) If a vehicle is equipped with right-hand drive, the percentages for Target Areas XR and XL and for Target Areas YR and YL, respectively, shall be reversed.

S5.2.1.2 The image of Target Areas XR and XL shall be of unit magnification. The image of Target Areas YR and YL shall be not smaller than one-third of that provided under unit magnification.

S5.2.1.3 The images of the portions of any single target area required to be visible under S5.2.1.1(b) shall be presented on a single image display.

S5.2.1.4 The image brightness of any portion of an image required to be visible under S5.2.1.1 shall be not less than 40 percent and not more than 95 percent, when viewed from each eye reference point.

S5.2.1.5 If a vehicle is manufactured with a rear window within 12 feet of the seating reference point, and the unobstructed field of view through the rear window, as viewed directly from Point M, has an angular width, at at least one point, of at least 10°, the vehicle shall have an inside image display providing an indirect view of the full width of this unobstructed view through the rear window.



PICTORIAL EXAMPLE SHOWING PLACEMENT OF TARGETS WITH RESPECT TO THE SEATING REFERENCE POINT AND MULTIPURPOSE PASSENGER VEHICLE, TRUCK, OR BUS EXTERIOR

FIGURE 3

S5.2.2 *Additional requirements for school buses.* When a straight rod 30 inches long is placed upright on the ground at any point along a transverse line 1 foot forward of the forwardmost point of a school bus and extending the width of the bus, at least 7½ inches of the length of the rod shall be visible from each eye reference point, either by direct view or by means of an indirect visibility system.

S5.2.3 *Multipurpose passenger vehicles, trucks, and buses designed for use by a standing driver.* Each multipurpose passenger vehicle, truck, or bus manufactured on or after January 1, 1973, and designed for use by a standing driver shall have one convex and one plane mirror mounted on the exterior of each side of the vehicle in positions that provide the driver with an image display from each mirror. The image brightness of each mirror shall be not less than 40 percent and not more than 95 percent. Each plane mirror shall have a reflecting surface at least 6 inches wide and at least 8 inches high. Each convex mirror shall have a reflecting surface at least 6 inches wide and at least 4 inches high.

S5.3 *Motorcycles.* Each motorcycle shall be equipped with two rearview mirrors, of unit magnification, each of which has not less than 15 square inches of surface reflecting area and an image brightness of not less than 40 percent and not more than 95 percent. The mirrors shall be mounted 13 inches or more outboard, one on each side, of the longitudinal centerline of the motorcycle.

S5.4 *Image orientation.* The image on each image display shall be presented with an orientation as an image is presented by a single plane mirror.

S5.5 *Distortion.* If an image display is of the unit magnification type, the image of a grid composed of vertical and horizontal lines, spaced 12 inches apart, center to center, on any target area required to be visible, viewed from each eye reference point, shall not contain more than 5 percent vertical and 5 percent horizontal linear distortion.

S5.6 *Adjustment and reference frame.*

S5.6.1 If an image display must be adjusted in order to provide a passenger car operator with the target area visibility requirements of S5.1, it shall be capable of adjustment by the operator, while seated at the controls, without use of tools.

S5.6.2 Each convex and plane mirror shall be adjustable by tilting in both the horizontal and vertical directions.

S5.6.3 Each inside image display shall have a white reference frame, not less than one-eighth of an inch wide, around its periphery. If a plane mirror is mounted with a convex mirror on the same outside mounting, the plan mirror shall have a white reference frame, not less than one-eighth of an inch wide, around its periphery.

S5.6.4 Any image upon an image display shall not disappear, and shall continue to meet the distortion requirements of S5.5, when the viewer moves from one eye reference point to another and the image display is maintained in position.

S6. *Conditions.* The requirements of S5 shall be met under the following conditions:

S6.1 *Loading.* The vehicle is empty, except for the maximum capacity of fuel and other fluids necessary for operation, and the test occupants as specified in S5.

S6.2 *Tire inflation pressure.* Tire inflation pressure is as specified by the vehicle manufacturer for vehicle weight under the conditions of S6.1.

S6.3 *Vehicle openings.* All vehicle openings (such as doors, tailgates, windows, hood, and movable or convertible tops) are closed.

S6.4 *Head restraints.* Each adjustable head restraint is positioned so that the top of the head restraint is at the adjustment point closest to, but not less than, 27½ inches above the seating reference point measured along the torso line.

S6.5 *Seat adjustment.* Each adjustable seat is at the longitudinal and vertical midpoint of its adjustment range, with the seat back in the adjustment position closest to vertical.

S6.6 *Road surface.* The surface on which the vehicle stands has a zero percent grade.

S6.7 *Target areas.*

S6.7.1 For passenger cars, there are five rectangular vertical targets (Q, SR, SL, TR, TL) as shown in Figure 2. Each target is 12 feet wide. Target areas are located on a plane perpendicular to the vehicle longitudinal centerline, 30 feet behind the driver's seating reference point. The bottom edge of each target area is 2 feet above the ground surface. Target Area Q is bisected by the vehicle centerline. Target Areas SR and SL extend from 6 to 18 feet from the centerline, and Target Areas TR and TL extend from 18 to 30 feet from the centerline, on the right and left side of it respectively. The distance from the ground surface to the top of each target area is the greater of the two distances indicated:

Target Area Q—5 feet, or visibility device height plus 2 feet.

Target Areas SR, SL—4 feet, or visibility device height plus 1 foot.

Target Areas TR, TL—3 feet, or visibility device height.

S6.7.2 For multipurpose passenger vehicles, trucks and buses, there are two vertical targets (XR, XL) and two horizontal or surface targets (YR, YL), as shown in Figure 3.

S6.7.2.1 Target Areas XR and XL are rectangles located in a plane perpendicular to the vehicle longitudinal centerline, 50 feet behind the driver's seating reference point. Each of the two target areas is 9 feet wide, with its bottom edge on the ground surface, and extends outward from a vertical plant parallel to the vehicle longitudinal centerline and tangent to the outermost part of the right side (XR) or the left side (XL) of the vehicle. The distance from the ground

surface to the top of Target Areas XR and XL is the greater of 6 feet, or visibility device height plus 2½ feet.

S6.7.2.2 *Target Areas YR, YL.* Target Areas YR and YL are trapezoids located on the ground surface. The parallel sides of each trapezoid (i.e., the widths of its forward and rearward edges) are 8 feet and 27 feet respectively, extending outward from and perpendicular to vertical longitudinal planes tangent to the outermost parts of the right and left sides of the vehicle. The shorter parallel side of each trapezoid is 15 feet rearward, and the longer parallel side 65 feet rearward, of the driver's seating reference point, measured longitudinally.

[FR Doc.71-919 Filed 1-22-71;8:45 am]

[49 CFR Part 571]

[Docket No. 71-3b; Notice 1]

REARVIEW MIRRORS—PASSENGER CARS AND MULTIPURPOSE PASSENGER VEHICLES

Proposed Motor Vehicle Safety Standard

The purpose of this notice is to propose an amendment of the present Motor Vehicle Safety Standard No. 111 that would terminate its applicability to multipurpose passenger vehicles effective January 1, 1973, and to passenger cars effective January 1, 1974. In addition, it would allow optional compliance of these vehicles with proposed Motor Vehicle Safety Standard No. 111a (36 F.R. ------) prior to the date the new standard is applicable to each category. On January 1, 1974, Standard No. 111a will become Standard No. 111 upon the termination of the present Standard No. 111.

The Traffic Safety Administration has proposed that Standard No. 111a apply to multipurpose passenger vehicles manufactured on or after January 1, 1973, and to passenger cars manufactured on or after January 1, 1974. Should these effective dates be delayed in the final rule, the termination dates adopted pursuant to this notice would be adjusted accordingly.

In consideration of the foregoing, it is proposed that paragraph S3. of Motor Vehicle Safety Standard No. 111, Rearview Mirrors, in § 571.21 of Title 49, Code of Federal Regulations, be amended to read as follows:

S3. *Requirements.* Each passenger car manufactured before January 1, 1974, and each multipurpose passenger vehicle manufactured before January 1, 1973, shall meet the requirements either of this section, or of Motor Vehicle Safety Standard No. 111a, Indirect Visibility.

Interested persons are invited to submit written data, views, or arguments pertaining to the proposed amendment. Comments should identify the docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 4223, 400 Seventh Street SW., Washington, DC 20591. It is requested but not required that 10 copies be submitted. All comments received before the close of business on April 22, 1971, will be considered and will be available in the docket for examination, both before and after the closing date. To the extent possible, comments filed after the above date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. Relevant material will continue to be filed, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Proposed effective date: Final issuance date of Standard No. 111a, Indirect Visibility.

This notice of proposed rulemaking is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407), and the delegations of authority at 49 CFR 1.51 (35 F.R. 4955) and 49 CFR 501.8 (35 F.R. 11126).

Issued on January 15, 1971.

RODOLFO A. DIAZ,
Acting Associate Administrator,
Motor Vehicle Programs.

[FR Doc.71-920 Filed 1-22-71;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19075; RM-1645]

TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS, NOGALES AND TUCSON, ARIZ.

Order Extending Time for Filing Reply Comments

1. This proceeding was begun by notice of proposed rule making (FCC 70-1164) adopted October 28, 1970, released November 2, 1970, and published in the FEDERAL REGISTER on November 6, 1970, 35 F.R. 17121. The date for filing comments has expired and the date for filing reply comments is presently January 18, 1971.

2. On January 15, 1971, KVOA Television, Inc. (KVOA), licensee of television broadcast Station KVOA-TV, Tucson, Ariz., filed a request to extend the time for reply comments to and including February 18, 1971. KVOA states that it filed its opposition to the petition for rule making on August 3, 1970, and in the intervening period several parties have filed extensive comments, which in the judgment of its Counsel, may merit reply comments. It further states that the instant request will afford an opportunity to investigate the desirability of such action. I.B.C., a limited-partnership, licensee of Station KZAZ, Nogales, proponent in the proceeding, has consented to this request.

3. We are of the view that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing reply comments in Docket 19075 is extended to and including February 18, 1971.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: January 18, 1971.

Released: January 20, 1971.

FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[FR Doc.71-993 Filed 1-22-71;8:49 am]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

HAROLD KENNETH EDWARDS

Notice of Granting of Relief

Notice is hereby given that Harold Kenneth Edwards, 4911 Ash Avenue, Hammond, IN 46427, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on February 17, 1943, in the Dyer County Circuit Court, Dyersburg, Tenn., and on December 21, 1945, in the Criminal Court of Lake County, Ind., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Harold Kenneth Edwards, because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Harold Kenneth Edwards to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Harold Kenneth Edwards' application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Harold Kenneth Edwards be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 15th day of January 1971.

[SEAL] WILLIAM H. SMITH,
Acting Commissioner of Internal Revenue.

[FR Doc.71-957 Filed 1-22-71;8:47 am]

EDWARD WILLIAM NEUMANN

Notice of Granting of Relief

Notice is hereby given that Edward William Neumann, Route 4, Box 116, Traverse City, MI, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on April 27, 1936, and October 23, 1936, in the Circuit Court of Saginaw County, Mich., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted it will be unlawful for Edward W. Neumann because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearms or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., appendix), because of such convictions, it would be unlawful for Edward W. Neumann to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Edward W. Neumann's application and:

(1) I have found that the convictions were made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Edward W. Neumann be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 11th day of January 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-958 Filed 1-22-71;8:47 am]

THOMAS E. WATSON

Notice of Granting of Relief

Notice is hereby given that Thomas E. Watson, 908 Pine Street, Sweetwater, TX 79556, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his convictions on June 24, 1946, by a General Court-Martial convened at Enid Army Air Field, Enid, Okla., by the Commanding General, Hq. AAF Flying Training Command, and on December 8, 1948, in the District Court of Swisher County, Tex., of crimes punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Thomas E. Watson, because of such convictions, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer, or collector. In addition, under Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such convictions, it would be unlawful for Thomas E. Watson to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Thomas E. Watson's application and:

(1) I have found that the convictions were made upon charges which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the convictions and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144: *It is ordered*, That Thomas E. Watson be, and he hereby is, granted

relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the convictions hereinabove described.

Signed at Washington, D.C., this 13th day of January 1971.

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

[FR Doc.71-959 Filed 1-22-71;8:47 am]

Office of the Secretary

[Department Circular; Public Debt Series—No. 1-71]

5⅞ PERCENT TREASURY NOTES OF SERIES C-1975

Offering of Notes

JANUARY 21, 1971.

