

# federal register

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Monday  
December 19, 1983

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## Selected Subjects

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Surface Mining Reclamation and Enforcement Office
- Credit Unions**  
National Credit Union Administration
- Educational Study Programs**  
Education Department
- Food Grades and Standards**  
Food and Drug Administration
- Forest and Forest Products**  
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- Housing**  
Farmers Home Administration
- Imports**  
Foreign Agricultural Service
- Income Taxes**  
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- Medicaid**  
Health Care Financing Administration
- Railroad Employees**  
Railroad Retirement Board
- Railroads**  
Interstate Commerce Commission
- Securities**  
Securities and Exchange Commission
- Veterans**  
Small Business Administration



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# Presidential Documents

Title 3—

Proclamation 5137 of December 14, 1983

The President

American Heart Month, 1984

By the President of the United States of America

## A Proclamation

Diseases of the heart and blood vessels are among the Nation's most important health problems. This year one and one-half million Americans will suffer a heart attack, and nearly one million people will die from diseases of the heart. The economic drain on our resources in the form of direct medical costs and lost wages and production will exceed \$60 billion.

Since 1948, the United States Public Health Service and a private voluntary organization, the American Heart Association, have joined in a concerted effort to combat cardiovascular diseases. These organizations have channeled their efforts and resources to reduce heart disease through such measures as prevention, diagnosis, and treatment; training of new research workers and clinicians; support for community service programs; and public education.

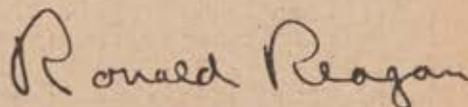
It is gratifying to note that mortality rates for heart disease and stroke are declining. Deaths from coronary heart disease have declined by more than 25 percent since 1972, while those from stroke have decreased by more than 40 percent. In large part, this favorable trend is the result of more Americans being aware of the personal risk factors for heart disease and adopting healthier life styles by changing their habits in such critical areas as smoking, cholesterol intake, exercise, and in controlling high blood pressure.

At the same time, science and medicine have made great strides in the past few years in technology to diagnose and treat diseases of the heart and blood vessels. The dedicated scientists and clinicians who labor to uncover the hidden causes of heart disease also deserve recognition. Lifesaving technology now in the hands of physicians has brought about more certain diagnoses of these diseases as well as the means to treat heart conditions that in the near past were considered beyond effective treatment.

Recognizing the need for all Americans to help in the continuing battle against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February, 1984, as American Heart Month. I invite the Governors of the States, the appropriate officials of all other areas subject to the jurisdiction of the United States and the American people to join with me in reaffirming our commitment to the search for new ways to prevent, detect, and control cardiovascular disease in all of its forms.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of Dec., in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.



Experimental Observations

Faint, illegible text covering the majority of the page, likely bleed-through from the reverse side.

*[Faint signature or handwritten text]*

## Presidential Documents

Proclamation 5138 of December 14, 1983

### National Day of Prayer, 1984

By the President of the United States of America

#### A Proclamation

In 1787, a then-elderly Benjamin Franklin said to George Washington as he presided over the Constitutional Convention, "I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth, that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid?"

With these words, Mr. Franklin called upon the Convention to open each day with prayer, and from the birth of our Republic, prayer has been vital to the whole fabric of American life.

As we crossed and settled a continent, built a Nation in freedom, and endured war and critical struggles to become the leader of the Free World and a sentinel of liberty, we repeatedly turned to our Maker for strength and guidance in achieving the awesome tasks before us.

From the poignancy of General Washington's legendary prayer in the snow at Valley Forge to the dangerous times in which we live today, our leaders and the people of this Nation have called upon Divine Providence and trusted in God's wisdom to guide us through the challenges we have faced as a people and a Nation.

Whether at the landing of our forebears in New England and Virginia, the ordeal of the Revolutionary War, the stormy days of binding the thirteen colonies into one country, the Civil War, or other moments of trial over the years, we have turned to God for His help. As we are told in II Chronicles 7:14: "If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then I will hear from heaven and will forgive their sin, and will heal their land."

By Joint Resolution of the Congress approved April 17, 1952, the recognition of a particular day set aside each year as a National Day of Prayer has become part of our unification as a great Nation. This is a day on which the people of the United States are invited to turn to God in prayer and meditation in places of worship, in groups, and as individuals. Since 1952, each President has proclaimed annually a National Day of Prayer, resuming the tradition started by the Continental Congress.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Thursday, May 3, 1984, as National Day of Prayer. I call upon the citizens of this great Nation to gather together on that

day in homes and places of worship to pray, each after his or her own manner, for unity of the hearts of all mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of Dec., in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 83-33621

Filed 12-15-83; 10:00 am]

Billing code 3195-01-M

# Rules and Regulations

Federal Register

Vol. 48, No. 244

Monday, December 19, 1983

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 706 and 707

#### Conversions; Deletion of Regulations Regarding Charter Conversions

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** Part 706, Conversion from Federal to State Credit Unions, and Part 707 Conversion from State to Federal Credit Unions, are deleted in their entirety from the National Credit Union Administration Rules and Regulations. The provisions of these regulations were essentially duplicative of the conversion requirements delineated in section 125 of the Federal Credit Union Act. (12 U.S.C. 1771)

**EFFECTIVE DATE:** January 12, 1984.

**FOR FURTHER INFORMATION CONTACT:** Gordon Sickler, Division of Examination, Department of Supervision and Examination, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456, telephone (202) 357-1065.

**SUPPLEMENTARY INFORMATION:** On September 7, 1983, the National Credit Union Administration (NCUA) Board approved issuing for public comment a proposal to delete Parts 706 and 707 from the NCUA Rules and Regulations. These Parts contain provisions relative to credit unions converting from a Federal charter to a State charter and vice-versa. The proposal to request comments on deleting the regulations resulted from a staff review which concluded that the regulations were essentially duplicative of the conversion provisions in the Federal Credit Union

Act and, thus, were unnecessary. The request for comments was published in the Federal Register on September 16, 1983 [FR 48-181 p. 41600] with a 60 day comment period.

Comments were received from one (1) national credit union trade association, three (3) state credit union leagues and six (6) Federal credit unions. The national trade association, the three state leagues, and four of the Federal credit union commenters concurred with the proposal and supported deletion of the regulatory provisions. One additional Federal credit union commenter apparently concurred with deletion. However, these comments were not totally clear and specific regarding the proposal. The remaining commenter (another Federal credit union) concurred that the regulations were repetitive of requirements in the Federal Credit Union Act. However, this commenter suggested as an alternative to total deletion, a revised abbreviated regulation to serve as a reference to the applicable Section of the Federal Credit Union Act. In view of the majority of commenters in concurrence with the deletion proposal and the ready availability of printed copies of the FCU Act and the NCUA guidelines publication, "Credit Union Conversion Procedure and Conversion Forms," (NCUA 4411) the NCUA Board does not consider the additional referencing necessary. Thus, the suggested alternative has not been adopted.

#### Regulatory Flexibility Analysis

These changes (deletion of regulatory provisions) will not have a significant impact on a substantial number of small credit unions (less than \$1 million in assets) because there is no substantive change in conversion procedures. Therefore, a Regulatory Flexibility Analysis is not required, 5 U.S.C. 605(b).

#### List of Subjects in 12 CFR Parts 706 and 707

Credit unions.

By the National Credit Union Administration Board on the 7th day of December, 1983.

Rosemary Brady,  
Secretary of the Board.

Authority: 12 U.S.C. 1706(a), 1771.

## PARTS 706 AND 707—[REMOVED]

Accordingly, 12 CFR Parts 706 and 707 are removed effective January 12, 1984.

[FR Doc. 83-33343 Filed 12-16-83; 8:45 am]

BILLING CODE 7535-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 122

#### Business Loans; Veterans Loan Program

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** These regulations outline the standards and guidelines for a loan program for disabled veterans and for veterans of the Vietnam era to implement the new direct financial assistance authority as outlined in the Veterans Small Business Loan Act of 1981 (Pub. L. 97-72) 95 Stat. 1055, and the Second Continuing Resolution of 1983 (Pub. L. 97-377), 96 Stat. 1871.

**EFFECTIVE DATE:** December 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this final rule may be directed to: Everett E. Shell, Chief, Program Operations Branch, Office of Business Loans (202) 653-6470.

**SUPPLEMENTARY INFORMATION:** SBA received no written responses to the proposed rule which was published in the Federal Register on August 15, 1983 (48 FR 36825).

SBA has determined that this final rule does not constitute a major rule for the purpose of Executive Order 12291. In this regard we are certain that the annual effect of this rule on the economy will be less than \$100 million. In addition this final rule will not result in a major increase in costs or price for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, for the purpose of compliance with the Regulatory Flexibility Act, Pub. L. 96-354, SBA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small

entities. Our own estimate, based on budgetary resources available for the program, indicates that we may expect to make two hundred and fifty loans averaging \$100,000, or a total of \$25 million available to a relatively small number of applicants.

This rule will implement the specific statutory authority contained in Pub. L. 97-72 and Pub. L. 97-377. This rule would be applicable to any small business meeting the specialized eligibility criteria, but it still contemplates that loan applicants be subject to all other relevant eligibility criteria for receipt of SBA assistance.

Finally, this final regulation would not impose any special reporting or record keeping requirements on the small businesses that avail themselves of this assistance.

#### List of Subjects in 13 CFR Part 122

Loan programs/business, Small business.

### PART 122—BUSINESS LOANS

Accordingly, pursuant to the authority in Section 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq.) Part 122, Chapter I, Title 13 of the Code of Federal Regulations, is amended by adding a new Subpart E to read as follows:

#### Subpart E—Veterans Loan Program

- Sec.  
122.501 Statutory provisions.  
122.502 Applications of other SBA regulations.  
122.503 Eligibility.  
122.504 Single loan benefit.

Authority: Sec. 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq.).

#### § 122.501 Statutory provisions.

The statutory authorities for these loans appear in Pub. L. 97-377 (95 Stat. 1055), Pub. L. 97-72 (96 Stat. 1871), and Sec. 7(a) of the Small Business Act (15 U.S.C. 636(a)).

#### § 122.502 Applicability of other SBA Regulations.

Except as noted herein, the other provisions of Part 120 and Part 122 of this chapter apply to the veterans loan program. Specifically, the eligibility provisions in § 120.2 apply; the applicable maturity and interest rules in § 102.3 apply, except that maximum maturity of a loan may not exceed 25 years. Similarly, other rules in § 120.3 pertaining to fees and insurance are applicable. Pertinent provisions in Part 122 apply including §§ 122.13 to 122.25, inclusive. Private sector financing and SBA guaranteed loans must be

unavailable before a direct loan can be considered.

#### § 122.503 Eligibility.

(a) *Eligible veterans.* Veterans eligible for this program include the following:

(1) Vietnam-era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30%, or a veteran of any era who was discharged for disability.

(b) *Ownership percentage.* The small business concern must be owned (a minimum of 51%) by one or more eligible veterans.

(c) *Management requirements.* Management and daily operation of the business must be directed by one or more of the veteran owners of the applicant whose veteran status was used to qualify for the loan.

#### § 122.504 Single loan benefit.

The veteran status of an individual may only be used once to qualify for an SBA loan. After having received an SBA loan with eligibility based on veteran status, second or refunding loans can be considered only under the regular business loan program or based on the ownership by other eligible veterans (51% minimum ownership by persons of unused eligibility). Individuals who formerly received SBA loans with eligibility based on veteran status have used their loan benefit and may not be considered for the veterans loans program.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: November 14, 1983.