I. *Offering of notes.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, offers notes of the United States, designated 5⅞ percent Treasury Notes of Series C-1975, at par, in exchange for the following securities, singly or in combinations aggregating $1,000 or multiples thereof:

(1) 5⅜ percent Treasury Notes of Series C-1971, due February 15, 1971;

(2) 7¾ percent Treasury Notes of Series D-1971, due February 15, 1971;

(3) 2½ percent Treasury Bonds of 1966-71, due March 15, 1971, with a cash payment of $1.50 per $1,000 to the United States;

(4) 5⅜ percent Treasury Notes of Series B-1971, due November 15, 1971, with a cash payment of $6 per $1,000 to subscribers;

(5) 7¾ percent Treasury Notes of Series G-1971, due November 15, 1971, with a cash payment of $23 per $1,000 to subscribers;

(6) 3⅞ percent Treasury Bonds of 1971, due November 15, 1971, with a cash payment of $5 per $1,000 to the United States;

(7) 4¾ percent Treasury Notes of Series A-1972, due February 15, 1972, with a cash payment of $0.50 per $1,000 to subscribers;

(8) 7½ percent Treasury Notes of Series C-1972, due February 15, 1972, with a cash payment of $26.50 per $1,000 to subscribers; or

(9) 4 percent Treasury Bonds of 1972, due February 15, 1972, with a cash payment of $5 per $1,000 to the United States.

Interest will be adjusted on the securities due March 15, 1971, November 15, 1971, and February 15, 1972, as of February 15, 1971. Payments on account of accrued interest and cash adjustments will be made as set forth in section IV hereof. The amount of this offering will be limited to the amount of elegible securities tendered in exchange. The books will be open until 8 p.m., local time, January 27, 1971, for the receipt of subscriptions.

2. In addition, holders of the securities enumerated in paragraph 1 of this section are offered the privilege of exchanging all or any part of them for 6¼ percent Treasury Notes of Series A-1978, which offering is set forth in Department Cicular, Public Debt Series—No. 2-71, issued simultaneously with this circular.

II. *Description of notes.* 1. The notes will be dated February 15, 1971, and will bear interest from that date at the rate of 5⅞ percent per annum, payable semi-annually on August 15, 1971, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature August 15, 1975, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Provision will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing U.S. notes.

III. *Subscription and allotment.* 1. Subscriptions accepting the offer made by this circular will be received at the Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington, D.C. 20220. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve Banks and the Department of the Treasury are authorized to act as official agencies.

2. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury has the authority to reject or reduce any subscription, and to allot less than the amount of notes applied for when he deems it to be in the public interest; and any action he may take in these respects shall be final. Subject to the exercise of that authority, all subscriptions will be allotted in full.

IV. *Payment.* 1. Payment for the face amount of notes alloted hereunder must be made on or before February 16, 1971, or on later allotment, and may be made only in a like face amount of securities of the issues enumerated in paragraph 1 of section I hereof, which should accompany the subscription. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. Payments due to subscribers (paragraphs 3, 4, 5, 6, 7, and 8 below) will be made by check or by credit in any account maintained by a banking institution with the Federal Reserve Bank of its District following acceptance of the securities surrendered. In the case of registered securities, the payment will be made in accordance with the assignments thereon. Payments due from subscribers (paragraph 9 below) should accompany the subscription.

2. 5⅜ percent notes of Series C-1971 and 7¾ percent notes of Series D-1971: When payment is made with notes in bearer form, coupons dated February 15, 1971, should be detached and cashed when due.[1]

3. 2½ percent bonds of 1966-67: When payment is made with bonds in bearer form, coupons dated March 15, 1971, must be attached to the bonds when surrendered. Accrued interest from September 15, 1970, to February 15, 1971 ($10.-56630 per $1,000), will be credited, the payment ($1.50 per $1,000) due the United States will be charged and the difference ($9.06630 per $1,000) will be paid to subscribers.

4. 5⅜ percent notes of Series B-1971: When payment is made with notes in bearer form, coupons dated May 15, and November 15, 1971, must be attached to the notes when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($13.66022 per $1,000), plus the cash payment ($6 per $1,000), a total of $19.66022 per $1,000, will be paid to subscribers.

5. 7¾ percent notes of Series G-1971: When payment is made with notes in bearer form, coupons dated May 15, and November 15, 1971, must be attached to the notes when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($19.69613 per $1,000), plus the cash payment ($23 per $1,000), a total of $42.69613 per $1,000, will be paid to subscribers.

6. 3⅞ percent bonds for 1971: When payment is made with bonds in bearer form, coupons dated May 15, and November 15, 1971, must be attached to the bonds when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($9.84807 per $1,000), will be credited, the payment ($5 per $1,000) due the United States will be charged and the difference ($4.84807 per $1,000) will be paid to subscribers.

7. 4¾ percent notes of Series A-1972: When payment is made with notes in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be detached[1]) to the notes when surrendered. The cash payment of $0.50 per $1,000 will be paid to subscribers.

8. 7½ percent notes of Series C-1972: When payment is made with notes in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be

[1] Interest due on Feb. 15, 1971, on registered securities will be paid by issue of interest checks in regular course to holders of record on Jan. 15, 1971, the date the transfer books closed.

detached[1]) to the note when surrendered. The cash payment of $26.50 per $1,000 will be paid to subscribers.

9. 4 percent bonds of February 15, 1972: When payment is made with bonds in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be detached[1]) to the bonds when surrendered. The cash payment of $5 per $1,000 due the United States must be paid by subscribers.

V. *Assignment of registered securities.* 1. Registered securities tendered in payment for notes offered hereunder should be assigned by the registered payees or assignees thereof, in accordance with the general regulations of the Department of the Treasury governing assignments for transfer or exchange, in one of the forms hereafter set forth, and thereafter should be surrendered with the subscription to a Federal Reserve Bank or Branch or to the Office of the Treasurer of the United States, Washington, D.C. 20220. The securities must be delivered at the expense and risk of the holder. If the new notes are desired registered in the same name as the securities surrendered, the assignment should be to "The Secretary of the Treasury for exchange for 5⅞ percent Treasury Notes of Series C–1975"; if the new notes are desired registered in another name, the assignment should be to "The Secretary of the Treasury for exchange for 5⅞ percent Treasury Notes of Series C–1975 in the name of _____"; if new notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for exchange for 5⅞ percent Treasury Notes of Series C–1975 in coupon form to be delivered to _____".

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] DAVID M. KENNEDY,
Secretary of the Treasury.

[FR Doc.71–1079 Filed 1–22–71;9:22 am]

[Department Circular; Public Debt Series—No. 2–71]

6¼ PERCENT TREASURY NOTES OF SERIES A–1978

Offering of Notes

JANUARY 21, 1971.

I. *Offering of notes.* 1. The Secretary of the Treasury, pursuant to the authority of the Second Liberty Bond Act, as amended, offers notes of the United States, designated 6¼ percent Treasury Notes of Series A–1978, at par, in exchange for the following securities, singly or in combinations aggregating $1,000 or multiples thereof:

(1) 5⅜ percent Treasury Notes of Series C–1971, due February 15, 1971;

(2) 7¾ percent Treasury Notes of Series D–1971, due February 15, 1971;

(3) 2½ percent Treasury Bonds of 1966–71, due March 15, 1971, with a cash payment of $1.50 per $1,000 to the United States;

(4) 5⅜ percent Treasury Notes of Series B–1971, due November 15, 1971, with a cash payment of $6 per $1,000 to subscribers;

(5) 7¾ percent Treasury Notes of Series G–1971, due November 15, 1971, with a cash payment of $23 per $1,000 to subscribers;

(6) 3⅞ percent Treasury Bonds of 1971, due November 15, 1971, with a cash payment of $5 per $1,000 to the United States;

(7) 4¾ percent Treasury Notes of Series A–1972, due February 15, 1972, with a cash payment of $0.50 per $1,000 to subscribers;

(8) 7½ percent Treasury Notes of Series C–1972, due February 15, 1972, with a cash payment of $26.50 per $1,000 to subscribers; or

(9) 4 percent Treasury Bonds of 1972, due February 15, 1972, with a cash payment of $5 per $1,000 to the United States.

Interest will be adjusted on the securities due March 15, 1971, November 15, 1971, and February 15, 1972, as of February 15, 1971. Payments on account of accrued interest and cash adjustments will be made as set forth in section IV hereof. The amount of this offering will be limited to the amount of eligible securities tendered in exchange. The books will be open until 8 p.m., local time, January 27, 1971, for the receipt of subscriptions.

2. In addition, holders of the securities enumerated in paragraph 1 of this section are offered the privilege of exchanging all or any part of them for 5⅞ percent Treasury Notes of Series C–1975, which offering is set forth in Department Circular, Public Debt Series—No. 1–71, issued simultaneously with this circular.

II. *Description of notes.* 1. The notes will be dated February 15, 1971, and will bear interest from that date at the rate of 6¼ percent per annum, payable semiannually on August 15, 1971, and thereafter on February 15 and August 15 in each year until the principal amount becomes payable. They will mature February 15, 1978, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

3. The notes will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

4. Bearer notes with interest coupons attached, and notes registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000 and $1,000,000. Provision will be made for the interchange of notes of different denominations and of coupon and registered notes, and for the transfer of registered notes, under rules and regulations prescribed by the Secretary of the Treasury.

5. The notes will be subject to the general regulations of the Department of the Treasury, now or hereafter prescribed, governing United States notes.

III. *Subscription and allotment.* 1. Subscriptions accepting the offer made by this circular will be received at the Federal Reserve Banks and Branches and at the Office of the Treasurer of the United States, Washington, D.C. 20220. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve Banks and the Department of the Treasury are authorized to act as official agencies.

2. Under the Second Liberty Bond Act, as amended, the Secretary of the Treasury has the authority to reject or reduce any subscription, and to allot less than the amount of notes applied for when he deems it to be in the public interest; and any action he may take in these respects shall be final. Subject to the exercise of that authority, all subscriptions will be allotted in full.

IV. *Payment.* 1. Payment for the face amount of notes allotted hereunder must be made on or before February 16, 1971, or on later allotment, and may be made only in a like face amount of securities of the issues enumerated in paragraph 1 of section I hereof, which should accompany the subscription. Payment will not be deemed to have been completed where registered notes are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. Payments due to subscribers (paragraphs 3, 4, 5, 6, 7, and 8 below) will be made by check or by credit in any account maintained by a banking institution with the Federal Reserve Bank of its District following acceptance of the securities surrendered. In the case of registered securities, the payment will be made in accordance with the assignments thereon. Payments due from subscribers (paragraph 9 below) should accompany the subscription.

2. 5⅜ percent notes of Series C–1971 and 7¾ percent notes of Series D–1971: When payment is made with notes in bearer form, coupons dated February 15, 1971, should be detached and cashed when due.[1]

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[1] Interest due on Feb. 15, 1971, on registered securities will be paid by issue of interest checks in regular course to holders of record on Jan. 15, 1971, the date the transfer books closed.

3. 2½ percent bonds of 1966–71: When payment is made with bonds in bearer form, coupons dated March 15, 1971, must be attached to the bonds when surrendered. Accrued interest from September 15, 1970, to February 15, 1971 ($10.56630 per $1,000), will be credited, the payment ($1.50 per $1,000) due the United States will be charged and the difference ($9.06630 per $1,000) will be paid to subscribers.

4. 5⅜ percent notes of Series B–1971: When payment is made with notes in bearer form, coupons dated May 15 and November 15, 1971, must be attached to the notes when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($13.66022 per $1,000), plus the cash payment ($6 per $1,000), a total of $19.66022 per $1,000, will be paid to subscribers.

5. 7¾ percent notes of Series G–1971: When payment is made with notes in bearer form, coupons dated May 15 and November 15, 1971, must be attached to the notes when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($19.69613 per $1,000), plus the cash payment ($23 per $1,000), a total of $42.69613 per $1,000, will be paid to subscribers.

6. 3⅞ percent bonds of 1971: When payment is made with bonds in bearer form, coupons dated May 15 and November 15, 1971, must be attached to the bonds when surrendered. Accrued interest from November 15, 1970, to February 15, 1971 ($9.84807 per $1,000), will be credited, the payment ($5 per $1,000) due the United States will be charged and the difference ($4.84807 per $1,000) will be paid to subscribers.

7. 4¾ percent notes of Series A–1972: When payment is made with notes in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be detached[1]) to the notes when surrendered. The cash payment of $0.50 per $1,000 will be paid to subscribers.

8. 7½ percent notes of Series C–1972: When payment is made with notes in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be detached[1]) to the notes when surrendered. The cash payment of $26.50 per $1,000 will be paid to subscribers.

9. 4 percent bonds of February 15, 1972: When payment is made with bonds in bearer form, coupons dated August 15, 1971, and February 15, 1972, must be attached (Feb. 15, 1971, coupons should be detached[1]) to the bonds when surrendered. The cash payment of $5 per $1,000 due the United States must be paid by subscribers.

V. *Assignment of registered securities.* 1. Registered securities tendered in payment for notes offered hereunder should be assigned by the registered payees or assignees thereof, in accordance with the general regulations of the Department of the Treasury governing assignments for transfer or exchange, in one of the forms hereafter set forth, and thereafter should be surrendered with the subscription to a Federal Reserve Bank or Branch or to the Office of the Treasurer of the United States, Washington, D.C. 20220. The securities must be delivered at the expense and risk of the holder. If the new notes are desired registered in the same name as the securities surrendered, the assignment should be to "The Secretary of the Treasury for exchange for 6¼ percent Treasury Notes of Series A–1978"; if the new notes are desired registered in another name, the assignment should be to "The Secretary of the Treasury for exchange for 6¼ percent Treasury Notes of Series A–1978 in the name of _____"; if new notes in coupon form are desired, the assignment should be to "The Secretary of the Treasury for exchange for 6¼ percent Treasury Notes of Series A–1978 in coupon form to be delivered to _____".

VI. *General provisions.* 1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive subscriptions, to make such allotments as may be prescribed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve Banks.

[SEAL] DAVID M. KENNEDY,
Secretary of the Treasury.

[FR Doc.71–1080 Filed 1–22–71;9:22 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

BLACKBEARD ISLAND NATIONAL WILDLIFE REFUGE

Notice of Public Hearing Regarding Wilderness Study

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 88–577; 78 Stat. 890–896; 16 U.S.C. 1131–1136), that a public hearing will be held at 9 a.m. on March 25, 1971, in the McIntosh County Courthouse, Darien, GA, to consider the results of a study leading to a recommendation to be made to the President of the United States by the Secretary of the Interior, regarding the desirability of including a portion of the Blackbeard Island National Wildlife Refuge within the National Wilderness Preservation System. The refuge, located in McIntosh County, Ga., consists of 5,618 acres of marsh, beach, forest, and dunes.

A brochure containing a map of the boundaries and additional information about the study may be obtained from the Refuge Manager, Savannah National Wildlife Refuge, Route 1, Hardeeville, S.C. 29927, or the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, GA 30323.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the Regional Director at the above address by May 9, 1971.

SPENCER H. SMITH,
Acting Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 20, 1971.

[FR Doc.71–971 Filed 1–22–71;8:48 am]

WOLF ISLAND NATIONAL WILDLIFE REFUGE

Notice of Public Hearing Regarding Wilderness Proposal

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 88–577; 78 Stat. 890–896; 16 U.S.C. 1131–1136), that a public hearing will be held beginning at 2 p.m. on March 25, 1971, at the McIntosh County Courthouse, Darien, McIntosh County, Ga., on a proposal leading to a recommendation to be made to the President of the United States by the Secretary of the Interior, regarding the desirability of including the Wolf Island Wilderness proposal within the National Wilderness Preservation System. The wilderness proposal consists of 538 acres within the Wolf Island National Wildlife Refuge in McIntosh County, Ga.

A brochure containing a map of the boundaries and additional information about the proposal may be obtained from the Refuge Manager, Savannah National Wildlife Refuge, Route 1, Hardeeville, SC 29927, or the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, GA 30323.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the Regional Director at the above address by May 9, 1971.

SPENCER H. SMITH,
Acting Director, Bureau of Sport Fisheries and Wildlife.

JANUARY 20, 1971.

[FR Doc.71–972 Filed 1–22–71;8:48 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[Notice No. 1]

SUGAR REQUIREMENTS AND QUOTAS

Requirements Relating to Bringing or Importing Sugar Into the Continental United States

Pursuant to provisions of paragraph (d) of § 817.8 (32 F.R. 14363) and on the basis of information before me, I do hereby determine and give public notice

that during the first quarter of 1971 the importation of raw sugar into the United States for refining and storage at locations north of Hatteras without charge to a quota at the time of importation will not interfere with the effective administration of the Sugar Act of 1948, as amended (60 Stat. 922, as amended).

Refineries in the Gulf and South Atlantic have ample supplies of raw sugar. Processing of sugar from the 1970 sugarcane crop was recently completed in Louisiana and is still in progress in Florida. Because of shipping considerations, a considerable quantity of the sugar authorized for importation during the first quarter is also destined for south of Hatteras ports. As a result, other refineries may have some difficulty in satisfying their needs from the quantities of the sugar previously authorized for importation. This action will assure refineries north of Hatteras of adequate supplies of raw sugar through March.

Accordingly, notice is hereby given that prior to April 1, 1971, raw sugar under set-aside agreements approved for importation during the second quarter of 1971 pursuant to Sugar Regulation 811 for 1971 (35 F.R. 18909) may be authorized for release for importation by or delivery to refiners for the sole purpose of refining and storage at north of Hatteras locations without effect on a quota at the time of importation. Any such sugar shall be charged to the second quarter quota limitation for the 1971 calendar year no later than April 1, 1971.

Authorization for the release of sugar pursuant to this notice may be issued only to cover raw sugar to be imported by or delivered to a refiner who is the principal on a bond accepted pursuant to § 817.9 of this Part 817 under which the principal is obligated to hold at the refinery at which such sugar is received the raw value equivalent of such sugar until release of such sugar from inventory is authorized by the Department within the second quarter quota limitation for the calendar year 1971.

For the purpose of this notice, sugar held in inventory under the control of a refiner in warehouse facilities within 2 miles of the refinery where such sugar was received shall be deemed to be held at that refinery.

Signed at Washington, D.C., on January 19, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-1001 Filed 1-22-71;8:50 am]

Consumer and Marketing Service

COLORADO, MASSACHUSETTS, AND NEW HAMPSHIRE

Notice of Intended Designation Under the Federal Meat Inspection Act

Paragraph 301(c) of the Federal Meat Inspection Act as amended (21 U.S.C. 661(c)) required the Secretary of Agriculture to designate promptly after December 15, 1969, any State as one in which the requirements of titles I and IV of said Act shall apply to intrastate operations and transactions, and to persons, firms and corporations engaged therein, with respect to meat products and other articles and animals subject to the Act, if he determined after consultation with the Governor of the State, or his representative, that the State involved had not developed and activated requirements, at least equal to those under titles I and IV, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered, or their carcasses, or parts or products thereof, are prepared for use as human food, solely for distribution within such State. However, if the Secretary had reason to believe that the State would activate the necessary requirements within an additional year, he could allow the State the additional year in which to activate such requirements. There was reason to believe that Colorado, Massachusetts, and New Hampshire would activate such requirements if they were allowed an additional year in which to do so and accordingly the Secretary allowed each of these States such additional time.

However, the Secretary has now determined that the States of Colorado, Massachusetts, and New Hampshire have not developed and activated the prescribed requirements. Therefore, notice is hereby given that the Secretary will designate said States under paragraph 301(c) of the Act as soon as necessary arrangements can be made for determining which establishments in these States are eligible for Federal inspection, for providing inspection at the eligible establishments, and for otherwise enforcing the applicable provisions of the Federal Act with respect to intrastate activities when the designation is made and becomes effective. As soon as these arrangements are completed, notice of the final designation will be published in the FEDERAL REGISTER. Upon the expiration of 30 days after such publication, the provisions of titles I and IV of said Act shall apply to intrastate operations and transactions and to persons, firms, and corporations engaged therein, in said States, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce" within the meaning of the Act, except as otherwise provided in subparagraph 301(c)(2) of the Act, and any establishment in Colorado, Massachusetts, or New Hampshire which conducts any slaughtering or preparation of carcasses or parts or products thereof as described above must have Federal inspection or cease its operations, unless it qualifies for an exemption under the Act. The exemption provisions of the Act are very limited.

Therefore, the operator of each such establishment who desires to continue such operations after designation of the State becomes effective should immediately communicate with the appropriate Regional Director listed below for information concerning the requirements and exemptions under the Act and application for inspection and a survey of the establishment.

For Colorado—

Dr. Willis H. Irvin, Director, Room 376, Merchandise Mart Building, 500 South Ervay Street, Dallas, TX 75201 (Telephone: Area Code 214-749-3747).

For Massachusetts and New Hampshire—

Dr. C. F. Diehl, Director, Seventh Floor, 1421 Cherry Street, Philadelphia, PA 19102 (Telephone: Area Code 215-597-4216).

Done at Washington, D.C., on January 18, 1971.

CLAYTON YEUTTER,
Administrator, Consumer and Marketing Service.

[FR Doc.71-1004 Filed 1-22-71;8:50 am]

DEPARTMENT OF TRANSPORTATION

Office of Pipeline Safety

[Notice W-2; Docket No. OPS-6]

WAIVER OF GAS PIPELINE SAFETY STANDARDS

Notice of Hearing

On June 18, 1970, the Department of Transportation issued a waiver to the Northern Natural Gas Co. permitting the operation of a 276-mile segment of its 24-inch B pipeline between Mullinville, Kans., and Palmyra, Nebr., at a maximum operating pressure of 797 p.s.i.g. (See the Notice of Hearing, 35 F.R. 8247, May 26, 1970, and Grant of Waiver, 35 F.R. 10329, June 24, 1970.) The waiver expires on July 1, 1971.

Northern Natural has petitioned for an amendment to that waiver to extend the expiration date to July 1, 1972. Referring to the justification provided in its earlier petition, Northern Natural states that—

> The subject pipeline has continued to operate at the elevated pressure without problems. We have experienced no ruptures or leaks during this period. It has been under close surveillance for possible encroachment and we have found no evidence of any form of construction near the pipeline.
>
> It was anticipated by Northern that governmental authority would have been received in time to permit the receipt of Canadian gas by July 1, 1971. While Northern does have on file with the Canadian National Energy Board and the FPC applications for the importation of natural gas, it would be impossible at this late date, even with immediate certificates, to construct the necessary facilities to bring the Canadian gas in by the middle of this year.

In accordance with section 3(e) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1672(e)), notice is hereby given that a hearing on the matter of granting a waiver for the purpose stated above will be held at 10 a.m., on February 1, 1971, at the Office of Pipeline Safety, 400 Sixth Street SW., Washington, DC 20590.

Interested persons are invited to present their views at the hearing or to

submit them in writing by February 1, 1971, to the Office of Pipeline Safety at the above address.

Issued in Washington, D.C., on January 21, 1971.

JOSEPH C. CALDWELL,
Acting Director,
Office of Pipeline Safety.

[FR Doc.71-1060 Filed 1-22-71;8:50 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Notice of Issuance of Amendment to Provisional Operating License

On September 8, 1970, the Atomic Energy Commission (the Commission) issued Provisional Operating License No. DPR-22 to Northern States Power Co. (Northern States), authorizing the licensee to possess, use, and operate the Monticello Nuclear Generating Unit No. 1, a single cycle, forced circulation, boiling water nuclear reactor (the reactor) on Northern States' site in Wright and Sherburne Counties, Minn. A notice of issuance of a provisional operating license was published in the FEDERAL REGISTER on September 15, 1970 (35 F.R. 14476).

The reactor is designed to operate at approximately 1,670 megawatts thermal, but initial operation was limited to 5 megawatts thermal and without the reactor head in place to permit initial fuel loading and testing.

Pursuant to the initial decision dated January 15, 1971, of the Atomic Safety and Licensing Board (Board), the Commission has issued, effective as of the date of issuance, Amendment No. 1 to Provisional Operating License No. DPR-22. The amendment supersedes the September 8, 1970, license in its entirety and authorizes Northern States to operate the reactor at power levels not to exceed 1,670 megawatts thermal with the reactor vessel head in place; however, operation at power levels in excess of 5 megawatts thermal with the reactor vessel head in place is subject to satisfactory demonstration of the operation of the plant feedwater pumps.

The Commission's regulatory staff has inspected the facility and has determined that, for operation as authorized by the amendment, the facility has been constructed in accordance with the application as amended, the provisions of Provisional Construction Permit No. CPPR-31, the said initial decision, the Atomic Energy Act of 1954, as amended, and the Commission's regulations. The licensee had previously submitted proof of financial protection and satisfaction of the requirements of 10 CFR Part 140. The Commission's regulatory staff will further inspect the facility to determine whether acceptable performance of the feedwater pumps has been demonstrated. Upon notification by the Commission in writing that such operation has been so demonstrated, Northern States will be authorized to operate the reactor at power levels not to exceed 1,670 megawatts thermal.

For further details with respect to this amendment, see (1) the initial decision dated January 15, 1971, (2) Amendment No. 1 to License No. DPR-22 and (3) the Technical Specifications attached to the license, copies of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Copies of item (2) above may be obtained at the Commission's Public Document Room, or upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 19th day of January 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-966 Filed 1-22-71;8:48 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23022; Order 71-1-87]

AMERICAN AIRLINES, INC. ET AL.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of January 1971.

By tariff revisions marked to become effective February 1, 1971,[1] American Airlines, Inc. (American), Delta Air Lines, Inc. (Delta), and United Air Lines, Inc. (United) propose to establish round-trip family excursion fares of $101.85 ($110 including tax) between Baltimore, Boston, Hartford, Springfield, New York, Philadelphia, Providence, and Washington, D.C., on the one hand, and Los Angeles, Palm Springs, San Diego, or San Francisco, on the other, effective February 1 through February 25, 1971. The proposed fares apply to the spouse and/or each accompanying child 2 through 21 years of age when accompanying the head of the family who pays the full round-trip coach fare. Travel under these fares will be permitted on Mondays through Thursdays or 16 days in all. Return travel must commence prior to 12 midnight of the 14th day after the date of departure from the originating point. The family must travel together on the entire trip.