James C. Sanders,  
Administrator.

[FR Doc. 83-33520 Filed 12-16-83; 8:45 am]

BILLING CODE 8025-01-M

### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 83-ANM-11]

#### Alteration of the Newport, OR, and the San Francisco, CA, Additional Control Areas

#### Correction

In FR Doc. 83-30682 beginning on page 51903 in the issue of Tuesday, November 15, 1983, make the following correction:

On page 51904, first column, under § 71.163, San Francisco, CA, fifth line,

"long. 124° 20' 30" W." should have read "long. 124° 29' 30" W."

BILLING CODE 1505-10-M

#### 14 CFR Part 73

[Airspace Docket No. 83-ASO-30]

#### Realignment and Establishment of Restricted Areas; Cape Kennedy, FL

#### Correction

In FR Doc. 83-31300 beginning on page 52698 in the issue of Tuesday, November 22, 1983, make the following correction:

On page 52699, middle column, under § 73.29, R-2924, in the fifth line, "lat. 28° 27'45"N." should have read "lat. 28° 27'54"N."

BILLING CODE 1505-01-M

### DEPARTMENT OF THE TREASURY

#### Customs Service

#### 19 CFR Parts 4 and 10

[T.D. 83-214]

#### Customs Regulations Amendments Relating to the Vessel Documentation Act; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

**SUMMARY:** This document corrects an error in a document which clarified the documentation procedure for U.S. vessels engaged in various trades and defined clearly the types of supplies and equipment for vessels which are exempt from the payment of Customs duties and internal revenue taxes. The document was published in the *Federal Register* on Thursday, October 13, 1983 (48 FR 46510).

**FOR FURTHER INFORMATION CONTACT:** Harold Singer, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

#### SUPPLEMENTARY INFORMATION:

#### Background

In FR Doc. 83-27827, appearing at page 46510, in the issue of October 13, 1983, on page 46511, item 5, under the heading for Part 4, Customs Regulations (19 CFR Part 4), § 4.9(a) was erroneously amended. Specifically, two corrections in § 4.9(a) must be made. At the end of the second sentence, the correct footnote reference is 19, not 20. Between the third and fourth sentences, the following sentence and footnote

reference must be inserted: "The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with section 435, Tariff Act of 1930 (19 U.S.C. 1435)."<sup>20</sup>

Thus, § 4.9(a), as amended, should read as follows:

#### § 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place shall be in accordance with section 434, Tariff Act of 1930 (19 U.S.C. 1434).<sup>19</sup> The term "American vessel" means a vessel of the United States (see § 4.0(b)) as well as a vessel entitled to be documented (see § 4.0(c)) except for its size when arriving by sea (if less than 5 net tons and arriving otherwise than by sea, see Part 123 of this chapter). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with section 435, Tariff Act of 1930 (19 U.S.C. 1435).<sup>20</sup> The required oath on entry shall be executed on Customs Form 1300.

Dated: December 12, 1983.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 83-33597 Filed 12-16-83; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Parts 1301 and 1311

#### Fees for Registration and Reregistration

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

**SUMMARY:** This is a final rule adjusting the current fee schedule for DEA registration to adequately recover the Federal costs involved in the registration and control of manufacturers, distributors and dispensers of controlled substances.

**EFFECTIVE DATE:** December 19, 1983. The new fee schedule will be in effect for all new applications postmarked on June 1, 1984 or later and all renewals of registrations with an expiration date of June 30, 1984 or later.

**FOR FURTHER INFORMATION CONTACT:** Joseph Trincellito, Special Assistant to the Deputy Assistant Administrator,

Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633-1172.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act of 1970 (CSA) requires the annual registration of any person who manufactures, distributes or dispenses a controlled substance. Section 301 of the CSA (21 U.S.C. 821) authorizes the charging of "reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances." The fee schedule under the CSA was established in 1971 and has not changed since then.

In 1982, the General Accounting Office conducted a review of the annual registration fees charged by DEA. GAO's findings were published in their report entitled, "Comprehensive Approach Needed to Help Control Prescription Drug Abuse," dated October 29, 1982 (GAO/GGD-83-2). It was GAO's finding that DEA's existing fee structure did not adequately recover the costs incurred by the Government. The standards for "user charges" set forth in the Office of Management and Budget (OMB) Circular A-25 are applicable to DEA registration fees. The application of these standards to DEA registration fee schedules clearly indicated that an increase in the fee schedule was appropriate.

Following the GAO report, a Notice of Proposed Rulemaking was published in the Federal Register on April 5, 1983 (48 FR 14640); proposing a new registration fee schedule as follows:

Manufacturer.....	\$250
Distributor.....	125
Importer.....	125
Exporter.....	125
Narcotic Treatment Program.....	20
Researcher.....	20
Analytical Lab.....	20
Retail Pharmacy.....	20
Hospital/Clinic.....	20
Practitioner.....	20
Teaching Institution.....	20

DEA received eight comments during the comment period. Two of these came from large organizations which represent a substantial number of DEA registrants. In a letter dated June 3, 1983, the American Medical Association's Executive Vice President, James M. Simmons, M.D., commented: "We believe the fee schedule proposed by DEA is reasonable. We commend the DEA for proposing a reasonable fee schedule in relation to the costs of performing its important drug abuse control activities." In a letter dated June 1, 1983, Charles J. Farho, Chairman of

the American Veterinary Medical Association's (AVMA) Drug Availability Committee, commented that the AVMA did "accept the concept that such a procedure should be self supporting." The remaining six comments were by individual registrants on their own behalf. Four of these could be considered negative. Two agreed that an increase may be necessary but considered the proposed fee increase "excessive" and two pharmacies considered any increases in business costs undesirable.

#### List of Subjects

##### 21 CFR Part 1301

Administrative practice and procedure, Drug Traffic control, Security measures.

##### 21 CFR Part 1311

Administrative practice and procedure, Drug traffic control, Exports, Imports.

The authority citation for 21 CFR Part 1301 is as follows:

(Secs. 301, 302, 303, 304, 501(b), 505, 507, 84 Stat. 1253, 1254, 1255, 1256, 1271, 1272, 1273 (21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877)

The authority citation for 21 CFR Part 1311 is as follows:

(Secs. 1006, 1007, 1008, 501(b), 84 Stat. 1288, 1289, 1271 (21 U.S.C. 956, 957, 958, 871(b))

After reviewing the comments on the proposed fee schedule, it has been determined that the proposed fee schedule should be implemented.

#### PARTS 1301 AND 1311—[AMENDED]

Accordingly, 21 CFR 1301.11 and 21 CFR 1311.11 are revised to read as follows:

##### § 1301.11 Fee amounts.

(a) For each registration or reregistration to manufacture controlled substances, the registrant shall pay a fee of \$250.

(b) For each registration or reregistration to distribute controlled substances, the registrant shall pay a fee of \$125.

(c) For each registration or reregistration to dispense, or to conduct research or instructional activities with, controlled substances listed in Schedule II through V, the registrant shall pay a fee of \$20.

(d) For each registration or reregistration to conduct research or instructional activities with a controlled substance listed in Schedule I, the registrant shall pay a fee of \$20.

(e) For each registration or reregistration to conduct chemical

analysis with controlled substances listed in any schedule, the registrant shall pay a fee of \$20.

(f) For each registration or reregistration to engage in a narcotic treatment program, including a compounding, the registrant shall pay a fee of \$20.

#### § 1311.11 Fee amounts.

(a) For each registration or reregistration to import controlled substances, the registrant shall pay a fee of \$125.

(b) For each registration or reregistration to export controlled substances, the registrant shall pay a fee of \$125.

The total economic impact of the proposed fee schedule is not expected to exceed \$10 million annually.

Accordingly, the Deputy Assistant Administrator for Diversion Control has determined that this rule is "non-major" for purposes of Executive Order 12291.

Pursuant to Executive Order 12291, Section 3(c)(3) and 3(e)(2)(B), this final rule has been reviewed by the Office of Management and Budget.

The vast majority of DEA registrants are considered to be small entities whose interests are to be considered under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, these registrants are dominantly practitioners and pharmacies whose individual registration fees will be increased by \$15.00 annually. Accordingly, pursuant to 5 U.S.C. 605(b), the Deputy Assistant Administrator has concluded that the fee increase will have no significant impact upon small entities.

Dated: December 8, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 83-33619 Filed 12-16-83; 8:45 am]

BILLING CODE 4410-09-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 33

[OA-FRL 2490-2]

### Procurement Under Assistance Agreements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Deviation from rule.

**SUMMARY:** Under the authority of 40 CFR 30.1004, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 33.510 and 33.515 for certain activities conducted under

the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund). This class deviation permits recipients to use the same architectural or engineering (A/E) firm that conducted any or all of the remedial investigation, feasibility study, or design to perform follow-on remedial investigation, feasibility study, design or engineering activities without going through the public notice (§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreement and must have followed all of the Part 33 requirements when they conducted the initial procurement of the A/E.

We are publishing the class deviation with the publication of this notice.

**EFFECTIVE DATE:** The class deviation was effective on the date signed.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M St. SW, Washington D.C. 20460, (202) 382-5296.

**SUPPLEMENTARY INFORMATION:** 40 CFR 33.510 requires recipients to give adequate public notice for competitively awarded procurements and 40 CFR 33.515 requires recipients to evaluate all proposals submitted in response to the request for proposals.

Many recipients of Superfund cooperative agreements want to retain the architectural and engineering (A/E) firm that provided remedial investigation, feasibility study, or design services for follow-on remedial investigation, feasibility study, design, or engineering services during the construction phase of remedial actions. In cases where the initial subagreement did not include the subsequent A/E services, or where State policies do not permit procurement for activities where funding is not guaranteed, EPA's procurement regulations (40 CFR Part 33) require that the recipient readvertise and reevaluate subagreement awards. These recipients could only use the same A/E by following the public notice and evaluation requirements in 40 CFR 33.510 and 33.515, or by obtaining an individual deviation from the Director, Grants Administration Division.

This class deviation permits recipients of Superfund remedial cooperative agreements to use the A/E procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design to perform follow-on RI, FS, design, or engineering activities without going through the public notice

(§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreements and must have followed all of the requirements in Part 33 (including the public notice and evaluation required in 40 CFR § 33.510 and § 33.515) for the initial procurement of the A/E, or EPA must have conducted the initial procurement.

This class deviation does not unduly restrict open and free competition. States will be required to ensure adequate competition for the initial procurement of A/E firms. EPA has previously approved this approach in the wastewater treatment construction grants program under Title II of the Clean Water Act, where its use has not adversely affected competition.

(41 U.S.C. 501; 33 U.S.C. 1251; 42 U.S.C. 7401, 6901, 300f, 9601; 7 U.S.C. 136, 15 U.S.C. 2601)

Dated November 17, 1983.

Concur:

Seymour D. Greenstone,  
Acting Assistant Administrator for  
Administration and Management Resources  
(PM-208).

Dated: November 8, 1983.

Concur:

Jack W. McGraw,  
Acting Assistant Administrator for Solid  
Waste and Emergency Response (WH-  
562A).6

### Office of Administration

November 18, 1983.

### Memorandum

To: Regional Administrators, Regions I-X; Chief, Grants Operations Branch (PM-216).

From: Harvey G. Pippen, Jr., Director, Grants Administration Division (PM-216).

Subject: Class Deviation From 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) provides financial assistance for planning and implementation of remedial actions to clean up uncontrolled hazardous waste sites posing significant threats to public health and the environment.