In justification of its proposal, American states that the proposed fares are to encourage husbands to take their wives and children on business trips and generate additional family vacation travel during the month of February when travel in the transcontinental markets is lower than in any other month. American contends that by offering a substantial discount from existing coach and family-plan fares, enough new traffic will be generated to offset the estimated dilution plus the increased costs of handling the additional passengers and promoting the fare.

Finally, American states that while it is not possible to forecast with certainty the generative effects of the proposed promotional fare, experimentation with this type of short-term coach fare reduction should be permitted as the risks are limited, since the fare is offered only on off-peak days of an off-peak travel month, can be used only by family members accompanying a full-fare-paying passenger, and is confined to selected transcontinental markets.

Delta and United would match American in competitive markets. In the statement accompanying its filing, United states that while it believes the proposal may help to stimulate additional travel and increase revenues, it is not as convinced of this as American. United feels that American may have been overly optimistic in its revenue generation estimates and may realize a net loss. United also believes American has failed to take into consideration downgrading from first-class traffic. Nevertheless, United states that it is willing to experiment with the proposed fares.

Northwest Airlines, Inc. (Northwest) and Trans World Airlines, Inc. (TWA)[2] have filed complaints against American's proposal requesting suspension and investigation. Northwest alleges that the proposed fares are uneconomic and unreasonable; that the proposed fares are discriminatory and will spread to other areas; and that the industry cannot afford the potential economic risk associated with the proposed experiment.

TWA alleges that the proposed fares are unjustly discriminatory; that the same fare applies to markets of varying distances and results in preference and prejudice; and that American does not show or even allege that the proposed fares will cover incremental costs for it and all of the carriers which would be required to meet the proposal if it is permitted to become effective.

American has answered the complaints, alleging that the fares are not unreasonable; that this is the kind of meaningful discount that is needed to stimulate traffic; that the fares will cover incremental costs and contribute toward covering capacity costs; and denies that the fares are unjustly discriminatory, or give rise to undue preference and prejudice.

Upon consideration of all relevant matters, the Board finds that the proposed family excursion fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. We further conclude that these fares should be suspended pending investigation.

[1] Revisions to American's Tariff CAB No. 241; Delta's Tariff CAB No. 135; and United's Tariff CAB No. 315.

[2] TWA has filed similar fares in competitive markets.

The reasonableness of the proposed fares, which reflect discounts from normal fares of 61 to 65 percent for the spouse and children, depends in large measure whether the generation of new traffic and revenues is sufficient to offset dilution of existing revenues. While discounts of this magnitude should generate additional traffic, the instant proposal will most certainly cause substantial revenue dilution, and we believe there is a great risk that a net loss of revenue will occur. American estimates it will have to increase coach traffic by 15 percent on each of the 16 days the fares apply if the plan is to be successful. This would represent a very substantial increase in family-fare travel. We believe it highly unlikely that generation will take place to that extent particularly since, as the carrier states, the fares would apply only on offpeak days of an offpeak month.

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions in American Airlines, Inc.'s CAB No. 241 and First Revised Pages 2, 3, and 4 thereto, Delta Air Lines, Inc.'s, CAB No. 135, Trans World Airlines, Inc.'s, CAB No. 235, and United Air Lines, Inc.'s, CAB No. 315, and rules, regulations, or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, American Airlines, Inc.'s, CAB No. 241 and First Revised Pages 2, 3, and 4 thereto, Delta Air Lines, Inc.'s, CAB No. 135, Trans World Airlines, Inc.'s, CAB No. 235, and United Air Lines, Inc.'s, CAB No. 315 are suspended and their use deferred to and including May 1, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. A copy of this order will be filed with the aforesaid tariffs and be served upon American Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc., which are hereby made parties to this proceeding; and

4. Except to the extent granted herein, the complaints in Dockets 22955 and 22957 are hereby dismissed.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[3]

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-988 Filed 1-22-71;8:49 am]

[3] Dissenting statement of Members Minetti and Murphy filed as part of original document.

[Docket No. 23026; Order 71-1-92]

EASTERN AIR LINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of January 1971.

By tariff revisions[1] marked to become effective February 1, 1971, Eastern Air Lines, Inc. (Eastern), proposes that in the New York-Boston/Washington Air Shuttle markets (1) spouses accompanying husbands may travel at 50 percent of the regular first-class or coach fare and (2) youth and military reservation fares be decreased to 50 percent of the regular coach fares. The proposed fares are marked to expire July 31, 1971.

In support of its proposal, Eastern alleges that wives accompanying husbands on the Air Shuttle appear to be discretionary travelers who are more income elastic than others, and that during this period of restrained discretionary spending its proposal provides a traffic generation opportunity through incentive pricing greater than what might normally be expected in other markets and under different economic circumstances. With respect to its military and youth fare proposal, it is Eastern's view that by providing a discount of 50 percent it will be able to meet the competition from bus and rail and that such a fare level will increase its present military traffic by more than 60 percent.

American Airlines, Inc. (American), has filed a complaint against the proposed revision of youth and military reservation fares. Northeast Airlines, Inc. (Northeast), has filed a complaint against the proposed youth and military fares as well as the proposed spouse fare. Both carriers request suspension of Eastern's proposal. The complainants assert among other things that Eastern's proposal is inconsistent with the Examiner's findings in Phase 5 of the Domestic Passenger-Fare Investigation, Docket 21866-5; that fares must bear a reasonable relationship to cost and that Eastern's proposal fails on this ground; and that certain of Eastern's assumptions are suspect, particularly with respect to the generative aspect of the proposals.

Eastern has answered the complaints claiming the greater discounts on the air shuttle are being offered because the markets involved are faced with competitive circumstances not obtaining in any other air travel markets; that because the shuttle service is in effect virtually a guaranteed reservation service there is no basis for requiring its air shuttle youth and military reservation fares to be priced above American's and other carriers' standby fares in the same markets. It asserts all selective promotional fares are discriminatory by design, and that such discrimination is permitted under the Federal Aviation Act—in this case by the beneficial economic effect on all travelers.

Upon consideration of all relevant matters, the Board finds that all of the proposed fare reductions and cancellations may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. We further conclude that these proposals should be suspended pending investigation.

The generation estimates made by the carrier are a very critical aspect of the proposal, and although this is a judgment area the estimates for each type of fare appear extremely optimistic. Moreover, the substantial volume of new traffic needed to offset dilution, if realized, would result in additional expenses if extra flights have to be operated. Therefore, we believe there is a substantial risk that a net loss of revenue would be likely to occur, and that the proposed fares may not be economically justified. In addition, we find some inconsistency in this proposal to reduce fares for a significant segment of the traveling public in markets where Eastern has recently increased fares because of higher than average cost levels due to airport and airway congestion.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation is instituted to determine whether the fares and provisions described in Appendix A hereto[2] and rules, regulations, or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, and practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A hereto[2] are suspended and their use deferred to and including May 1, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the complaints of American Airlines, Inc., in Docket 22965, and Northeast Airlines, Inc., in Docket 22964 are hereby dismissed;

4. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

5. Copies of this order be filed with the aforesaid tariffs and be served upon American Airlines, Inc., Eastern Air Lines, Inc., and Northeast Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[3]

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-989 Filed 1-22-71;8:49 am]

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariffs CAB Nos. 136 and 142.

[2] Appendix A filed as part of original document.

[3] Dissenting statement of Members Minetti and Murphy filed as part of original document.

[Docket No. 22647; Order 71-1-86]

JIM HANKINS AIR SERVICE, INC.

Order To Show Cause

Issued under delegated authority January 18, 1971.

In response to a petition filed October 14, 1970, on behalf of Jim Hankins Air Service, Inc. (Hankins), by the Postmaster General, the Board established a final service mail rate of 50.40 cents per great circle aircraft mile for the transportation of mail by aircraft between Mobile, Ala., and Nashville, Tenn., via Birmingham, Ala. This final service mail rate was fixed by Order 70-11-97, issued November 19, 1970.

On January 4, 1971, the Postmaster General, at the request of Hankins, filed a petition to amend the service mail rate currently in effect. While maintaining the same overall revenue per flight for the air taxi, the Postmaster General requests a correction of the mileage from 788 to 786 miles and a revision of the applicable rate from 50.40 cents to 50.53 cents per great circle aircraft mile between the above points.

The Board finds it is in the public interest to adjust, determine, and fix the fair and reasonable rate of compensation to be paid to Hankins by the Postmaster General for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the carrier's petition, and other matters officially noticed, the Board proposes to issue an order [1] to include the following findings and conclusions:

1. On and after January 4, 1971, the fair and reasonable final service mail rate to be paid to Jim Hankins Air Service, Inc., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 50.53 cents per great circle aircraft mile between Mobile, Ala., and Nashville, Tenn., via Birmingham, Ala., based on five round trips per week.

2. The final service mail rate here fixed and determined is to be paid in its entirety by the Postmaster General;

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly sections 204(a) and 406 thereof, and the Board's regulations in 14 CFR Part 302, 14 CFR Part 298 and the authority duly delegated by the Board in its Organization Regulations 14 CFR 385.16(f):

It is ordered, That:

1. Jim Hankins Air Service, Inc., the Postmaster General, Delta Air Lines, Inc., Eastern Air Lines, Inc., Southern Airways, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, as the fair and reasonable rate of compensation to be paid to Jim Hankins Air Service, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, as specified below; and

3. This order shall be served upon Jim Hankins Air Service, Inc., the Postmaster General, Delta Air Lines, Inc., Eastern Air Lines, Inc., and Southern Airways, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

1. Further procedures related to the attached order shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed therein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

2. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed therein and fix and determine the final rate specified therein;

3. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307).

[FR Doc.71-990 Filed 1-22-71;8:49 am]

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

SMALL BUSINESS ADMINISTRATION

ABBOTT CAPITAL CORP.

Notice of Issuance of Small Business Investment Company License

On December 24, 1970, a notice of application for a license as a small business investment company (SBIC) was published in the FEDERAL REGISTER (35 F.R. 19597) stating that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107) for a license as a small business investment company by Abbott Capital Corp., 120 South La Salle Street, Chicago, IL 60603.

Interested parties were given to the close of business January 4, 1971, to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and facts with regard thereto, SBA has issued License No. 07/07-0082 to Abbott Capital Corp., to operate as a small business investment company.

A. H. SINGER,
Associate Administrator for Investment.

JANUARY 14, 1971.

[FR Doc.71-995 Filed 1-22-71;8:47 am]

NORTH AMERICAN MESBIC, INC.

Notice of Issuance of a License To Operate as a Minority Enterprise Small Business Investment Company

On December 29, 1970, a notice was published in the FEDERAL REGISTER (35 F.R. 19725) stating that North American MESBIC, Inc., 114 State Street, Boston, MA 02109, had filed an application with the Small Business Administration, pursuant to § 107.102 of the SBA Regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107), for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business January 8, 1971, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 01/01-5070 to North American MESBIC, Inc., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

A. H. SINGER,
Associate Administrator for Investment.

JANUARY 14, 1971.

[FR Doc.71-956 Filed 1-22-71;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

JANUARY 20, 1971.

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on February 24, 1971, the following standard broadcast application will be considered as ready and available for processing:

BP-18813 KKON, Kealakekua, Hawaii,
Kona Koast Broadcasting Co.
Has: 79 kc., 1 kw, U.
Req: 790 kc., 5 kw, U.

Pursuant to § 1.227(b)(1), § 1.591(b) and note 2 to § 1.571 of the Commission's rules,[1] an application, in order to be considered with the above application must

[1] See Report and Order released July 18, 1968, FCC 68-739, Interim Criteria to Govern Acceptance of Standard Broadcast Applications, 33 FR 10343, 13 RR 2d 1667.

be in direct conflict with said application, substantially complete, and tendered for filing at the offices of the Commission by the close of business on February 23, 1971.

The attention of any party in interest desiring to file pleadings concerning the application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: January 20, 1971.

Released: January 21, 1971.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-995 Filed 1-22-71;8:49 am]

[Canadian List No. 275]

CANADIAN BROADCAST STATIONS

Notification List

JANUARY 11, 1971.

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letters	Location	Power kw.	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
		540 kHz							
CBEF (now in operation)	Windsor, Ontario, N. 42°08'50", W. 83°05'33".	2.5D/5N	DA-1	U	II				
		1340 kHz							
CKOX (change in daytime pattern).	Woodstock, Ontario, N. 43°06'18", W. 80°45'50".	1D/0.25N	DA-D ND-N	U	IV				12.15.71.
		1400 kHz							
CKCB (delete notification for 1 Kw. day-time as shown on List No. 213—Power to remain at 0.25 Kw.).	Collingwood, Ontario, N. 44°28'54", W. 80°14'45".	*0.25*	ND	U	IV				
		1420 kHz							
CKDY (now in operation)	Digby, Nova Scotia, N. 44°38'03", W. 65°46'43".	1	DA-1	U	III				
		1600 kHz							
CJRN (delete notification for 25 Kw. Power as shown on List No. 233—Power to remain at 10 Kw. at present site).	Niagara Falls, Ontario, N. 42°57'51", W. 79°06'36".	*10*	DA-2	U	III				

FEDERAL COMMUNICATIONS COMMISSION,
MARTIN I. LEVY,
Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc.71-994 Filed 1-22-71;8:49 am]

FEDERAL POWER COMMISSION

[Docket No. CP71-150]

ALGONQUIN GAS TRANSMISSION CO.

Further Notice of Application

JANUARY 19, 1971.

Take notice that on November 23, 1970, Algonquin Gas Transmission Co. (applicant), 1284 Soldier's Field Road, Boston, MA 02135, filed in Docket No. CP71-150 an application for a certificate of public convenience and necessity authorizing applicant to provide an existing customer, Providence Gas Co. (Providence Gas), with a new delivery point to serve an unserved portion of its authorized service territory, all as more fully described in the application which is on file with the Commission and open for public inspection.

Applicant states that Providence Gas can begin service to the town of Burrillville, R.I., a part of its existing service territory, at substantially less cost by having a new delivery point from applicant rather than by extending its existing distribution system some 10 miles to Burrillville. Under the general terms and conditions of applicant's tariff this delivery point will be paid for by Providence Gas. Applicant's only cost will be approximately $4,400 for construction of dual 2-inch taps.

On December 4, 1970, the Commission issued a notice of the subject application; however, said notice was not published in the FEDERAL REGISTER. In order to give adequate notice, any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-943 Filed 1-22-71;8:46 am]

[Project No. 2543]

MONTANA POWER CO.

Notice of Application for Amendment of License for Constructed Project

JANUARY 19, 1971.

Public notice is hereby given that application for amendment of license has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by The Montana Power Co. (correspondence to: George W. O'Connor, President, The Montana Power Co., General Offices, Electric Building, Butte, MT 59701) for its constructed Milltown Project No. 2543, located on Clark Fork River, tributary to

navigable waters, in the vicinity of Missoula, in Missoula County, Mont.

Licensee seeks amendment of license article 8 to incorporate a more flexible rate of return limitation on project net investment upon which surplus earnings of the project would be based and amortization reserves established and maintained pursuant to section 10(d) of the Federal Power Act. Licensee seeks to have the rate of return related to the company's weighted average annual embedded long-term debt-cost rate times 1½, or 6 percent, whichever is greater. This provision would be substituted for the straight 6-percent rate of return provision presently specified by article 8.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 10, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-938 Filed 1-22-71;8:45 am]

[Docket No. CP71-180]

CITIES SERVICE GAS CO.

Notice of Application

JANUARY 19, 1971.

Take notice that on January 11, 1971, Cities Service Gas Co. (applicant), Post Office Box 25128, Oklahoma City, OK 73125, filed in Docket No. CP71-180 a budget-type application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations thereunder, for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1971, and operation of small compressor units and minor appurtenant facilities on its gathering laterals located in various gas producing fields which are presently connected to its system, including where necessary, the relocation of such units and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment applicant's ability to act with reasonable dispatch in taking into its certificated main pipeline system natural gas purchased from producers thereof.

Applicant states that the total estimated cost of the proposed facilities will not exceed $800,000, with the cost of units for any single producing area not to exceed $400,000. Financing will be from treasury cash.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-944 Filed 1-22-71;8:46 am]

[Docket No. CI62-1209, etc.]

COLUMBIA GAS DEVELOPMENT CORP.

Notice of Petition To Amend

JANUARY 18, 1971.

Columbia Gas Development Corp. (successor to the Preston Oil Co., an Ohio corporation).

Take notice that on November 10, 1970, Columbia Gas Development Corp. (petitioner), Post Office Box 1350, Houston, TX 77001, filed in Docket No. CI62-1209, et al., a petition to amend the orders issuing certificates of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in said dockets to the Preston Oil Co., an Ohio corporation, by substituting petitioner as certificate holder, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it merged the Preston Oil Co., an Ohio corporation, effective as of June 1, 1970, and that it proposes to continue without change the sales of natural gas in interstate commerce authorized to be made by the latter. Petitioner states further that immediately prior to the merger, the Preston Oil Co., an Ohio corporation, assigned all of its properties and interests outside of Louisiana and Texas and the offshore areas adjacent thereto to the Preston Oil Co., a Delaware corporation.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 10, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT,
Secretary.

[FR Doc.17-945 Filed 1-22-71;8:46 am]

[Docket No. E-7591]

MINNESOTA POWER & LIGHT CO.

Notice of Application

JANUARY 19, 1971.

Take notice that on December 31, 1970, Minnesota Power & Light Co. (MP&L) made application to the Commission for an order pursuant to section 203 of the Federal Power Act authorizing MP&L's sale of its facilities at Silver Bay and Babbitt to Reserve Mining Co., a Minnesota corporation (Reserve) for $254,641.95.

MP&L presently has a 115-kv. transmission line which runs from its Colbyville substation in Duluth, Minn., to the 115-kv. powerplant substation located at Reserve's plant in Silver Bay, Minn. Three MP&L substations, at French River, Two Harbors, and Silver Bay Hillside, tap this 115-kv. line.

The substation terminus of the line is on property owned by Reserve but the substation equipment is owned by MP&L. Reserve owns the secondary electrical facilities beyond the low-voltage terminals of the substation transformer.

The facilities to be disposed of by MP&L consist of certain equipment located at Silver Bay, Minn., and near Babbitt, Minn.

The specific equipment to be disposed of at Silver Bay includes the existing MP&L owned facilities at the Reserve 115-kv. powerplant substation, except for the FM radio station equipment and the presently installed MP&L owned d.c. earth current recorder complete with clamp-on transducer. In addition, the steel tower portion of MP&L's 115-kv. transmission line from Reserve's powerplant substation to the point at MP&L's No. 614 corner tower where said 115-kv.

transmission line turns parallel to the highway is to be transferred. Steel Tower No. 614 shall remain the property of MP&L.

The specific equipment to be disposed of at Babbitt includes the MP&L owned 115-kv. tap line to Reserve's Northwest substation, and the totalizing and carrier equipment to enable Reserve to monitor from Silver Bay the energy being transmitted to Reserve's Babbitt substations.

After the sale to Reserve of all of these facilities, the operation shall continue as previously operated except that the totalized meter readings of the Babbitt substation will be telemetered to Silver Bay rather than to Duluth.

Both MP&L and Reserve contend that it is in the best public interest that MP&L, for allegedly adequate consideration, sell to Reserve said equipment in that it is used solely to serve Reserve and is integral to the operations of Reserve's facilities.

A statement of the cost of the facilities involved in the sale has been submitted. Gross value of the plant and equipment to be transferred is $383,515.68. Net of accumulated depreciation, the assets are carried at $254,641.95.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 3, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-946 Filed 1-22-71;8:46 am]

[Docket No. CP71-179]

NORTHERN NATURAL GAS CO.

Notice of Application

JANUARY 19, 1971.

Take notice that on January 11, 1971, Northern Natural Gas Co. (applicant), 2223 Dodge Street, Omaha, NE 68102, filed in Docket No. CP71-179 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Vincent underground gas storage field near Vincent, Iowa, as hereinafter set forth, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant was authorized by the Commission's order issued March 18, 1963, as amended April 16, 1964, in Docket No. CP62-307 to construct and operate two 550 horsepower compressor units and 1½ miles of pipeline for the purpose of injecting up to 5,000,000 Mcf of natural gas into the Vincent underground storage field in order to test and develop the gas storage capabilities of four potential storage reservoirs in the field.

Applicant states that after thoroughly testing the storage field, it has determined that it is not practical to operate this field as a storage facility.

Applicant propose to abandon and remove all of its surface facilities, plug and abandon all subsurface facilities and terminate the testing and development of the Vincent Field.

The estimated cost of the proposed abandonment and removal of facilities is $347,200, which will be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 8, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[FR Doc.71-947 Filed 1-22-71;8:46 am]

[Docket No. CP70-243]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Petition To Amend

JANUARY 19, 1971.

Take notice that on January 8, 1971, Panhandle Eastern Pipe Line Co. (petitioner), Post Office Box 1642, Houston, TX 77001, filed in Docket No. CP70-243 a petition to amend the order issued in the subject docket on June 19, 1970, granting a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize petitioner to construct and operate additional gathering lines and field compressor units, as hereinafter described, as more fully described in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, petitioner proposes to install approximately 72.6 miles of varying diameter pipeline and 38 580-horsepower field compressor units, at a total estimated cost of $6,713,000.

Petitioner states that it has been advised by Phillips Petroleum Co. (Phillips) that volumes of residue gas available to petitioner at the outlet of Phillips' plant near Douglas, Wyo., are projected to reach an average of 110,000 Mcf per day in August 1971. The proposed facilities are required to accommodate the additional raw gas volumes related to the residue gas volume projection. Petitioner states that the proposed facilities will provide a market for new gas volumes and will supplement petitioner's existing gas supply.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 8, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT,
Secretary.

[FR Doc.71-948 Filed 1-22-71;8:46 am]

[Project No. 1894]

SOUTH CAROLINA ELECTRIC AND GAS CO.

Notice of Application for New License for Constructed Project

JANUARY 14, 1971.

Public notice is hereby given that application for new license has been filed under section 15 of the Federal Power Act (16 U.S.C. 791a-825r) by South Carolina Electric and Gas Co. (correspondence to: George H. Fischer, Esq., Vice President and General Counsel, South Carolina Electric and Gas Co., Post Office Box 764, Columbia, SC 29202) for its constructed Parr Shoals Project No. 1894, located on the Broad River, in Newberry

and Fairfield Counties, S.C., in the vicinity of the cities of Winnsboro and Columbia. The original license for the project expired on June 30, 1970.

The existing project consists of (1) a 2,715-foot long dam having a 35-foot high 2,000-foot long, concrete overflow section having a crest elevation of 258.2 feet, USGS, joined on the westerly end by an earth dike about 300-feet long and on the easterly end by a 300-foot long integral powerhouse section, a 90-foot long concrete nonoverflow section, and a 25-foot earth filled section; (2) a 2,925-acre reservoir having a controlled surface elevation of 258.2 feet, USGS, extending about 8½ miles upstream; (3) a steel-framed brick powerhouse containing six generators rated at 2,480 kw. each, and provisions for two additional units; and (4) all other facilities and interests appurtenant to operation of the project.

Recreational features of the project are as follows: The 2,925-acre reservoir has a 48-mile shoreline—20 percent of which is easily accessible for recreational use from paved roads—and contains some game fish as well as other varieties. The applicant plans to construct a picnic and boat launch facility on a gently sloping area adjacent to the Parr Steam Plant for general public use and is working with the South Carolina Department of Parks, Recreation, and Tourism on possible future recreational improvement at the project.

According to the application: (1) The power generated by the project is delivered into applicant's interconnected system serving customers in 23 counties in south and southwestern South Carolina and applicant transfers power from its system to Georgia Power Co. for distribution in Georgia; (2) the estimated net investment in the project as of the termination date of the license was $1,587,000 which is less than the estimate of fair value; (3) the estimated severance damages in the event of takeover by the United States is in excess of $190,000; and (4) estimated annual taxes paid to Federal, State, and local government agencies is $164,000.

Any person desiring to be heard or to make any portest with reference to said application should on or before March 3, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[FR Doc.71-949 Filed 1-22-71;8:46 am]

NATIONAL POWER SURVEY TASK FORCE ON ENVIRONMENT

Determination of the Commission

JANUARY 15, 1971.

Pursuant to section 8 of Executive Order No. 11007, issued February 26, 1962 (27 F.R. 1875, 3 CFR 1959–1963 Comp., p. 573) and paragraph 7 of the Commission's Order Establishing the National Power Survey Task Force on Environment, issued January 28, 1970 (35 F.R. 2543, Feb. 4, 1970), the Commission hereby determines that the continued existence of the National Power Survey Task Force on Environment for an additional peroid of 6 months, from January 27, 1971 through July 28, 1971, is in the public interest.

The Secretary shall cause prompt publication of this determination to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[FR Doc.71-950 Filed 1-22-71;8:46 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regulations Temporary Regulation E-14]

PURCHASE OF PASSENGER VEHICLES

Procedures To Be Followed

1. *Purpose.* This regulation prescribes policies and procedures to be followed in purchasing new passenger vehicles covered by Interim Federal Standard No. 00122L.