Many recipients of Superfund cooperative agreements want to retain the architectural and engineering (A/E) firm that provided remedial investigation or feasibility study services for engineering planning and

design activities or engineering services during the construction phase of remedial actions. In cases where the initial subagreement did not include the subsequent A/E services for the construction phase, or where State policies do not permit procurement for activities where funding is not guaranteed, EPA's procurement regulations (40 CFR Part 33) require that the recipient readvertise and reevaluate subagreement awards. These recipients could only use the same A/E by following the public notice and evaluation requirements in 40 CFR 33.510 and 33.515, or by obtaining an individual deviation from the Director, Grants Administration Division.

#### Background

The Superfund remedial action process is made up of four separate but related activities. These activities are part of a comprehensive approach required by CERCLA and the National Oil and Hazardous Substance Contingency Plan (NCP, 40 CFR Part 300) to mitigate actual or potential threats to public health and the environment. These activities are: (1) Remedial investigations (RI) to determine the type and extent of contamination, (2) feasibility studies (FS) to evaluate alternative actions and recommend a cost-effective remedy, (3) design of the remedy; and (4) construction of the remedy. Each of these activities requires the services of A/E firms qualified in hazardous waste management.

Continuity from one activity to another is needed to allow a timely and cost-effective response at Superfund sites. This class deviation saves time by eliminating the requirement for separate procurement actions between the various activities and provides continuity in A/E services. In addition, the time required to conduct subsequent activities would be reduced since the A/E firm would be familiar with the site conditions and will have had the opportunity to develop any specific expertise required to deal with the problems.

The Office of Emergency and Remedial Response issued guidance on February 22, 1983, discussing the need for continuity in providing A/E services in a particular project. That guidance recommends that States prepare site specific subagreements with firms to provide A/E services for all four of the activities listed above. EPA encourages this practice at new Superfund sites and expects this procedure to minimize future problems. This practice, however, is allowed by Part 33 only when the subagreement includes all four

activities. Therefore, this class deviation is necessary to allow Superfund recipients to use the same A/E firm in all four of the Superfund activities when the original subagreement does not include all four activities. This class deviation applies in the following cases:

1. Where States conducted RI and/or FS activities without EPA assistance and are now requesting funding for the follow-on activities;
2. Where States conduct RI and/or FS activities with EPA assistance under a cooperative agreement, but did not include follow-on activities in the original RI and/or FS subagreement; and
3. Where EPA conducted RI, FS or design activities and the State, under a cooperative agreement, assumes responsibility for the subsequent phases of remedial responses using EPA's A/E contractors.

We estimate that 100 to 200 procurement actions over the next three years may fall into the above categories. The exact number will depend on whether recipients follow the guidance referenced above and the number of sites where the recipient rather than EPA conducts the remedial activities. We anticipate that this class deviation will save three to six months on the remedial response at many sites.

This class deviation does not unduly restrict open and free competition. States will be required to ensure adequate competition for the initial procurement of A/E firms. EPA has previously approved this approach in the wastewater treatment construction grants program under Title II of the Clean Water Act, where its use has not adversely affected competition.

#### Action

I am approving a deviation to permit recipients of Superfund remedial action cooperative agreements to use the A/E procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design to perform follow-on RI, FS, design or engineering activities without going through the public notice (§ 33.510) and evaluation procedures (§ 33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreements and must have followed all of the requirements in Part 33 (including the public notice and evaluation required in 40 CFR § 33.510 and § 33.515) for the initial procurement of the A/E, or EPA must have conducted the initial procurement.

The class deviation applies in the following cases:

1. Where the recipient conducted the RI and/or FS activities without EPA

assistance but is using EPA funds for follow-on activities, the recipient may use the A/E for subsequent work provided the recipient attests that it:

- (a) Complied with the following requirements when it selected the A/E:
  - (i) Section 33.230 "Competition," and
  - (ii) Section 33.250 (a)(1) and (a)(2) and (a)(3), and (b) "Documentation," and
  - (iii) Sections 33.505 through 33.525 "Competitive negotiation," and
- (b) Complied with the following:
  - (i) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and
  - (ii) None of the recipient's officers, employees, or agents solicited or accepted gratuities, favors, or anything of monetary value from contractors or other parties to subagreements.

(c) If the recipient uses the procedures in this paragraph to retain an architect or engineer, any EPA funded subagreement between the A/E and the recipient must meet all of the other provisions in Part 33.

2. Where the recipient conducted the RI, FS, or design activities with EPA assistance but the original subagreement did not include the follow-on activities and the recipient wishes to use the same A/E for follow-on Superfund remedial activities, the recipient does not have to follow the public notice and evaluation requirements in 33.510 and 33.515, for subsequent activities provided the recipient follows the rest of the procedures in 40 CFR Part 33.

3. Where EPA conducted the RI, FS, or design activities under a direct procurement contract but the recipient will assume the responsibility for subsequent phases of remedial response under a cooperative agreement, the recipient may use, with EPA's approval, EPA's A/E contractor without further public notice or evaluation provided the recipient follows the rest of the Part 33 requirements to award the subagreement.

4. Where the recipient awards a subagreement after the effective date of this class deviation, the initial request for proposals or bid solicitations must clearly state the possibility that the firm or individual selected could be awarded a subagreement for follow-on services.

Dated: November 17, 1983.

Concur:

Seymour D. Greenstone,  
Acting Assistant Administrator for  
Administration and Resources Management  
(PM-208).

concur:

Dated: November 8, 1983.

Jack W. McGraw,

Acting Assistant Administrator for Solid  
Waste and Emergency Response (WH-562A).

(FR Doc. 83-33488 Filed 12-10-83; 8:45 am)

BILLING CODE 6560-50-M

**GENERAL SERVICES  
ADMINISTRATION****41 CFR Ch. 1**

[FPR Temp. Reg. 75]

**Procedures for Publicizing Proposed  
Procurements and Processing  
Noncompetitive Procurements***Correction*

In FR Doc. 83-28440 beginning on page 48462 in the issue of Wednesday, October 19, 1983, make the following corrections:

1. On page 48464, in the second column, in § 1-1.1003-6(b)(3), in the fourth and fifth lines, "notice to intent to place" should read "notice of intent to place".

2. On page 48466, in the second column, in § 1-3.107(c)(4), in the first line, "published" should read "publicized"; and in the third line, "resource" should read "response".

3. On the same page, in the third column, in § 1-3.108(e)(4), in the second line, "of" should read "or".

BILLING CODE 1505-01-M

**41 CFR Parts 101-11, 101-35, and  
101-36**

[FPMR Temp. Reg. B-6 and F-500]

**Management of Information  
Processing Resources; Temporary  
Regulation***Correction*

In FR Doc. 83-28963 beginning on page 49236 in the issue of Tuesday, October 25, 1983, make the following corrections:

1. On page 49236, in the first column, in the subject heading, in the third line, "Registration" should read "Regulation".

2. On the same page, in the SUMMARY paragraph, in the tenth line, "Systems" should read "System".

3. On the same page, in the DATES section, the comments due date should read "January 23, 1984".

BILLING CODE 1505-01-M

**41 CFR Part 101-36**

[FPMR Amdt. F-58]

**Hardware and Federal  
Telecommunications Standards***Correction*

In FR Doc. 83-29946 beginning on page 50890 in the issue of Friday, November 4, 1983, make the following correction on page 50891: In the second column, the number in the section heading now reading "§ 101-36.1304-5" should read "§ 101.36.1304-15".

BILLING CODE 1505-01-M

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES****Health Care Financing Administration****42 CFR Part 447****Medicaid Program; Payment for Long-  
Term Care Facility Services and  
Inpatient Hospital Services**

**AGENCY:** Health Care Financing  
Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** On September 30, 1981, we published interim final regulations concerning Medicaid payment for long-term care (LTC) facility services and inpatient hospital services. The major purpose of the regulations was to implement amendments to the Medicaid law that are designed to increase States' flexibility in setting payment rates for those services, while keeping Federal reporting and other administrative requirements to the minimum necessary to assure proper accountability. Although the regulations were effective upon publication, we provided a 90-day period for public comment.

Based on the comments received during the public comment period, and on the operating experience we have gained since the regulations were published, we have concluded that further changes in those regulations are needed. This document sets forth the changes, and explains our reasons for making them.

**EFFECTIVE DATE:** January 18, 1984.

**FOR FURTHER INFORMATION CONTACT:**  
Richard Lyman, (301) 594-9286.

**SUPPLEMENTARY INFORMATION:**

**I. Background***A. Legislative History*

In 1980 and 1981, Congress enacted legislation (section 962 of the Omnibus Reconciliation Act of 1980, Pub. L. 96-499, and section 2173 of the Omnibus

Budget Reconciliation Act of 1981, Pub. L. 97-35) that made significant changes in the provisions of the Medicaid law dealing with reimbursement for long-term care (LTC) facility and inpatient hospital services. This legislation:

1. Removed the requirements in the previous law, that State agencies pay for LTC facility services on a reasonable cost-related basis and for inpatient hospital services on a reasonable cost basis, in accordance with methods and standards developed by the State and approved by the Secretary;

2. Added the requirement that State agencies pay for both types of services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the cost that efficiently and economically operated facilities must incur to provide care in conformity with applicable State and Federal laws, regulations and quality and safety standards; and

3. Specified that the methods and standards for payments of inpatient hospital services must take into account certain other factors, as explained in the preamble to the interim final regulations published on September 30, 1981 (46 FR 47964.)

These provisions on Medicaid reimbursement for hospitals, skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are now contained in section 1902(a)(13)(A) of the Social Security Act, 42 U.S.C. 1369a(a)(13)(A). The preamble to the 1981 regulations describes section 962 and section 2173, and the statutory developments that preceded them, in greater detail. For further discussion of these matters, the reader should refer to that document.

*B. Summary of Major Features of  
Regulations*

In general the September 30, 1981 interim final regulations implemented these statutes by providing for:

- Elimination of all requirements in current regulations that relate to Medicaid payment for LTC facility services on a reasonable cost-related basis, or inpatient hospital services on a reasonable cost basis.

- A requirement that States find, and submit assurances to HCFA, that their rates meet the statutory requirements, and also submit related information on the estimated short-term, and to the extent feasible, long-term impact of the rates on availability of services, type of care furnished, the extent of provider participation, and the degree to which costs are covered in hospitals that serve

a disproportionate number of low income patients with special needs.

- A requirement that States resubmit assurances regarding rates before the end of the calendar quarter that includes the date on which the rate has been in effect for one year, or whenever they wish to revise significantly their methods of determining rates, whichever is earlier.

- A requirement that States submit assurances that they have provided the public with the opportunity to review and comment on significant changes in their methods for determining payment rates before the changes are implemented.

- A requirement that States develop appeals procedures that will give individual facilities an opportunity to seek administrative review of their payment rates.

- Establishment of uniform cost reporting and periodic audit requirements, as required by the statute.

- A requirement that the agency may not pay more in the aggregate for inpatient hospital or LTC facility services than the amount that would be paid for these services under the Medicare principles of reimbursement.

- A requirement that inpatient hospital payment rates may not exceed customary charges. (The requirement does not apply to public providers that provide services free or at a nominal charge.)

#### C. Implementation of Sections 962 and 2173

The legislative history of Sections 962 and 2173 indicates Congressional intent to keep requirements on States to the minimum level necessary to assure proper accountability, and not to burden States and facilities with unnecessary paperwork requirements. (Refer to the Senate Finance Committee Report on H.R. 934 (S. Rep. No. 96-471) and the Senate Budget Committee Report on S. 1377 (S. Rep. No. 97-139).)