2. *Effective date.* This regulation is effective upon publication in the FEDERAL REGISTER (1–23–71).

3. *Applicability.* The provisions of this regulation apply to all Federal agencies.

4. *Background.* Public Law 91–423 dated September 26, 1970, amends paragraph (1) of subsection (c) of section 5 of the Act of July 16, 1914, as amended (31 U.S.C. 638a), to allow the Administrator of General Services to (1) determine the systems and equipment required for standard passenger vehicles (sedans and station wagons) to be completely equipped for operation, and (2) purchase such additional systems and equipment as he finds to be other than customary for standard passenger motor vehicles, but appropriate for reasons of safety, efficiency, economy, or suitability for the purposes intended; the prices for which are considered not to be included in the statutory price limitation. As a consequence Interim Federal Standard No. 00122L (attachment A) has been developed. This standard identifies those standard passenger vehicles which are subject to statutory price limitation and those additional systems or equipment which may be purchased without regard to the statutory limitation.

5. *Standard passenger vehicles.* a. The items shown below are extracted from Interim Federal Standard No. 00122L and are considered to be standard passenger vehicles completely equipped for ordinary operation thus subject to the statutory maximum price limitation:

Table I, Standard Item No. 9, Specification Type I.
Table II, Standard Item No. 10, Specification Type II.
Table III, Standard Item No. 11, Specification Type III.
Table VI, Standard Item No. 15, Specification Type II.
Table VII, Standard Item No. 16, Specification Type III.

b. To facilitate requisitioning new passenger vehicles from GSA, the Interim Federal Standard includes eight tables, numbered I through VIII. The first seven tables identify specific categories of vehicles with additional systems or equipment generally associated with the listed vehicle. Table VIII reflects additional systems or equipment which might be procured with any of the vehicles covered by the other tables.

6. *Additional systems or equipment.* Those items included in tables I through VIII, other than the standard items shown in paragraph 5a, above, are considered to be additional systems or equipment for new passenger vehicles. Nothing in this regulation is to be construed as authorizing the procurement of additional systems or equipment for other than new passenger vehicles.

a. Selection of additional systems or equipment in vehicles shall be made by the requiring agency and shall be based on the need to provide for overall economy, safety, efficiency, and suitability of the vehicle for the purposes intended. The agency head or his designee involved shall so determine which vehicles require specific additional systems or equipment and among other factors shall, in making this determination, consider:

(1) Climatic conditions prevailing in the area of operations (see paragraph b, below).

(2) Affect on vehicle operational capabilities.

(3) Special terrain requirements.

(4) Availability of maintenance and service facilities.

b. Air-conditioning equipment may be authorized where the vehicle involved will operate principally in the geographic areas shown in the shaded portion of the map illustrated in attachment B to this regulation; provided that the head of the agency or his designee has determined that air-conditioning equipment is required in consideration of safety, efficiency, and economy. Where vehicles are to be operated in areas other than those in the shaded area on the map or outside of the United States, data similar to the following should be used if available, to determine if the 700 cooling degree day criterion for justification for air-conditioning such vehicles is met. The shaded area is derived by computing the number of cooling degree days of 700 or more during the 4 hottest months of the year. Cooling degree days are calculated by subtracting the base value of 65°F. from the daily average temperature (average

of high and low of daily recorded temperatures), with negative values being zero and summing these values for the 4 months. Where the 700 cooling degree day criterion for other than the shaded areas is met a statement to that effect should be included on or with the requisition. Where this data is not available or air conditioning is determined essential irrespective of whether the criterion is met, justification shall be submitted to the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C. 20406, for approval prior to procurement.

c. Additional systems or equipment requested to be purchased by GSA will be construed to have been determined essential for the effective operation of the vehicle involved by the agency head or his designee. The essentiality of such systems or equipment shall be weighed against the economic factors involved and potential benefits to be derived therefrom. Where systems or equipment other than those listed in table I through table VIII are requested, such systems or equipment shall be considered and treated as deviations pursuant to paragraph 7, below.

7. *Deviation from Interim Federal Standard 00122L.* Requisitions for passenger vehicles and systems or equipment not identified in Interim Federal Standard 00122L shall be accompanied by a supporting justification setting forth the intended use of the vehicle including a description of the terrain where such vehicle will be used. These justifications and those for air conditioning required in paragraph 6 above shall be submitted to the Commissioner, Federal Supply Service, for approval prior to procurement.

8. *Submission of requirements.* The GSA Form 1781, Motor Vehicle Requisition—Delivery Order-Invoice, revised October 1970, may be used to identify requirements by the codes as shown in Interim Federal Standard 00122L. For ease in placing requirements, the appropriate item number for passenger vehicles equipped to meet specific operational needs may be selected from tables I through VII; additional systems and equipment may be added by inserting the appropriate code for the selected items from table VIII and inserting such code(s) in the "Standard Options" portion of block 10, on the form. If a vehicle equipped as listed in tables I through VII includes items which are not required, item number 9, 19, 11, 15, or 16, whichever represents the minimum wheelbase required, should be selected, and all the additional systems or equipment required should be identified by inserting the appropriate item code(s) from table VIII in the appropriate portion of block 10 on the form.

9. *Trucks and buses.* Requirements for trucks and buses shall be requisitioned in accordance with the provisions of FPMR 101–26.501 and Interim Federal Standard 00307 or 00292, as applicable. Interim Federal Standard 00307 covers those trucks formerly identified in Interim Federal Standard 00122K.

10. *Availability of Federal Standards.* Copies of Federal Standards may be obtained from established sources of supply within each agency. When there is no such established source, purchase orders should be submitted to the General Services Administration (3FRDS), Washington, D.C. 20407.

11. *Effect on other issuances.* This regulation supersedes FPMR 101–26.501 as it applies to the policy covering type I vehicles.

12. *Expiration date.* This regulation expires October 31, 1971, unless sooner revised or superseded. Prior to this expiration date, this regulation shall be codified, as appropriate, in the permanent regulations of GSA appearing in Title 41, CFR, Public Contracts and Property Management. Comments concerning the effect or impact of this regulation on agency operations or programs should be submitted to General Services Administration (FF), Washington, D.C. 20406, no later than May 31, 1971, for consideration and possible incorporation into the permanent regulation.

ROBERT L. KUNZIG,
Administrator of General Services.

JANUARY 18, 1971.

Int. Fed. Std. No. 00122 L (GSA–FSS) September 26, 1970

Superseding Int. Fed. Std. No. 00122K (GSA–FSS) August 11, 1969 and Interim revision of Fed. Std. No. 122 July 1, 1957 (See S6.2)

INTERIM FEDERAL STANDARD

AUTOMOBILES, SEDANS AND STATION WAGONS (GASOLINE ENGINE POWERED, REAR WHEEL DRIVE)

This Interim Federal Standard was developed by Automotive Standards Division, Federal Supply Service, General Services Administration, Washington, D.C. 20406, based upon currently available technical information. It is recommended that Federal agencies use it in procurement and forward recommendations for changes to the preparing activity at the address shown above.

The General Services Administration has authorized the use of this Interim Federal Standard as a valid exception to Federal Standard No. 122, dated July 1, 1957.

S1. Purpose and scope.

S1.1 The purpose of this standard is to identify standard passenger vehicles as those being completely equipped for ordinary operations and additional systems and equipment authorized for installation on Government vehicles.

S1.2 Tables of standard passenger vehicles and additional systems and equipment:

I—Automobiles, 4-door sedans (compact).

II—Automobiles, 4-door sedans (intermediate).

III—Automobiles, 4-door sedans (regular).

IV—Automobiles, 4-door sedans (law enforcement).

V—Station wagons, 4-door (law enforcement).

VI—Station wagons, 4-door (intermediate).

VII—Station wagons, 4-door (regular).

VIII—Systems and equipment.

S1.3 *Application.* This standard is intended for the procurement of standard passenger vehicles and other vehicles equipped with additional systems and equipment as set forth in this standard and individual related specifications, procurement documents, or other authorizing directives. The criteria for authorization to purchase such systems and equipment are set forth in FPMR Temp. Reg. E–14 (see S6.1).

S2. Applicable documents.

S2.1 The following specifications, of the issues in effect on date of invitation for bids or request for proposal, form a part of this standard to the extent specified therein.

KKK–A–00811—Automobile (106- to 149-inch wheelbase).

KKK–A–00850—Automobile, station wagon (4 x 2, 106- to 123-inch wheelbase).

FSC 2310

Attachment A

FPMR Temp. Reg. E–14

(Activities outside the Federal Government may obtain copies of Federal Specifications, Standards, and Handbooks as outlined under Information in the Index of Federal Specifications and Standards and at the prices indicated in the Index. The Index, which includes cumulative monthly supplements as issued, is for sale on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(Single copies of this standard and other product specifications required by activities outside the Federal Government for bidding purposes are available without charge at the General Services Administration Regional Offices in Boston, New York, Washington, D.C., Atlanta, Chicago, Kansas City, Mo., Fort Worth, Denver, San Francisco, Los Angeles, and Seattle, Washington.

(Federal Government activities may obtain copies of Federal Specifications, Standards, and Handbooks and the Index of Federal Specifications and Standards from established distribution points in their agencies.)

S3. Standard passenger vehicles.

S3.1 The standard passenger vehicles completely equipped for operation for determining whether the cost is within any maximum price otherwise established by law are found by the Administrator of General Services to be limited to item numbers 9, 10, 11, 15 and 16 of the tables included in S3.2 and S3.3.

S3.2 *Standard passenger vehicle, sedan type. (Int. Fed. Spec. KKK–A00811.)*

TABLE I. AUTOMOBILES, 4-DOOR SEDANS
(Compact)

Item No.	9	9a	9b	9c	9d
Specification type	I	I	I	I	I
Wheelbase, min	106	106	106	106	106
Engine, G.H.P., min.*	[1] 115	[1] 115	[2] 140	[2] 190	[2] 190
Transmission, 3-sp., manual (T3)	X				
Transmission, 3-sp., automatic (T2)		X	X	X	X
Differential, special traction (D3)		X	X	X	X
Suspension, H.D. springs and shocks (H2)		X	X	X	X
Trim, vinyl upholstery (VT)		X	X	X	X
Steering, power (PS)					X
Air conditioning (AC)					X

*"NOTE": Engine codes; [1] E3; [2] E4; [3] E5.

TABLE II. AUTOMOBILES, 4-DOOR SEDANS
(Intermediate)

Item No.	10	10a	10b	10c	10d
Specification type	II	II	II	II	II
Wheelbase, min	114	114	114	114	411
Engine, G.H.P., min.*	[1] 140	[1] 140	[1] 140	[2] 190	[2]190
Transmission, 3-sp., manual (T3)	X				
Transmission, 3-sp., automatic (T2)		X	X	X	X
Differential, special traction (D3)		X	X	X	X
Rear axle ratio, mountain terrain** (D7)			X		
Suspension, H.D. springs and shocks (H2)		X	X	X	X
Trim, vinyl upholstery (VT)		X	X	X	X
Steering, power (PS)				X	X
Brakes, power (PB)				X	X
Air conditioning (AC)					X

*"NOTE": Engine codes; [1] E4; [2] E5.
**"NOTE" or equivalent transmission and axle combination.

TABLE III. AUTOMOBILES, 4-DOOR SEDANS (REGULAR)

Item No.	11	11a	11b	11c	11d
Specification type	III	III	III	III	III
Wheelbase, min	119	119	119	119	119
Engine, G.H.P., min.*	[1] 140	[1] 140	[1] 140	[2] 190	[2] 190
Transmission, 3-sp., manual (T3)	X	X			
Transmission, 3-sp., automatic (T2)			X	X	X
Differential, special traction (D3)		X	X	X	X
Rear axle ratio, mountain terrain** (D7)		X			
Suspension, H.D. springs and shocks (H2)		X	X	X	X
Trim, vinyl upholstery (VT)		X	X	X	X
Steering, power (PS)			X	X	X
Brakes, power (PB)				X	X
Air conditioning (AC)					X

*"NOTE": Engine codes; [1] E4; [2] E5.
**"NOTE" or equivalent transmission and axle combination.

TABLE IV. AUTOMOBILES, 4-DOOR SEDANS (LAW ENFORCEMENT)

Item No.	10e	10f	11e	11f	11g
Specification type	II	II	III	III	III
Wheelbase, min	114	114	119	119	119
Engine, G.H.P., min.*	[1] 190	[2] 300	[2] 245	[2] 300	[2] 300
Transmission, 3-sp., automatic (T2)	X	X	X	X	X
Differential, special traction (D3)	X	X	X	X	X
Rear axle ratio, standard (D2)	X	X	X	X	X
Suspension, H.D. springs and shocks (H2)	X	X	X	X	X
Brakes, power H.D. disc-front (PD)	X	X	X	X	X
Steering, power (PS)	X	X	X	X	X
Wheels, 15-in. dia., min. (WD)	X	X	X	X	X
Tires, Police special type (H8)	X	X	X	X	X
Seats, H.D. construction, front (H9)	X	X	X	X	X
Trim, vinyl upholstery (VT)	X	X	X	X	X
Mirror, left side remote controlled (MR)	X	X	X	X	X
Air conditioning (AC)		X			X

*"NOTE": Engine codes; [1] E5; [2] E8; [3] E7.