Congress reasoned that the Federal regulations implementing the prior "reasonable cost-related" and "reasonable cost" statutory requirements relied too greatly on the Medicare reimbursement principles. The application of the Medicare principles of reimbursement was seen as inherently inflationary, and not entirely satisfactory.

In our view, the expectation of Congress, therefore, was that we develop regulations that would increase States' discretion in setting payment rates, and would employ a Federal review process which would be less administratively burdensome.

During the period between the enactment of section 962 and the publication of the interim final regulations on September 30, 1981, we issued interim guidelines and procedures that generally followed the approach later adopted in the regulations. We determined that approved LTC plans in effect prior to October 1, 1980 meet the new section 962 requirements.

After the enactment of section 2173, we similarly determined that the inpatient hospital plans that were previously approved under the reasonable cost criteria of section 1902(a)(13)(D) of the Medicaid law in effect before enactment of Pub. L. 97-35, could continue in operation. These plans meet the requirements of section 1902(a)(13)(A) of the amended Act. This is also true of those plans that adopted the Medicare principles of reimbursement. Our determination was based on the fact that the earlier plans were subjected to a more rigorous statutory standard both substantively and in terms of Federal review than the current statute requires, and are therefore acceptable.

#### II. Summary of Revised Regulations

As a result of our review of the comments we received during the public comment period, as discussed in section III of this preamble, and of experience we have gained during the first year of operation under the revised regulations, we are making several changes in the procedural requirements States must comply with to obtain acceptance of their assurances, and approval of amendments to their State plans for setting payment rates. We believe these revised regulations will simplify the process by reducing unnecessary reporting and administrative burdens on States, and clarify our policy in areas such as the nature of HCFA review, State flexibility, appeal rights for individual providers, and the upper limit requirements. The major changes we are making are as follows:

- *Submittal of assurances.* Under current regulations, the Medicaid agency is required to submit assurances annually, or whenever the agency wishes to make a significant change in its methods and standards for determining payment rates, whichever is earlier. This requirement is being clarified to provide that States must continue to make an annual finding that the general requirements of the regulations are met. However, under these final rules, States will not be required to provide such assurances or related information to HCFA annually. Assurances and related information are

required when States are proposing to make significant changes in their payment methods and standards. States need not provide HCFA with assurances regarding the annual findings. Instead HCFA will monitor such documentation as part of its program oversight activities.

- *Other requirements.* We have also shifted the current requirements for an appeals process, uniform cost reporting, periodic audits, public notice and an upper limit based on Medicare principles of reimbursement to the other requirements section and have made them the subject of assurances.

- *Effective date of revised rates.* The effective date of revised payment rates is clarified to require compliance with the general regulations in 45 CFR Part 201. These regulations address the effective dates of State plan amendments in general, and govern the submittal and implementation of State plans and plan amendments. These regulations also specify that a State plan will be effective no earlier than the first day of the calendar quarter in which an approvable plan amendment is submitted for approval. In order to be approvable under these provisions, the plan amendment must be accompanied by the required assurances.

- *Upper limits and appeals.* We have revised the Medicare upper limit requirement by removing the suggested method of determining if the upper limit requirement has been met thus emphasizing that States may develop their own calculations for estimating what Medicare would have paid for a service. The appeals requirement now specifies that States must act on requested appeals within a reasonable period of time.

- *Other revisions.* We have made a number of other minor revisions to promote consistency with other program requirements, clarify the procedural requirements, and explain the nature of HCFA review.

#### III. Public Comments

During the public comment period on the September 30, 1981 interim final rules, we received 33 comments. These included 17 responses from industry representatives, 13 from State or local government organizations, and 3 from groups concerned with Medicaid recipients' interests. The following section of this preamble discusses concerns raised in these comments.

##### A. General Requirements

Most of the comments we received on this section of the regulations suggested Federal definitions of key terms,

particularly those pertaining to the additional requirements applicable only for inpatient hospital services (i.e., inappropriate level of care, disproportionate numbers of low income patients with special needs, and reasonable access). In many cases, the commentors offered their recommendations for definitions that could be adopted. These definitions were often stated in quantifiable terms.

**1. Disproportionate Number of Low Income Patients.** One commentor would define "a hospital with a disproportionate number of low income patients with special needs" as an institution in which 35 percent or more of patients are either Medicaid eligible or medically indigent. Another commentor would define such hospitals as institutions with a large volume of Medicaid patients without health insurance who are sicker than the average Medicaid patient as measured by case mix.

As a general matter, we agree that many of the suggested definitions and interpretations for these terms would be acceptable if implemented by a State. However, we do not agree that greater specificity is necessary under the regulation. The regulations are intended to allow States greater flexibility in developing more cost effective payment methods. We believe that imposing a specific definition for "disproportionate numbers \* \* \*" would be contrary to this intent.

Moreover, we wish to point out that we have considered developing Federal definitions or standards for many of the terms used in the statutory language, such as disproportionate numbers and efficiently and economically operated facilities. However, in recognition of diverse facility characteristics, differences in State demographics and varying needs for services, we do not believe it is possible to develop national definitions that would be effective and equitable. For a number of reasons States are in a better position to establish methods and standards that adequately account for the provisions of the law. For example, States are more informed of individual providers' circumstances, and they can be more responsive to individual needs when dealing with a limited number of providers.

One commentor suggested the regulations require States to state explicitly how their methods and standards take into account the situation of hospitals with a disproportionate number of low income patients. We believe that the regulatory requirement (42 CFR 447.255(b)) for submission of information regarding

degree to which the costs of hospitals that serve a disproportionate number of low income patients with special needs are covered by the State's payment rate, coupled with the general State plan requirements (42 CFR 447.252) which require that States set forth their methods and standards used to set payment rates, adequately address the Congressional requirements that the States take such matters into account without being unduly burdensome.

In connection with the comments suggesting Federal definition of terms in this section, several commentors expressed concern over the effect of the regulations on public hospitals. They requested special occupancy standards for public hospitals, waiver of the provision where there is a nursing home bed shortage in the area but excess public hospital beds available to cope with high emergency room admissions, and special treatment of public hospitals whose costs are part of a multi-hospital system.

Congress has specified that States must take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs. The requirement reflects a special concern of Congress that public hospitals and teaching hospitals serving a large Medicaid and low income population are particularly dependent on and vulnerable to changes in Medicaid reimbursement. Therefore, to the extent hospitals are in this special situation, a State must consider this when developing its rates. Establishment of the requirements proposed by the commentors would be inconsistent with the Congressional intent that States, rather than the Federal government, establish the method by which States set their rates under the law.

**2. Reimbursement for Inappropriate Level of Care.** Commentors also requested a Federal definition of the rate to be paid for inappropriate levels of care, that is, paying hospitals for SNF and ICF care furnished to hospital patients, at rates lower than for hospital care. It was recommended that one nationwide and uniform definition be used for both Medicare and Medicaid. In conjunction with this comment, it was suggested that the lowest rate for such services be at the estimated adjusted statewide average per diem rate paid to hospital based SNFs under the State plan. Other commentors took an opposite view, and requested that we not apply Medicare rules to inappropriate level of care requirements, or that the regulations explicitly provide States the authority to develop their own conditions under which a lower

rate will be paid. Another commentor suggested the requirement for a lower rate for the inappropriate days be waived where there is a shortage of nursing home beds in an area.

In general response, we should point out that the primary objective of Congress in enacting what is now section 1902(a)(13)(A) of the Act, (as enacted by sections 962 and 2173) was to increase the State's administrative and fiscal discretion to set payment rates, by keeping the requirements of the regulations and other instructions to a minimum level necessary to assure proper accountability. As currently presented, the regulations implement what is mandated by the legislation. However, in light of the confusion that has arisen over the relationship of the Medicaid policy to the Medicare policy in this area, we believe a brief discussion clarifying our policy under this provision would be helpful.

Section 1902(a)(13)(A) of the Act requires States to assure that their methods and standards provide for payment to hospitals at lower rates for Medicaid recipients who are receiving an inappropriate level of care. The statutory language references "in the case of hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1861(v)(1)(G), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1861(v)(1)(G) \* \* \*". This reference to section 1861(v)(1)(G) of the Act (42 U.S.C. 1395x(v)(1)(G)) in the regulation has prompted much confusion, as well as numerous inquiries regarding the requirements of States to provide payment for inappropriate levels of care under Medicaid.

We want to clarify that States have the same discretion in developing methods and standards for these lower payments as is provided to the States in setting payment rates for inpatient hospital or LTC facility services, as long as the methods are consistent with 1861(v)(1)(G) of the Act. However, the State must find and assure HCFA that the methods and standards provide for appropriate payment rates for hospital patients receiving these services.

We have also received inquiries concerning the relationship between the excess beds rules under section 1861(v)(1)(G) and the Medicaid requirements. The Department has not yet issued final regulations under section 1861(v)(1)(G). The final regulation will include the criteria for excess beds under Medicare. Until those regulations are published in final form,

we are unable to provide definitive guidance in this area. In the interim, States may submit their own criteria for excess beds as long as these criteria are consistent with the statute [1861(v)(1)(G) of the Act].

Finally one commentator suggested that we change the language in the regulations from "level of care actually received" to "level of care determined to be medically necessary." In developing the procedural regulations implementing section 1902(a)(13)(A), we were striving to keep the regulatory requirements parallel to the statute. The statutory language uses "level of care actually received". Therefore, we do not believe it is appropriate to adopt this recommendation.

**3. Reasonable Access.** One commentator suggested that reasonable access be defined to mean that services are readily available to Medicaid eligible and other medically indigent people within the catchment area of the hospital. The commentator suggested that reasonable travel time mean a system with no delays that would be life threatening to a potential patient in the catchment area of the hospital. In response, we would note that in implementing the statute, we have not imposed any new restrictions on the States beyond what is applicable under current law and regulations. We have chosen this approach so that States are not compelled to meet unnecessary requirements. We believe to do otherwise would be contrary to the legislative intent of section 1902(a)(13)(A).

**4. Same Requirements for LTC Facility and Inpatient Hospital Payments.** We received opposing comments concerning the applicability of the general requirements for payment to LTC facilities. One commentator opposed the approach we selected, i.e., the use of the same basic requirements for both LTC facilities and hospitals, by stating that such rules would be ineffective because the needs and services of hospitals are vastly different from long-term care facilities. Conversely, another commentator suggested extending the availability of the separate requirement for hospitals with a disproportionate number of low income patients to LTC facilities.

In response to the first comment, section 1902(a)(13)(A) of the Act as enacted by section 2173 (which extended the changes made by section 962 of Pub. L. 96-499 to apply to hospital as well as LTC facility reimbursement) requires that we adopt the same basic implementation approach with respect to payments for both services. In addition, the use of the same approach

to implement both aspects of section 1902(a)(13)(A) will simplify the administration of the Medicaid program for both the Federal and State Governments, and will make it easier for hospitals and facilities to understand Federal policy in this area. However, we wish to point out that although we have used the same general procedural approach to implement the statute for both types of provisions, States need not use the same methods and standards for determining payment rates for inpatient hospital services and LTC facility services. The regulations permit States to account for the different costs that must be experienced by both types of providers in developing their payment rates.

In response to the second comment, we believe that the provisions pertaining to disproportionate numbers of low income patients are explicitly limited to hospitals. If Congress had intended for that requirement to be applied to LTC facility payments as well, the legislation would have specified it.

#### *B. State Plan Requirements*

We received a number of comments from industry representatives suggesting that the regulations require State definition of allowable costs to include all expenses necessary to meet certification, licensing and health standards. While we believe that these costs necessarily must be reimbursed as part of a reasonable and adequate rate paid to an efficiently and economically operated facility, we do not feel it is necessary to add a separate requirement to specify this. We believe the allowability of these costs is embodied in the statutory requirement as set forth in the regulations at 42 CFR 447.252(a) that the payment rates must be "reasonable and adequate to meet the cost which must be incurred by efficiently and economically operated providers in order to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards".

A suggestion was made that either the regulations or the State plan should define the term "efficiently and economically operated facility". Since the Medicaid program is administered by the State, we believe the States are in a better position to define or determine what is "efficient and economical" for its Medicaid program. More importantly, we believe any Federal attempt to impose specific definitions would unnecessarily intrude upon the legislatively mandated flexibility provided to States under the statute.

We have also decided not to mandate that the State plan specifically provide a definition of an "efficiently and economically operated facility". The reason for this is that the State's methods and standards implicitly act as the State's definition of an efficiently and economically operated facility, and no explicit definition is necessary. Moreover, States are best equipped to determine what is an efficient and economically operated facility for its Medicaid program, and a prescriptive Federal definition would be contrary to State flexibility. The term "efficiently and economically operated facility" is one that has not been precisely defined by the Congress, the Department, or the health care industry.

This decision is also consistent with our approach used for other key statutory terms such as disproportionate numbers of low income patients with special needs and reasonable and adequate payment rates, in which we have not provided definitions. The use of a Federal definition would infringe on the discretion of the State. With regard to the latter term "reasonable and adequate," it should be noted that the term is not a precise number, but rather a rate which falls within a range of what could be considered reasonable and adequate.

A suggestion was made that the regulations require States to furnish a list of those items and services that are mandated, and for which the proposed payment rates are found to be reasonable and adequate. It was also recommended that there be a separate definition of routine and ancillary services. We believe the State plan must be comprehensive enough so that all parties subject to the reimbursement rates understand which items and services are paid for through the rates. However, regulations concerning mandated items and services already exist under Subpart E of 42 CFR Part 440, which also includes other administrative requirements. Further, covered items and services are listed in section 3 of the State plan. We believe these provisions are adequate to assure that parties subject to reimbursement rates are made aware of items and services included in the rate. However, we would consider issuing additional administrative instructions in this regard if we determine they are necessary.

#### *C. Public Notice Requirements*

Several commentators suggested that the term "significant proposed change" be defined in the regulation. We had considered restoring the 1 percent threshold as a trigger mechanism for

public notice, as was suggested by several commentors. (This threshold was included in 42 CFR 447.205 before that regulation was revised by the final rule published at 46 FR 58677 on December 3, 1981.) However, we rejected this change for a number of reasons.

First, we do not believe it is necessary to set an explicit expenditure threshold above which public notice is required, and that doing so may deprive affected providers an opportunity for public comment. For example, a State may make major changes in its methods and standards that may affect a significant portion of providers but still not result in a total program expenditure increase or decrease of 1 percent. We believe that a requirement for all significant changes to be published will be more effective in guaranteeing public notice of all major changes in methods and standards for setting payment rates.

Section 42 CFR 447.205 contains rules governing public notice of changes in Statewide methods and standards for setting payment rates. That regulation provides for public notice of any "significant proposed change" in methods and standards for setting payment rates. In order to consolidate relevant notice requirements in one section, we are deleting the specific institutional reimbursement public notice requirements in 42 CFR 447.254 and are amending the general public notice requirements in 42 CFR 447.205 to also apply to the procedures for approval of State payment rates for inpatient hospital and LTC services.

A number of commentors expressed concern regarding the timing of public notice. They were concerned that there may not be adequate advance public notice of significant changes in the payment rate.

We can understand that a mandatory waiting period prior to implementing significant changes in payment methods and standards may be advantageous to providers in making financial plans. However, for several reasons, we do not believe it is necessary to include a prescribed waiting period in these regulations. First, many States have their own procedures that allow for comment periods and delayed effective dates. The length of the comment period and delay in effective date varies from State to State. The formal waiting periods contained in State procedures are adequate to fulfill the intent of a public notice and comment regulation. Second, a prescribed waiting period may be too restrictive. States often complained about the 60-day waiting period that was part of the previous public notice requirements, contending

that it did not provide for timely responses to legislatively mandated changes. We believe that requiring that a public notice must appear before the effective date of the proposed changes, without prescribing a definite waiting period, is sufficient.

One commentor suggested that the public notice requirements be extended to include notifying the public when a State plan amendment is submitted for review. We believe the Federal public notice requirements (42 CFR 447.205) and the various State administrative procedures are sufficient to allow proper notification of the public. Therefore, we see no need to revise the regulation as suggested.

One commentor contended that the public notice requirements are burdensome and are not supported by statute. It was suggested that the regulation be amended to permit any State having an administrative procedures act to follow the public notice provisions of its own statute. Although there is no specific statutory requirement that mandates public notice, we believe sections 1902(a)(4)(A) and 1902(a)(30) authorize the requirement. Moreover, we do not agree that the Federal public notice requirement is unduly burdensome. Administrative procedures act requirements vary considerably. In the interest of assuring that the rates established are adequate, we believe Federal requirements concerning public notice are appropriate.

#### *D. Submittal of Assurances and Related Information*

A number of comments from industry representatives suggested that the regulations need to be more explicit as to HCFA criteria for review of State assurances. They suggested we develop minimum threshold criteria such as requiring the State to reimburse at least 108 percent of the mean amount of incurred cost, include an allowance for inflation, etc. Further, the industry recommended that the regulations specifically require States to identify the findings and background data used in supporting assurances, such as requiring States to specify the age of data, the techniques used to trend data forward, the methodology for inflation adjustments, data array of provider payment rates vs. actual costs, identification of providers not receiving full costs, and an explanation of why providers not receiving full costs are not considered efficiently and economically operated.

We can appreciate the desire for explicit criteria for Federal review of States' methods and standards for

establishing payment rates. However, we feel that such a list of criteria may be viewed as imposing Federal standards for payment rates, an effect that would be contrary to the legislative intent. Section 1902(a)(13)(A) places the responsibility for the development of reasonable and adequate payment rates with the States. Thus, the system of assurances has been developed where States must make the necessary findings and assure HCFA that they have done so. States are, of course, free to use threshold criteria such as those suggested by the commentors, if they desire.

Also, we are not convinced that the reporting of more background data would necessarily aid the Federal review. To require the background data suggested would impose upon States a significant reporting burden that is not required by law. Because of the explicit statutory responsibility of the State agency to make its finding that the methods and standards result in reasonable and adequate payment rates, we doubt that requiring further detailed reporting would add substantially to our evaluation of States' assurances. For example, the inclusion or absence of trending data or inflation adjustments would not in itself necessarily be indicative of reasonable and adequate rates. Moreover, HCFA may request additional background information in order to complete review of an individual State's assurances and the appropriate data would be made available as needed.

In response to the concern regarding a State explanation as to why a provider is not considered an efficiently and economically operated facility, we would note that HCFA regulations at 42 CFR 447.258 include a requirement that the State agency must provide an appeals procedure to address the expressed concern of those individual facilities who believe they are efficient and economical but are being adversely affected by the State's payment rates. (The regulations now being adopted move this requirement to § 447.253(b). See section V.E. of this preamble.)

Another commentor suggested that as a means of monitoring payment rates, the regulations require States to report quarterly on the number of Medicaid recipients awaiting beds in nursing homes. We believe that this additional reporting burden would not in itself be indicative of unreasonable and inadequate reimbursement rates since other factors, such as bed supply and volume of patients, can also influence the number of Medicaid recipients

awaiting nursing home beds. Therefore, we are not requiring such a report.

A number of industry commentators requested that we require States to make available for public disclosure all information supporting the States' findings. We do not believe it is necessary to specifically require in these regulations that States release this information. The Medicaid regulations at 42 CFR 431.17 and 431.18(f) already require the State agency to maintain records and make program policy materials available to individuals and providers who request them. We believe these regulations should adequately assure public disclosure of States' findings.

It should be noted that many industry representatives also requested that the regulations explicitly state that rates should not be based solely on budget considerations. We are not implementing this suggestion because we believe that this would not be an objective standard upon which to measure the reasonableness or adequacy of a State's payment rates. That is, payment rates can be reasonable and adequate even though the rates are determined from methods and standards that are based on State budgetary considerations.

The statute requires that the States make a finding that their payment rates are reasonable and adequate to meet the costs of efficiently and economically operated facilities. Consequently, States may use budget considerations in setting their payment rates as long as the State can make a finding that the resulting rates are reasonable and adequate. Our general approach in implementing the legislation is to not impose on States requirements that are not contained in the statute. We do not believe it is necessary to prohibit States from using budgetary or fiscal considerations in developing payment rates in order to satisfactorily implement the statutory requirements.

One State agency contended that the impact information required by the regulation does not relate to efficiency and economy, is generally not substantial enough for HCFA to make an informed evaluation, and could create an unwarranted administrative burden on the State agencies. Therefore, the commentator suggested that the requirement be dropped. In response, we would note that the Federal review, responsibility focuses on the assurances, which attest to the fact that States' findings do indeed indicate that the payment rates are reasonable and adequate. The Federal responsibility is not, as the commentator implies, to evaluate the accuracy of the State's

determination of efficient and economical operations, but rather to judge whether the assurances are satisfactory.

A comment from one State suggested that the regulations requiring States to submit information about revised payment rates should be clarified by replacing the reference to an "average rate" with reference to an "estimated average rate." We agree that estimated average rate more accurately reflects our intent to assure that the statutory requirements are met and the program is not adversely affected. We do not wish to burden States with the determination of actual average rates when this calculation would be difficult. Therefore, we are revising the language accordingly.

A number of States requested that the regulations be modified to make submission of a "quantified" estimate of the effect of the payment rates optional rather than mandatory because of the difficulty inherent in establishing projected impact information when making these calculations. We are revising 42 CFR 447.255(b) to delete the word quantified. Although related information is still required, we have eliminated the requirement to submit a quantitative estimate because we recognize the tentative nature of projections of future impact, and the need to accept estimates that may or may not contain quantitative data. Of course, if a State wishes to submit this information to further enhance its assurances, it may do so.

#### *E. Procedures for HCFA Action on Assurances*

Specific comments on the procedures for HCFA action on assurances primarily concerned three issues. These are: (1) Increasing the time period for HCFA review to 90 days, (2) Including authority for allowing HCFA to withdraw approval of the plan, and, (3) Requiring HCFA approval before States are allowed to implement changes.

In light of other changes being made in the final regulations, such as removal of the resubmittal of annual assurances and incorporation of the regulations on State plans in Title 45 of the CFR, we have reconsidered our previous position regarding the time period for HCFA review. While we will continue to provide prompt action on State submittals, we are revising the regulations to permit 90 days for HCFA review. This is in keeping with the statutory requirements of sections 1116(a)(1), (b), and 1915(f) of the Social Security Act, which provide 90 days for HCFA review of State plan amendments. We believe this change

will promote consistency between HCFA action on State plan amendments concerning inpatient hospital and LTC facility payment, and other State plan amendments. In addition, the increased time will assist HCFA in the review of State plans where additional information is requested.

Under the general requirements for State medical assistance plans at 45 CFR 201.3(c), HCFA already has the authority to determine that a previously approved plan no longer meets the requirements for approval. Under 45 CFR 201.6(a), this action could arise from an unapproved change in the approved State plan, failure of the State to change its plan to conform to a new Federal requirement, failure to operate in conformity with the approved State plan, or failure of the State to operate its plan in compliance with a Federal requirement, whether or not the plan has been amended to conform to the requirement. Therefore, it is not necessary to restate this authority in these regulations.