S3.3 Standard passenger vehicle, station wagon type. (Int. Fed. Spec. KKK-A-00650.)

TABLE V. STATION WAGONS, 4-DOOR
(Law enforcement—5 to 8 passengers)

Item No.	15e	15f	16c	16d	17b	17c
Specification type	II	II	III	III	III	III
Wheelbase, min	113	113	119	119	119	119
Engine, G.H.P., min.*	[1] 245	[2] 300	[2] 300	[2] 300	[2] 300	[2] 300
Transmission, 3-sp., automatic (T2)	X	X	X	X	X	X
Differential, special traction (D3)	X	X	X	X	X	X
Rear axle ratio, standard (D2)	X	X	X	X	X	X
Suspension, H.D. springs and shocks (H2)	X	X	X	X	X	X
Brakes, power H.D. disc-front (PD)	X	X	X	X	X	X
Steering, power (PS)	X	X	X	X	X	X
Wheels, 15-in. dia., min. (WD)	X	X	X	X	X	X
Tires, Police special type (H8)	X	X	X	X	X	X
Rows of seats, min.**	[1] 2	[1] 2	[1] 2	2	8-pass.	[2] 8-pass.
Seats, H.D. construction, front (H9)	X	X	X	X	X	X
Trim, vinyl upholstery (VT)	X	X	X	X	X	X
Mirror, left side remote controlled (MR)	X	X	X	X	X	X
Rear window air deflector (WA)	X	X	X		X	X
Air conditioning (AC)		X		X		X

*"NOTE": Engine codes; [1] E7; [2] E8. **"NOTES": Seats; [1] R2; [2] R8.

TABLE VI. STATION WAGONS, 4-DOOR
(Intermediate, 5 to 6 passengers)

Item No.	15	15a	15b	15c	15d
Specification type	II	II	II	II	II
Wheelbase, min	113	113	113	113	113
Engine, G.H.P., min.*	[1] 140	[1] 140	[2] 190	[2] 190	[2] 190
Transmission, 3-sp., manual (T3)	X				
Transmission, 3-sp., automatic (T2)		X	X	X	X
Differential, special traction (D3)		X	X	X	X
Suspension, H.D. springs and shocks (H2)		X	X	X	X
Rows of seats (R2)	2	2	2	2	2
Trim, vinyl upholstery (VT)		X	X	X	X
Rear window air deflector (WA)		X	X	X	X
Steering, power (PS)			X	X	X
Brakes, power (PB)				X	X
Air conditioning (AC)					X

*"NOTE": Engine codes; [1] E4; [2] E5.

TABLE VII. STATION WAGONS, 4-DOOR

(Regular, 6 to 8 passenger)

Item No.	16	16a	16b	17	17a
Specification type	III	III	III	III	III
Wheelbase, min.	119	119	119	119	119
Engine, G.H.P., min.*	[1] 190	[1] 190	[2] 220	[3] 245	[3] 245
Transmission, 3-sp., manual (T3)	X				
Transmission, 3-sp., automatic (T2)		X	X	X	X
Differential, special traction (D3)		X	X	X	X
Suspension, H.D. springs and shocks (H2)		X	X	X	X
Rows of seats or passenger, min.** (D7)	[1] 2	[1] 2	2	8-pass.	[2] 8-pass.
Trim, vinyl upholstery (VT)		X	X	X	X
Rear window air deflector (WA)		X	X	X	X
Steering, power (PS)		X	X	X	X
Brakes, power, disc-front (PD)				X	X
Air conditioning (AC)			X		X

*"NOTE": Engine codes; [1] E5; [2] E6; [3] E7. **"NOTE": Seats; [1] R2; [2] R8.

S3.4 Systems and equipment. Any of the systems and equipment listed below may be selected for incorporation in any of the vehicles in tables I through VII, when required to meet agencies' needs.

TABLE VIII. SYSTEMS AND EQUIPMENT

	Code
Engines:	
6 cyl., 115 G.H.P. (min.) (Applicable type I only.)	E3
6 cyl., 140 G.H.P., (min.)	E4
8 cyl., 190 G.H.P. (min.)	E5
8 cyl., 220 G.H.P. (min.)	E6
8 cyl., 245 G.H.P. (min.)	E7
8 cyl., 300 G.H.P. (min.)	E8
Transmission:	
Automatic, 3-speed	T2
Manual, 3-speed	T3
Differential:	
Special traction	D3
Rear axle ratio:	
Mountain terrain (Or equivalent transmission and axle combination.)	D7
Standard	D2
Heavy duty equipment:	
Suspension, springs and shocks	H2
Clutch (Manual transmission only.)	H3
Cooling system	H4
Electrical system Battery—65 amp. hour. Alternator—50 amp. at 12 volts.	H5
Heavy duty equipment:	
Electrical system Battery—95 amp. hour. Alternator—60 amp. at 12 volts.	H6
Tires, high speed police pursuit (Law enforcement only.)	H8
Front seats	H9
Special equipment:	
Air Conditioner (8 cyl. engines only.)	AC
Power brakes	PB
Power front disc brakes (Not applicable to type I.)	PD
Power steering	PS
Radio, AM	RA
Bumper guards (Front and rear.)	BG
Rear window defogger (Sedans only.)	RD
Undercoating	UC
Rustproofing	RP
Vinyl upholstery trim	VT
Mirror, left side, remote controlled	MR
Wheels 15" diameter (Not applicable to type I.)	WD
Special equipment:	
Rear window air deflector (Station wagons only.)	WA
2 Rows of seats (Station wagons only.)	R2
Seats, 8 passenger (Station wagons only.)	R8
Tinted glass	TA

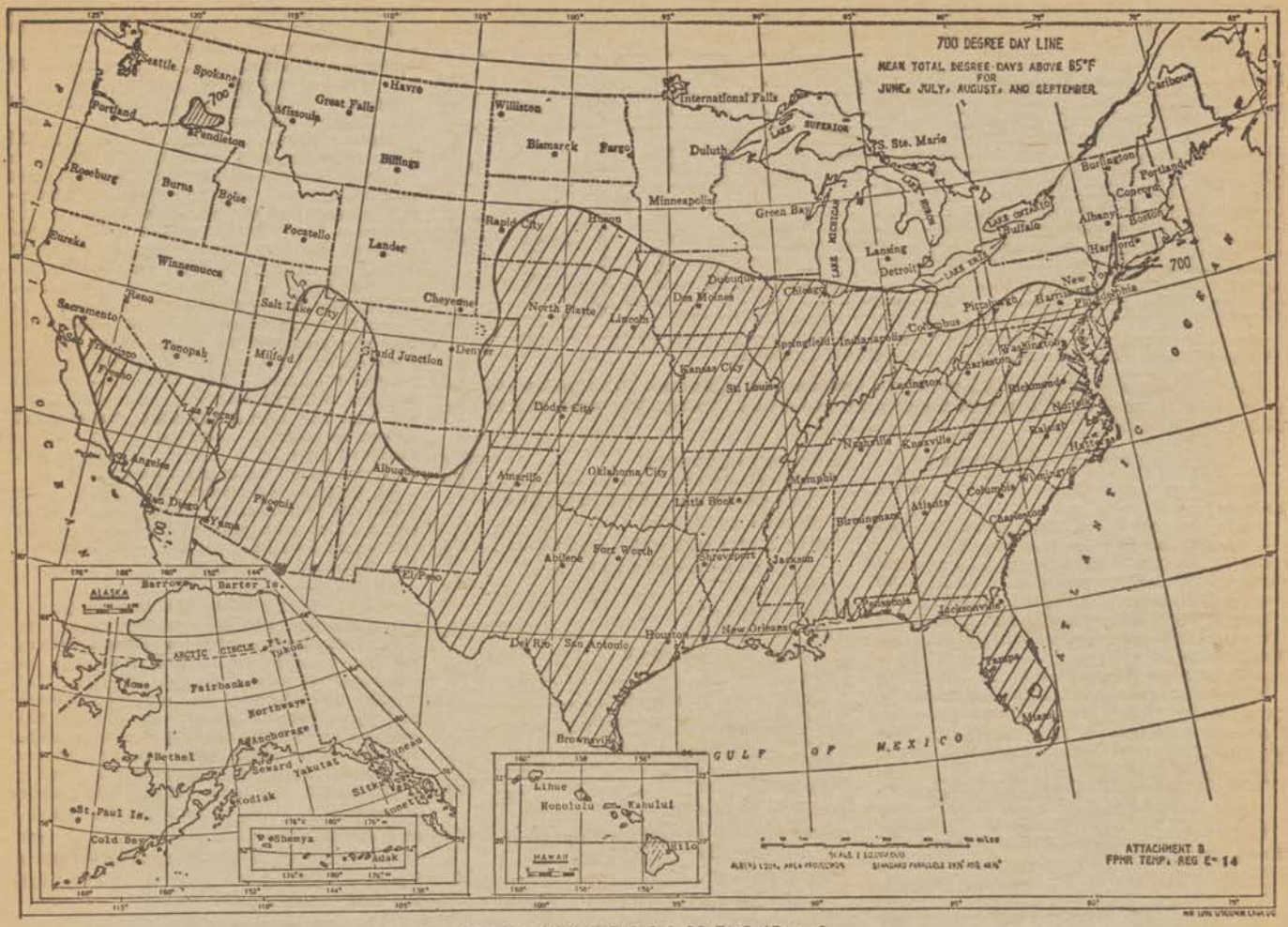
S4. Changes and amendments. When a Federal agency considers that this standard requires revision, written request for changing or adding to the standard, supported by adequate justification, shall be sent to the General Services Administration, Federal Supply Service, Automotive Standards Division, Washington, D.C. 20406, for appropriate action. The agency will be informed of action taken. New and revised information regarding this standard will be issued from time to time under an amendment to the Interim Federal Standard. These amendments, pink in color, will be numbered consecutively and will bear the date of issuance. Amendments should be retained and filed in front of the standard until such time as it is superseded by a reissue of the entire standard.

S5. Conflict with referenced specification. When the requirements stated in this standard conflict with any requirements in the referenced specification, the requirements of this standard shall apply.

S6. Notes.

S6.1 *Ordering data.* For ease in placing requirements, ordering agencies, using GSA Form 1781, may select from tables I through VII the appropriate item number for the passenger vehicle equipped to meet their specific operational needs; additional systems and equipment authorized under table VIII may be added by inserting the appropriate code(s). If a vehicle with the systems and equipment required cannot be described in that manner, the basic vehicle listed under either item 9, 10, 11, 15, or 16 may be selected and additional systems or equipment from table VIII may be added or substituted by use of the appropriate code(s), to constitute the vehicle required.

S6.2 *Supersession data.* This standard covers automobiles (sedans and station wagons). For selection of light trucks refer to Int. Fed. Std. No. 00307.



[FR Doc.71-934 Filed 1-22-71;8:45 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MALTA

Entry or Withdrawal From Warehouse for Consumption

JANUARY 19, 1971.

On June 14, 1967, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a bilateral cotton textile agreement with the Government of Malta concerning exports of cotton textiles and cotton textile products from Malta to the United States. Under this agreement the Government of Malta has undertaken to limit its exports to the United States of cotton textiles and cotton textile products to specified annual amounts. Among the provisions of the agreement are those applying specific limitations to Categories 43, 51, and 60.

On December 30, 1970, the two Governments exchanged notes amending the agreement and extending its term through December 31, 1971.

Accordingly, there is published below a letter of January 11, 1971, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs directing that the amounts of cotton textiles and cotton textile products in Categories 43, 51, and 60, produced or manufactured in Malta, which may be entered or withdrawn from warehouse for consumption in the United States for the period beginning January 1, 1971, and extending through December 31, 1971, be limited to designated levels.

This letter and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

JANUARY 11, 1971.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of June 14, 1967, as amended, between the Governments of the United States and Malta, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning January 1, 1971, and extending through December 31, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 43, 51, and 60, produced or manufactured in Malta, in excess of the following designated levels of restraint:

Category		*12-month level of restraint*
43	dozen	77,306
51	do	27,348
60	do	46,796

In carrying out this directive entries of cotton textiles and cotton textile products in Categories 43, 51, and 60, produced or manufactured in Malta, which have been exported to the United States from Malta prior to January 1, 1971, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period January 1, 1970, through December 31, 1970. In the event that the level of restraint established for such goods for that period has been exhausted by previous entries, such goods shall be subject to the directives set forth in this letter.