Further, we are clarifying the effective date provision in 42 CFR 447.256(b) in order to maintain consistency with 45 CFR 201.3(g). The current State plan amendment provision on the effective dates in 45 CFR 201.3(g) is appropriate to govern effective dates for reimbursement related amendments as it does for any other plan amendments. Under that regulation a State plan can be effective no earlier than the first day of the calendar quarter in which an approvable amendment is submitted to HCFA. In order to be considered approvable, both the State plan amendment and, where required, the assurances must be submitted during the same calendar quarter in order to meet the requirement cited above.

In addition to the comments submitted during the public comment period, we have received a number of other inquiries from State agencies and other interested parties, during the first year of operation under the interim final regulations. These inquiries concerned the relationship between acceptance of a State's assurances and approval of the related plan amendment and the basis on which State plan amendments are approved when they are not "significant" enough to require submittal of assurances and related information.

HCFA approval of a State plan amendment, in accordance with section 1902(b) of the Act, is based on HCFA's acceptance of satisfactory assurances pursuant to section 1902(a)(13)(A), and the implementing regulations. For example, we would want to determine that: (1) All required assurances are

submitted; and are acceptable; (2) The payment methods and standards are included in the plan and are presented in reasonably comprehensive detail; (3) The public notice requirements are met; and (4) The customary charge limit for inpatient hospital services is not exceeded.

The Federal review procedure is not directed toward judging or validating a State's payment methods and standards from a technical standpoint. HCFA's approval of a State plan amendment indicates that the State has complied with the requirements in the statute and regulations.

HCFA's acceptance of a State's assurances, is based on the evaluation of the information submitted. HCFA evaluates assurances to determine whether the State has made a finding to substantiate that the payment rates are reasonable and adequate, that appropriate appeals procedures in compliance with the regulation are in effect, that the Medicare upper limit will not be exceeded, and that the State provides for uniform cost reporting and periodic audits. Additionally, we must be satisfied that the State has made a finding that the availability of services and recipients' rights to reasonable access to necessary services will not be impeded as a result of implementation of the proposed rates.

With respect to HCFA's review of insignificant changes, the comments we have received point out that since no assurances and related information are required for such changes, it is difficult for HCFA to make a reasoned decision relative to the approvability of the amendment. Moreover, situations may arise where a State submits a State plan amendment which it terms insignificant, but which others may believe is, in fact, significant. In response, we expect that a State's determination of significant or insignificant changes to its payment methods and standards is based on a test of reasonableness. For example, we would expect that the State would consider the impact of the proposed change (e.g., the change in rates and the number of providers affected) in determining the significance of the plan amendment. HCFA may request a State to provide an explanation as to why they consider a plan change insignificant. We should point out, however, that we receive annually many plan amendments which have little or no impact on payment rates. To require States to make findings, and submit assurances and related information for such amendments would be contrary to the legislative intent of section 1902(a)(13)(A) to grant States more

flexibility to design their payment systems, and to develop a Federal review process which is less administratively burdensome. In the case of insignificant plan amendments, there is a presumption of validity that the State's prior assurances still apply irrespective of the insignificant change.

#### *F. Provider Appeals of State Rate Determinations*

We received a number of comments requesting greater specificity in the appeals regulations. These commentors suggested that we revise the regulations to:

- Establish a time period for States to act on appeals;
- Establish minimum criteria setting forth situations in which a rate may be appealed, such as cases in which capital improvements were not included in the rate calculation, or incorrect data were used or erroneous calculations made; and
- Establish a penalty clause for frivolous appeals, e.g., a clause making providers liable for a portion of the cost of the appeal proceedings when there is no evidence that the rate has been incorrectly calculated.

With regard to the comment on establishing time periods, we believe that a greater degree of specificity in the appeals provision would not be in the interests of State flexibility nor would it necessarily result in any substantial benefit to the Medicaid program. We do agree that State appeal procedures should be consistent with the intent of the Federal provision regarding prompt administrative review as currently reflected in the regulation. Therefore, we are not revising the regulations to specify a given time period, for the State to act on appeal requests. We are, however, revising the appeal requirement by making it a general requirement subject to assurances.

We also believe that establishing minimum criteria for appeals and penalty clauses for frivolous appeals in the regulation would be contrary to the statutory intent allowing States greater flexibility in developing more cost effective reimbursement systems. Moreover, the States, not the Federal government, are in the best position to determine the administrative process that would best meet their needs and be most compatible with their reimbursement system. However, States are free to establish reasonable criteria for appeals to limit the issues on appeal that may be appropriate or to adopt other procedures to prevent frivolous appeals.

A number of commentors suggested that the regulations specify who should

adjudicate appeals. One commentor suggested that the appeals procedure be performed independently of the State agency to avoid a potential conflict of interest. Another suggested a Federal appeals process be instituted because providers should be permitted to challenge the State's assurances. A third commentor suggested we require States to provide judicial recourse for providers dissatisfied with State payment rates.

We do not see any overriding purpose that would be served by requiring States to establish a separate appeals entity. A prescriptive procedural requirement in these regulations could cause an unnecessary administrative burden on the State. Likewise, since the Medicaid program is State administered, it is neither appropriate nor administratively feasible to establish a Federal appeals process outside the current State administrative procedures or the State and Federal civil court systems. Finally, absent any statutory mandate, there is no Federal authority to require judicial recourse (presumably in State courts) for providers dissatisfied with State payment rates. Of course, under both the current and revised regulations, providers are free to pursue whatever judicial remedies are available in their States after they have exhausted the administrative appeal process.

One commentor suggested that Federal rules require retroactive payments in appealed cases where payment rates are adjusted. The intent behind the Federal appeals provision is to provide a means for facilities to seek reimbursement relief upon a proper finding by the State agency. We do not believe it would be appropriate or in keeping with the intent of State flexibility to specifically require either retroactive or prospective adjustments. We believe that fair and reasonable rate adjustments are implicit in an appeals process and see no need for a prescriptive Federal requirement. States are in a better position to design an effective appeal procedure.

One State agency commented that the appeals process requirement should be waived in States with uniform statewide rates. We have clarified the regulation to allow States employing uniform statewide rates to adopt the administrative process for reconsideration or appeal that would be most compatible with these reimbursement systems.

### G. Provider Cost Reporting and Audit Requirements

Several commentors expressed their concern that the cost reporting and periodic audit requirements are not specific enough to enable HCFA to retain the capability to review expenditures. These commentors recommended reinstating the requirements formerly in 42 CFR 447.274 through 447.296 (1980), and inserting a cross reference to other audit requirements imposed on State plans.

The regulatory requirement is consistent with the statutory requirement for audit and the general statutory emphasis on State, rather than Federal, activity in this area. The Federal government has authority under other provisions to review specific expenditures should that prove necessary.

In response to our request for comments concerning audit adjustments, a number of States supported the interim final regulation, and recommended against further expansion and inclusion of procedures regarding audit based adjustments for overpayments and underpayments. Therefore, we are not amending the substance of the Federal requirement concerning audit. However, we are moving the requirement to the general requirements section and making it subject to State assurances requirement.

Several States commented on the uniform cost reporting requirement. They suggested that the requirement be clarified to permit use of varying cost reporting formats for differing classes of providers. While we do not believe revision of the content of this regulation is necessary, we do believe clarification of the uniform cost reporting requirement will be helpful. Therefore, we are providing the discussion in the following paragraph.

The cost reporting requirement is intended to give States the flexibility to make administrative determinations for implementation of the statutory requirement in section 1902(a)(13)(A) of the Act that requires uniform cost reporting. States are free to develop their own cost reporting formats for providers. We believe that use of the term "uniform" in the statute does not mean that only one cost reporting format must be used by all providers in the State, but merely requires that there be uniformity among like providers and with regard to the kinds of cost information and accounting principles used. For example, it may be inappropriate for one LTC facility to report on a cash accounting basis and

for other similar facilities to use the accrual method.

Additionally, the regulation does not require States to collect the same level of detail on provider costs from each facility. Therefore, it is acceptable for States to develop a number of cost reporting forms, including short form cost reports, to develop an effective provider cost reporting system. A State may decide to vary reporting formats by provider type (hospital vs. long-term care facility), number of beds, or accounting capabilities, etc., if it desires.

### H. Upper Limits Based Upon Customary Charges (42 CFR 447.271)

Two States commented on this provision. One recommended amending the regulations to apply this limit to long-term care facility services as well as to inpatient hospital services. The other comment suggested revision of the regulations to specify that "payment may not exceed the lesser of the customary charge or a rate consistent with reasonable and adequate costs".

In response to the first comment, 42 CFR 447.271 implements section 1903(i)(3) of the Act, which requires that payments for inpatient hospital services not exceed the hospital's customary charges. Since the statute enacting this limit addressed only inpatient hospital services, we do not feel it is appropriate to extend the limit to LTC facility services. The absence of a Federal guideline, however, does not preclude a State from applying the limit to LTC facility payments if a State chose to do so.

With regard to the second comment, the enactment of section 1902(a)(13)(A), which requires payment of reasonable and adequate rates for inpatient hospital and LTC facility services, does not conflict with section 1903(i)(3) or the implementing regulations. While a State may assure that its payment formula under section 1902(a)(13)(A) results in a reasonable and adequate rate, the rate may exceed customary charges. In this case, the State could not pay more than the charges. If the State's rates are less than charges, we believe that the rates by definition are consistent with the reasonable and adequate requirement if they meet the statutory requirement of being sufficient to meet the cost which must be incurred by an efficiently and economically operated facility.

### I. Upper Limits Based on Medicare Payments (42 CFR 447.272)

Many commentors expressed concern at the continuation of the Medicare ceiling on payment rates and its extension to prospective reimbursement systems. These comments may be

classified generally into three categories. The comments in the first category express the view that the imposition of the ceiling exceed the Secretary's authority under section 1902(a)(13)(A), and is not in compliance with congressional intent. The comments in the second category apply to the procedural application of the limits. The comments in the third category relate to meeting an additional requirement of section 1902(a)(13)(A) applicable to inpatient hospital services (i.e., that the State's methods and standards must take into account the situation of hospitals that serve a disproportionate number of low income patients with special needs). Eight States commented that an exception should be granted when costs are incurred above the Medicare limit to meet the requirement.

1. *Congressional Intent Issue.* These comments take the view that the Secretary exceeded the authority under section 1902(a)(13)(A) in applying the Medicare limit to facilities that do not participate in Medicare. Most of the commentors recommended that we revise the upper limit regulation to permit calculation of the limit based solely on the facilities that participate in Medicare.

Much of the concern regarding the Secretary's authority for establishing an upper limit based on Medicare reimbursement stems from varying interpretations of the legislative history of section 1902(a)(13)(A). The Senate Finance Committee Report on the legislation states that "the Secretary would be expected to continue to apply current regulations that require that payments made under State plans do not exceed amounts that would be determined under the Medicare principles of reimbursement. Since States would be free under the bill to establish payment rates without reference to Medicare principles of reimbursement, the Secretary would only be expected to compare the average rates paid to SNFs participating in Medicare with the average rates paid to SNFs participating in Medicaid in applying the limitation." (S. Rep. No. 96-471). The commentors, who are opposed to the Medicare limit on the basis that the Secretary's authority has been exceeded, rely on that part of the committee report, which sets forth the simplified method of comparing the average SNF rates between Medicare-only providers and Medicaid-only providers. By focusing on just one section of the report, these commentors believe that Congress intended to limit the Secretary's oversight on the upper limit requirement for all providers to the

single comparison. Thus, they perceive the current upper limit regulations as inappropriate.

There are two major problems with this interpretation. First, the current regulations do not preclude the Medicaid agency from using the simplified formula specified in the legislative history for determining whether the upper limit requirement is met. Second, we do not believe Congress intended to limit the Secretary's actions on the Medicare limit to a single comparison. This is supported by the committee's reference to previous upper limit regulations and the expectation that the Secretary would continue to apply such limits.

We should also note that application of the Medicare ceiling requirement to prospective payment systems for inpatient hospital services has applied since 1969 when an upper limit for institutional services was set as the reasonable cost as defined by the standards and principles for computing reimbursement currently applicable to such institutions under Title XVIII of the Social Security Act. We believe it is important that the Federal upper limit requirement apply equally to all State payment systems. In addition, this requirement is not based solely on the legislative intent of section 1902(a)(13)(A). It is also based upon the separate requirement of section 1902(a)(30) that payments be consistent with efficiency, economy, and quality of care. Section 1902(a)(30) applies to Medicaid payments generally, and not only to payments for hospitals or LTC services. In addition, the Senate Report on section 2173 (S. Rept. No. 97-139, 97 Cong., 1st Sess., P. 26 (1981)) includes language that specifies that the amount paid cannot, in the aggregate, exceed the amount determined to be reasonable under Medicare.

The intent of the interim final regulation was to provide the States with the flexibility to develop an appropriate method of applying the Medicare upper limit. Thus, the two methods specified in the regulations were not intended to be all-inclusive; instead, they represented HCFA's recommendations on ways a State may comply with the requirement. In addition, the regulations allow a State to use an aggregate versus facility-specific application of the limit. This was in keeping with the congressional intent that the calculation of the limit not be an administrative burden on States. To alleviate this confusion and to stress the latitude available to the States even further, we are revising the regulations

to delete recommendations on methods States would use to meet the upper limit.

**2. Procedural Application Issues.** The commentators that raise questions concerning the procedural application of the upper limits focus generally on three issues. The first of these questions is how the Medicaid agency can estimate a rate that would be paid by Medicare to non-participating Medicare providers and, in the process, avoid Medicare's detailed cost finding requirements. The second issue is the applicability of the Medicare principles of reimbursement, that result in the retrospective determination of the provider's rate, to many Medicaid systems which reimburse providers on a prospective basis. The third issue is the relevance of the Medicare principles to services which are not covered under title XVIII, such as ICF and ICF-MR care.

In addressing the first of these issues, the preamble to the interim final regulations specifies that the Medicaid agency is not required to apply Medicare's detailed cost-finding principles to determine what would have been paid under Medicare. Alternatively, the regulations allow the States the option to use the Medicare interim payments to determine what Medicare would have paid facilities that participate in both programs, and permit the agency considerable discretion in calculating what Medicare would have paid to Medicaid-only facilities. States may also apply the upper limit requirement in the aggregate rather than on a facility-specific basis that would necessitate facility-specific cost finding. The regulation sets forth the Federal expectation that the Medicaid agency set payment rates so that Medicaid payments in the aggregate do not exceed estimated amounts that would be determined using Medicare's principles. To clarify the flexibility of the States in determining what would have been paid under Medicare further, reference to the Medicare regulations at 42 CFR Part 405, Subpart D is being deleted. However, implicit in the adoption of the Medicare principles in the upper payment limit in 42 CFR 447.272 is the realization that the Medicare principles may be revised by statute or by regulation from time to time. Section 447.272 is designed to accommodate all such changes without the need for periodic amendment of the Medicaid rules. Thus, in determining if a State meets the test of the upper payment limit, the State's estimate must use the Medicare principles in effect at the time. For example, in estimating the Medicare upper limit, States are expected to consider the provider cost limits (42 CFR 405.460) and for hospitals,

the rate of increase controls authorized in 42 CFR 405.463 (as published in 47 FR 43282, September 30, 1982) and in the near future, the changes resulting from the Medicare prospective payment program enacted in the Social Security Amendments of 1983 (Pub. L. 98-21).

With respect to the issue of the prospectivity of a Medicaid payment system vs. the retrospectivity of the Medicare method, we do not see this as an obstacle in the States' determination of whether the upper limit requirement is met. Some commentators suggested that the Medicaid rate for prospective systems should be adjusted for any efficiency incentives or profit in order to compare the Medicaid rate to the Medicare rate, since the Medicare principles of reimbursement do not include efficiency incentives. As an alternative, other commentators suggested that the comparison to determine compliance with the upper limit requirement be made using data from a 2- or 3-year period. The rationale for this suggestion is that the prospectivity of the system may encourage cost behavior that may result over time in a lesser amount of payments. In both cases, the concern of the commentators is that the Medicaid rate in any one year may exceed Medicare reasonable cost, and that a retrospective recoupment of payments will be made. At issue is when the upper limit requirement must be met.

It is true that many Medicaid prospective payment systems include efficiency incentives or profit for providers to the extent they do not, or did not, incur costs in excess of the predetermined payment rate. These incentives would not be recognized under the current Medicare reasonable cost formula that uses cost finding to pay only for costs actually incurred. However, without such incentives, providers may have little motivation to hold down costs which ultimately would be recognized under the retrospective reasonable cost system of reimbursement. Therefore, irrespective of whether a State's system includes efficiency incentives, the amount paid under Medicaid could be roughly equivalent to what Medicare would have paid in any one year. For these reasons, we do not believe it is appropriate to adjust the Medicaid rate to exclude amounts paid as efficiency incentives when determining if the Medicare limit is exceeded. Allowing this adjustment would ignore a major goal of prospective payment systems, which is to make incentives available only to providers to the extent they keep costs below a predetermined rate.

As mentioned above, the Medicare upper limit need not be applied on a facility-specific basis. Instead, States may apply the Medicare limit using aggregate data. Additionally, the regulations would not preclude the State from adopting a method of determining if the upper limit requirement is met that considers cost experience of providers over more than one payment period.

The interim final regulations do not specify when the upper limit requirement must be met. To correct this, we have moved this requirement to the "general requirements" section. We believe this change in the location of the requirement will make it clear that compliance with the upper limit requirement is to be determined by the State when the payment rate is set. In addition, to ensure that the States make the required comparison, we have specified that States must submit an acceptable assurance that this regulatory requirement is met prior to the approval of the State plan.

In making the assurance that the Medicare upper limit will not be exceeded, States should compare the estimated Medicaid payments to an imputed projection of what Medicare would pay for such services over the State's fiscal ratesetting period. It would not be equitable to compare Medicaid payment levels that may remain static throughout the period to the Medicare payment level in effect at the beginning of the period, since the Medicare reasonable cost reimbursement system recognizes rising costs throughout the period. Thus, for example, a fixed prospective Medicaid rate set for a period could satisfy the requirement at § 447.253(b)(2), even if it were higher than the Medicare rate at the beginning of the period, if there were a projection of rising Medicare costs through the ratesetting period. In all cases the State would be expected to document its determination.

The third procedural application issue concerned the relevance of the Medicare principles to services which are not covered under title XVIII such as ICF and ICF-MR services. The intent of the regulation is for States to consider what would have been paid for the services if the Medicare principles had been used to reimburse providers.

3. *Application of Upper Limit to Hospitals With Disproportionate Numbers of Low Income Patients.* Several States commented that waivers of, or exceptions to, the limits should be granted when costs above the Medicare-based limits are attributable to a State's actions taken to comply with the statutory requirement that the payment methods and standards for reimbursing

hospitals take into account the situation of hospitals with disproportionate numbers of low income patients.

The effect of allowing a waiver or exception to the limits for the hospitals serving a disproportionate number of low income patients would be to allow a rate higher than the maximum level of reimbursement that was in effect under the prior law. This would be difficult to reconcile with the Medicaid law, in view of the legislative history of section 1902(a)(13)(A) that describes the Medicare rate as costly and inflationary. Since the Medicare upper limit requirement is based on the reasonable costs the hospital actually incurs in furnishing services to patients, hospitals will not be disadvantaged by application of that limit due to the nature of its patient population. We do not believe the income status of patients would significantly affect the costs a hospital incurs in furnishing services to those patients. To permit an exception to the Medicare upper limit requirement for hospitals serving disproportionate numbers of low income patients would have the effect of permitting those hospitals more than their reasonable costs incurred. For these reasons, the problem of avoiding a disproportionate impact, if any, will be met by a payment rate that is not higher than the rate that would be paid by a Medicare type reasonable cost system.

## V. Regulation Revisions

### A. Realignment of Requirements

We are reorganizing Part 447 Subpart C as follows:

Requirement	From—	To—
	Sec	Sec
State Plan.....	447.253	447.252
General.....	447.252	447.253
Appeals.....	447.258	447.253(b)
Cost Reporting.....	447.280	447.253(c)
Audit.....	447.265	447.253(d)
Upper Limit Based on Medicare.....	447.272	447.253(a)(2)
Submission of Assurances.....	447.255(a)	447.253(f)
Public Notice.....	447.254	447.205

The reorganization of the regulations is in concert with legislative intent, in that it requires States to make findings and submit assurances attesting that each of the general requirements has been met. The regulatory framework thus emphasizes that Federal review is focused on the State's assurances, the submittal of related information, and the State's compliance with the procedural provisions of the regulations, rather than on a technical review of the State's methods and standards.

In the summary of the revisions to the regulations that follows, we have referenced the requirements based on

their placement in the interim final rules unless otherwise noted.

### B. Annual Resubmittal of Assurances

Under the interim final regulation, submittal of assurances and related information was required not only when significant changes in payment methods and standards or payments rates occurred, but also whenever one year had elapsed since the last review of assurances. (See 42 CFR 447.255(a).) Consequently, States were required to resubmit assurances even when the State made no changes in its payment methods. This annual assurance requirement placed an additional reporting burden on States.

The intent of the interim final regulations was to place the greatest responsibility for developing payment rates that are reasonable and adequate with the State. It was intended that both the HCFA review and the public's comments would serve to assure that the State's efforts result in rates that meet the requirements of the law. Public notice is only required when the State is proposing significant changes in its methods and standards for setting payment rates. Consequently, it seems inconsistent to maintain an annual reporting requirement on States to submit information to HCFA for review when the State is not amending the plan. Therefore, we are revising the regulation at 42 CFR 447.255(a) to eliminate the requirement that "the Medicaid agency must submit the assurances before the end of the calendar quarter that includes the date on which the rate has been in effect for one year". We believe this is an unnecessary reporting burden on States and see no overriding program benefit served in requiring these annual assurances by a State agency.

Instead, 447.253(a) of the revised regulations requires States to make an annual finding that its payments rates are reasonable and adequate. States are not required to submit this annual finding to HCFA for review. We believe these findings can be adequately monitored through existing State assessment and other evaluation or auditing procedures without the need for a reporting burden on the States. Further, States are not required to submit new assurances when they are changing the rates in accordance with methods and standards in their already approved plans.

### C. State Plan Requirements

We are amending the State plan requirements in 42 CFR 447.253 to specify that not only must the State plan include the State's payment methods

and standards used to set payment rates but they must also be presented in accordance with the general State plan requirements as set forth in 45 CFR 201.2.

#### D. Public Notice Requirements

After the September 30, 1981 publication of the interim final rules on Medicaid reimbursement for LTC facility and inpatient hospital services, HCFA published separate revised regulations that require public notice of changes in the method or level of reimbursement. These revised regulations were published as interim final rules with a comment period on December 3, 1981 (46 FR 58677). They replaced the regulations at 42 CFR 447.205. These revised rules are similar to the public notice requirements for long term care and inpatient hospital reimbursement currently in 42 CFR 447.254.