Cotton textile products which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of June 14, 1967, as amended, between the Governments of the United States and Malta which provide in part that within the aggregate and applicable group limit for apparel, limits on categories subject to specific limits may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Malta and with respect to imports of cotton textiles and cotton textile products from Malta have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965–69). This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROCCO C. SICILIANO,
Acting Secretary of Commerce,
Chairman, President's Cabinet
Textile Advisory Committee.

[FR Doc.71–953 Filed 1–22–71;8:47 am]

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN ROMANIA

Entry or Withdrawal From Warehouse for Consumption

JANUARY 19, 1971.

On December 31, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concluded a new comprehensive bilateral cotton textile agreement with the Government of the Socialist Republic of Romania concerning exports of cotton textiles and cotton textile products from Romania to the United States over a 5-year period beginning on January 1, 1971, and extending through December 31, 1975. Among the provisions of the agreement are those establishing an aggregate limit for the 64 Categories, and within the aggregate limit specific limits on Categories 19, 26, 47, 49, 55, 60, and 63.

Previously, the Chairman of the President's Cabinet Textile Advisory Committee issued a series of directives, pursuant to Article 3 of the Long-Term Arrangement Regarding International Trade in Cotton Textiles, limiting imports of cotton textiles and cotton textile products in various Categories from Romania. The letter published below cancels and supersedes these directives.

Accordingly, there is published below a letter of January 8, 1971, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amounts of cotton textiles in Categories 19, 26, 47, 49, 55, 60, and 63 produced or manufactured in Romania which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning January 1, 1971, and extending through December 31, 1971, be limited to the designated levels. The letter published below and the actions pursuant thereto are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

STANLEY NEHMER,
Chairman, Interagency Textile
Administrative Committee,
and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

JANUARY 8, 1971.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directives issued to you on the following dates by the Chairman, President's Cabinet Textile Advisory Committee, regarding imports of cotton textiles and cotton textile products in the following categories produced or manufactured in the Socialist Republic of Romania:

Date of P.C.T.A.C. directive	*Categories*
Mar. 30, 1970	50.
Apr. 27, 1970	55.
June 15, 1970	53.
Aug. 12, 1970	34.
Sept. 25, 1970	19 and 47.
Oct. 30, 1970	63.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of December 31, 1970, between the Governments of the United States and the Socialist Republic of Romania, and in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning January 1, 1971, and extending through December 31, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 19, 26, 47, 49, 55, 60, and 63, produced or manufactured in the Socialist Republic of Romania in excess of the following levels of restraint:

Category	*12-month levels of restraint* [1]
19	1,100,000 square yards.
26	2,200,000 square yards (of which not more than 500,000 square yards may be duck fabric [2]).
47	40,566 dozen.
49	21,538 dozen.
55	13,725 dozen.
60	19,246 dozen.
63	347,826 pounds.

Cotton textiles in Categories 19, 26, 47, 49, 55, 60, and 63 produced or manufactured in the Socialist Republic of Romania and which have been exported prior to January 1, 1971, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 31, 1970, between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that within the aggregate limit, the limitations on Categories 19, 26, 47, 49, 55, 60, and 63 may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above, will be made to you by letter from the Chairman of the Interagency Textile Administrative Committee.

[1] These levels have not been adjusted to reflect any entries made on or after Jan. 1, 1971.

[2] The T.S.U.S.A. Nos. for duck fabric are:
320.--01 through 04, 06, 08
321.--01 through 04, 06, 08
322.--01 through 04, 06, 08
326.--01 through 04, 06, 08
327.--01 through 04, 06, 08
328.--01 through 04, 06, 08

Cotton textile products which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textiles and cotton textile products from the Socialist Republic of Romania have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965–69). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

ROCCO C. SICILIANO,
Acting Secretary of Commerce,
Chairman, President's Cabinet
Textile Advisory Committee.

[FR Doc.71–952 Filed 1–22–71;8:47 am]

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN POLAND

Entry or Withdrawal From Warehouse for Consumption

JANUARY 19, 1971.

On March 7, 1970, there was published in the FEDERAL REGISTER (35 F.R. 4273) a letter dated February 28, 1970, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in Poland and exported to the United States during the 12-month period beginning March 1, 1970. As set forth in that letter, the levels of restraint are subject to adjustment pursuant to the bilateral cotton textile agreement of March 15, 1967, as amended, between the Governments of the United States and Poland, which provides that within the aggregate and applicable group limits, specific limits on categories may be exceeded by not more than five (5) percent. The aforementioned letter also provided that any such adjustment in the levels of restraint would be made to the Commissioner of Customs by letter from the Chairman of the Interagency Textile Administrative Committee.

Accordingly, at the request of the Government of Poland and pursuant to the bilateral agreement referred to above, there is published below a letter of January 11, 1971, from the Chairman of the Interagency Textile Administrative Committee to the Commissioner of Customs adjusting the level of restraint applicable to cotton textile products in Category 42 for the 12-month period which began on March 1, 1970.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee and Deputy Assistant Secretary for Resources.

ASSISTANT SECRETARY OF COMMERCE

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C. 20226.

JANUARY 11, 1971.

DEAR MR. COMMISSIONER: On February 28, 1970, the Chairman of the President's Cabinet Textile Advisory Committee, directed you to prohibt entry of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in Poland, and exported to the United States on or after March 1, 1970, in excess of the designated levels of restraint. The Chairman further advised you that in the event that there were any adjustments[1] in the levels of restraint you would be so informed by letter from the Chairman of the Interagency Textile Administrative Committee.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral cotton textile agreement of March 15, 1967, as amended, between the Governments of the United States and Poland, in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, and under the terms of the aforementioned directive of February 28, 1970, the level of restraint provided in that directive for cotton textile products in Category 42, produced or manufactured in Poland and exported from Poland to the United States for the period beginning March 1, 1970, and extending through February 28, 1971, is hereby amended, effective as soon as possible, to be 31,500 dozen.

The actions taken with respect to the Government of Poland and with respect to imports of cotton textiles and cotton textile products from Poland have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965–69). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[1] The term "adjustments" refers to those provisions of the bilateral cotton textile agreement of Mar. 15, 1967, between the Governments of the United States and Poland which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; and for administrative arrangements.

[FR Doc.71-954 Filed 1-22-71;8:47 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (71-1)]

JAMES A. CHAMBERLIN

Certification

In accordance with the authority contained in title 18, U.S. Code, section 207, I hereby certify that in my judgment the national interest would be served by permitting Mr. James A. Chamberlin, a former employee of the Manned Spacecraft Center, Houston, Tex., to act as a representative of the McDonnell-Douglas Astronautics Co., and to appear personally before NASA in connection with matters relating to the NASA Space Shuttle Program, notwithstanding the restrictions on the activities of former U.S. Government employees, as set forth in title 18, U.S. Code, sections 207(a) and 207(b).

Effective date: January 20, 1971.

GEORGE M. LOW,
Acting Administrator.

[FR Doc.71-977 Filed 1-22-71;8:48 am]

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

3 CFR

Page

PROCLAMATIONS:

3548 (see Proc. 4026) 5
3558 (see Proc. 4026) 5
3562 (see Proc. 4026) 5
3597 (see Proc. 4026) 5
3709 (see Proc. 4026) 5
3790 (see Proc. 4026) 5
3822 (see Proc. 4026) 5
3856 (see Proc. 4026) 5
3870 (see Proc. 4026) 5
3884 (see Proc. 4026) 5
4026 5

EXECUTIVE ORDERS:

10427 (revoked by EO 11575) 37
10737 (revoked by EO 11575) 37
10973 (superseded in part by EO 11579) 969
11248 (amended by EO 11581) 1027
11495 (revoked by EO 11575) 37
11575 37
11576 347
11577 349
11578 683
11579 969
11580 971
11581 1027

5 CFR

213 11, 39, 261, 315, 353, 600, 1029, 1087
531 1029
2410 315

7 CFR

0 413
20 40
53 1029
215 1030
225 1030
270 261
301 139, 261
354 823
401 262
722 11, 40
725 11
728 1030
730 139, 140, 900
812 140
814 141
815 11
905 40, 41
906 143
907 144, 213, 543, 973
909 1087
910 41, 315, 685, 901
930 1088
966 41
971 421
1421 41, 42
1804 1095
1831 1099
1871 1110
1890k 1131
1890l 1131

PROPOSED RULES:

68 545
81 984
907 22
908 22
987 112
1001 921

7 CFR—Continued

Page

PROPOSED RULES—Continued

1002 921
1004 921
1006 921
1007 921
1011 921
1012 921
1013 921
1015 921
1030 921
1032 921
1033 921
1036 921
1040 921
1043 921
1044 921
1046 921
1049 921
1050 921
1060 921
1061 370, 921
1062 921
1063 921
1064 921
1065 921
1068 921
1069 921
1070 921
1071 921
1073 921
1075 921
1076 921
1078 921
1079 921
1090 921
1094 921
1096 921
1097 921
1098 921
1099 921
1101 921, 984
1102 921
1103 921
1104 921
1106 921
1108 921
1120 921
1121 921
1124 921
1125 921
1126 921
1127 921
1128 921
1129 921
1130 921
1131 921
1132 921
1133 921
1134 921
1136 921
1137 921
1138 921

8 CFR

3 316
100 316
103 316
212 317
234 317
242 317
243 317

9 CFR

Page

2 1132
76 74, 144, 265, 318, 353, 493, 599, 776, 899, 1038
78 493
97 1038
201 1039, 1132

10 CFR

2 828
30 145
40 145
50 828
70 146
170 146

12 CFR

213 1040
224 973
226 1040
545 901
563 902
740 902

PROPOSED RULES:

545 942

13 CFR

121 43, 213, 315, 421, 1043

PROPOSED RULES:

121 294

14 CFR

1 43
37 15
39 15, 214, 421, 422, 773, 904, 974, 1135
71 44, 147, 214–216, 319, 494, 773, 774, 904, 905, 974
73 44
75 44, 494
91 43
95 823
97 147, 353, 600, 775, 1044
121 45
135 45
208 1135
224 1135
1204 600

PROPOSED RULES:

25 829
37 23
39 931
71 165, 224, 225, 323–325, 556, 782, 783, 932, 995
73 435, 833
75 165
91 325

15 CFR

50 905
1000 975

PROPOSED RULES:

7 113
1020 547
1025 547
1030 547
1035 547

15 CFR—Continued

PROPOSED RULES—Continued

16 CFR

PROPOSED RULES:

17 CFR

18 CFR

PROPOSED RULES:

19 CFR

PROPOSED RULES:

20 CFR

PROPOSED RULES:

21 CFR

21 CFR—Continued

PROPOSED RULES:

23 CFR

24 CFR

PROPOSED RULES:

26 CFR

PROPOSED RULES:

28 CFR

29 CFR

PROPOSED RULES:

30 CFR

PROPOSED RULES:

31 CFR

32 CFR

32A CFR

PROPOSED RULES:

33 CFR

PROPOSED RULES:

35 CFR

36 CFR

PROPOSED RULES:

37 CFR

PROPOSED RULES:

38 CFR

39 CFR

PROPOSED RULES:

41 CFR

42 CFR

43 CFR

43 CFR—Continued

45 CFR

46 CFR

47 CFR

49 CFR

49 CFR—Continued

50 CFR

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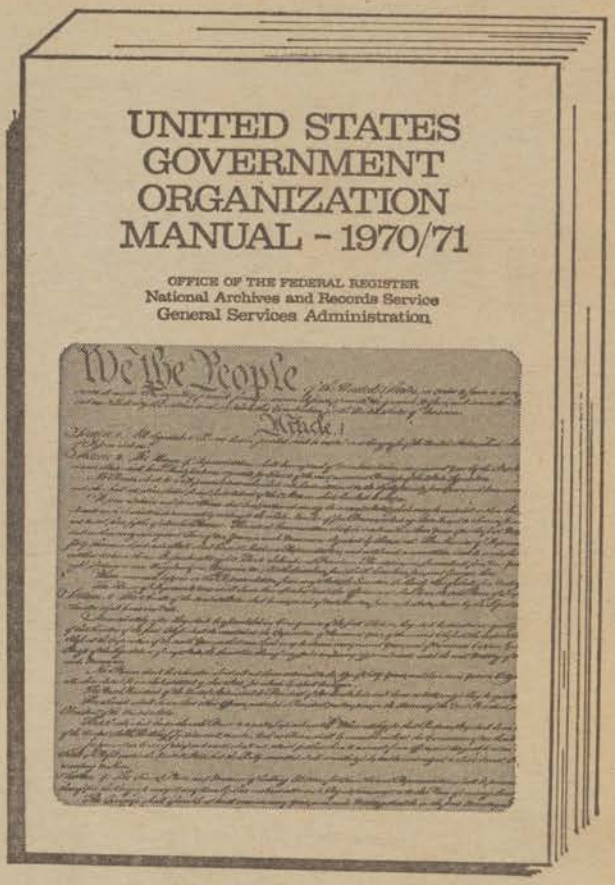

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