We do not believe it is necessary to maintain two essentially duplicative sets of public notice requirements for reimbursement levels. Therefore, we are removing the requirements in 42 CFR 447.254, revising 42 CFR 447.205 to delete the exception for inpatient hospital and LTC facility services, and cross-referring the public notice requirements in Subpart C of Part 447 (42 CFR 447.253(e)) to 42 CFR 447.205. The requirement for public notice will only apply when the State is making a significant change in the payment methods or standards.

#### E. Procedures for HCFA Action

We are revising 42 CFR 447.256 to specify that HCFA will review State plan amendments concerning payment for inpatient hospital and LTC facility services in accordance with 45 CFR Part 201. In addition, the effective date of approved amendments will be not earlier than the first day of the calendar quarter in which an approvable amendment is submitted as required by 45 CFR 201.3(g). In order to be approvable, a significant amendment must also include the submittal of assurances. These changes are being made to clarify that HCFA's procedures for review of inpatient hospital and LTC services reimbursed are consistent with the review of all other State plan amendments, regardless of the subject matter of the changes.

#### F. Appeals

The current regulations on appeals, 42 CFR 447.258, state that the State agency must provide an appeals procedure that allows individual providers an opportunity to submit additional

evidence and request prompt administrative review of payment rates.

We are deleting § 447.258 as a separate requirement and instead are placing the appeals procedures under the general requirements section. In doing so, we are consolidating the essential elements of a State's reimbursement system to a single section of the regulations. Also, we are now requiring States to provide written assurances that the requirement is met. Another purpose of this realignment is an attempt to lessen confusion over the relationship between general requirements, State plan requirements and assurance requirements.

#### G. Medicare Upper Limit

The language in the interim final regulation on the Medicare upper limit generated a great deal of concern. As noted above in section III.1.1 of this preamble, this provision is based on section 1902(a)(30) of the Act, that provides that payments be consistent with efficiency, economy, and quality of care. In an effort to eliminate this confusion and to make State agencies' discretionary authority more explicit, we are revising the regulations on the Medicare upper limit. The revised regulations delete the provision as a separate requirement and move the Medicare upper limit to the general requirements section. These revised regulations require that the State agency make assurances that its *estimated* average payment rate will not pay more in the aggregate for inpatient hospital services or long-term care facility services than the *estimated* amount that would be paid for the services under the Medicare principles of reimbursement. This new language eliminates the guidelines specified in the interim final rule and clarifies when the requirements must be met.

We wish to point out, however, that although we will accept assurances that the estimated average payment rates do not exceed the Medicare upper limit, States must develop and utilize methods of calculating what Medicare would have paid for the services and projecting estimated payment rates. The State's documentation of their assurances will be subject to confirmation under the Department's ongoing assessment and audit procedures.

#### H. Other Technical Changes

We are also making a number of minor technical changes to several sections of the regulations in order to clarify several other areas of the interim final rules. Several States expressed concern that quantified data may not always be available or may be

burdensome to gather in estimating the impact of changes in the payment rate. Therefore, we are removing the word "quantified" from the regulations in 42 CFR 447.255(b). Of course, States retain the option of submitting quantified data to further enhance its assurances.

Similarly, we are amending 42 CFR 447.255(b)(1) to specify that States may submit related information on the impact of payment rate changes using the "estimated" average rate. We realize the difficulty inherent in projecting impact information and recognize the tentative nature of future estimates. We do not intend to burden States with requirements to calculate the actual mean payment rate when this calculation is difficult to determine.

We are moving the requirement concerning uniform cost reporting from 42 CFR 447.260 and periodic audit from 42 CFR 447.265 to the general requirements section (42 CFR 447.253) and making them subject to assurances.

## VI. Impact Analysis

### A. Executive Order 12291

We have determined that these regulations will not result in an annual effect on the economy of \$100 million or otherwise meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. We have made this determination because the revised final rules do not make any significant change in program payments. The revisions made in this rule are intended to clarify and ease procedural requirements States must comply with in obtaining approval of their methods and standards for making payments for inpatient hospital services and long-term care facility services. There may be minimal saving in State administrative cost due to the easing of these procedural requirements.

In making this determination, we are aware that the easing of the procedural requirements for States in rate-setting that will be allowed by the revised regulations may induce some States to make changes in their payment rates. These changes could have economic consequences for States, hospitals, and facilities.

Experience under the interim final regulation leads us to believe the effect of any changes will be minimal. To date, only a few States have completely changed their payment methods and standards as a result of the interim final regulation. Therefore, although we do not have a sound basis for estimating the economic impact of this regulation, we are confident that any changes resulting from this final rule will not

approach the threshold criteria for a major rule.

### B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments.

The reason for the Secretary's negative certification is that, as explained in the discussion of requirements under Executive Order 12291, these regulations will not significantly affect program payments. This final rule clarifies the procedural requirements for obtaining approval of State payment methods for inpatient hospital services and long-term care facility services.

### VII. Reporting Requirements

Sections 447.252, 447.253 and 447.255 contain information collection and reporting requirements that are subject to Office of Management and Budget (OMB) review. As required by 44 U.S.C. 3504(h), enacted by the Paperwork Reduction Act of 1980, we had submitted these requirements to OMB when we issued the final rule with comment period. The OMB approval number for this reporting requirement is 0938-0193.

### List of Subjects in 42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, Reimbursement, Rural areas.

### PART 447—PAYMENT FOR SERVICES

The authority citation for Part 447 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted. 42 CFR Part 447 is amended as set forth below:

1. Section 447.205 is amended by revising paragraph (a) to read as follows:

**§ 447.205 Public notice of changes in Statewide methods and standards for setting payment rates.**

(a) *When notice is required.* Except as specified in paragraph (b) of this section, the agency must provide public notice of any significant proposed change in its methods and standards for setting payment rates for services.

2. The table of contents for Part 447 Subpart C is amended to read as follows:

#### Subpart C—Payment For Inpatient Hospital and Long-Term Care Facility Services

Sec.

447.250 Basis and purpose.

#### Payment Rates

447.251 Definitions.

447.252 State plan requirements.

447.253 Other requirements.

447.255 Related information.

447.256 Procedures for HCFA action on assurances and State plan amendments.

#### Upper Limits

447.271 Upper limits based on customary charges.

#### Swing-Bed Hospitals

447.280 Hospital providers of SNF and ICF services (swing-bed hospitals).

3. Section 447.250 is revised to read as follows:

#### § 447.250 Basis and purpose.

(a) This subpart implements section 1902(a)(13)(A) of the Act, which requires that the State plan provide for payment for hospital and long-term care facility services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with State and Federal laws, regulations, and quality and safety standards.

(b) Section 447.253(a)(2) implements section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care;

(c) Section 447.271 implements section 1903(i)(3) of the Act, which requires that payments for inpatient hospital services not exceed the hospital's customary charges.

(d) Section 447.280 implements section 1913(b) of the Act, which concerns reimbursement for long-term care services furnished by swing-bed hospitals.

4. The material in §§ 447.252, 447.255(a), 447.258, 447.260, 447.265 and 447.272 is revised and redesignated as § 447.253 (the existing § 447.253 will be redesignated as § 447.252 later in this document) to read as follows:

#### § 447.253 Other requirements.

(a) *State assurances.* In order to receive HCFA approval of a significant State plan change in payment methods and standards, the Medicaid agency must make assurances satisfactory to HCFA that the requirements set forth in

paragraphs (b) through (g) of this section are being met, must submit the related information required by § 447.255 of this subpart, and must comply with all other requirements of this subpart.

(b) *Findings.* Whenever the Medicaid agency makes a significant change in its methods and standards, but not less often than annually, the agency must make the following findings:

(1) *Payment rates.* (i) The Medicaid agency pays for inpatient hospital services and long-term care facility services through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

(ii) With respect to inpatient hospital services—

(A) The methods and standards used to determine payment rates take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs;

(B) The methods and standards used to determine payment rates provide that reimbursement for hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1861(v)(1)(G) of the Act will be made at lower rates, reflecting the level of care actually received, in a manner consistent with section 1861(v)(1)(G); and

(C) The payment rates are adequate to assure that recipients have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality.

(2) *Upper Limits.* The Medicaid agency's estimated average proposed payment rate is reasonably expected to pay no more in the aggregate for inpatient hospital services or long-term care facility services than the amount that the agency reasonably estimates would be paid for the services under the Medicare principles of reimbursement.

(c) *Provider Appeals.* The Medicaid agency must provide an appeals or exception procedure that allows individual providers an opportunity to submit additional evidence and receive prompt administrative review, with respect to such issues as the agency determines appropriate, of payment rates.

(d) *Uniform Cost Reporting.* The Medicaid agency must provide for the filing of uniform cost reports by each participating provider.

(e) *Audit Requirements.* The Medicaid agency must provide for periodic audits

of the financial and statistical records of participating providers.

(f) *Public Notice.* The Medicaid agency must provide that it has complied with the public notice requirements in § 447.205 of this part when it is proposing significant changes to its methods or standards for setting payment rates for inpatient hospital or LTC facility services.

(g) *Rates Paid.* The Medicaid agency must pay for inpatient hospital and long term care services using rates determined in accordance with methods and standards specified in an approved State plan.

5. The material in § 447.253 is revised, and the revised material is designated as § 447.252, as follows:

**§ 447.252 State plan requirements.**

(a) The plan must provide that the requirements of this subpart are met.

(b) The plan must specify comprehensively the methods and standards used by the agency to set payment rates in a manner consistent with 45 CFR 201.2.

(c) If the agency chooses to apply the cost limits established under Medicare (see § 405.460 of this chapter) on an individual provider basis, the plan must specify this requirement.

(The OMB approval number for the reporting of these State plan requirements is 0938-0193)

**§ 447.254 [Removed]**

6. Section 447.254 is removed.

7. Section 447.255 is amended by revising the title, removing paragraph (a) and revising paragraph (b) to read as follows:

**§ 447.255 Related information.**

The Medicaid agency must submit, with the assurances described in § 447.253(a), the following information:

(a) The amount of the estimated average proposed payment rate for each type of provider (hospital, SNF, ICF, or ICF/MR), and the amount by which that estimated average rate increased or decreased relative to the average payment rate in effect for each type of provider for the immediately preceding rate period;

(b) An estimate of the short-term and, to the extent feasible, long-term effect the change in the estimated average rate will have on—

(1) The availability of services on a Statewide and geographic area basis;

(2) The type of care furnished;

(3) The extent of provider participation; and

(4) The degree to which costs are covered in hospitals that serve a disproportionate number of low income patients with special needs.

8. Section 447.256 is revised to read as follows:

**§ 447.256 Procedures for HCFA action on assurances and State plan amendments.**

(a) *Criteria for approval.* (1) HCFA approval action on State plans and significant or other State plan amendments, is taken in accordance with 45 CFR 201.2 and 201.3 and §§ 1116, 1902(b) and 1915(f) of the Act.

(2) In the case of State plan and plan amendment changes in payment methods and standards, HCFA bases its approval on the acceptability of the Medicaid agency's assurances that the requirements of § 447.253 have been met, and the State's compliance with the other requirements of this subpart.

(b) *Time Limit.* HCFA will send a notice to the agency of its determination as to whether the assurances regarding a State plan amendment are acceptable within 90 days of the date HCFA receives the assurances described in § 447.253, and the related information described in § 447.255 of this subpart. If HCFA does not send a notice to the agency of its determination within this time limit and the provisions in paragraph (a) of this section are met, the assurances and/or the State plan amendment will be deemed accepted and approved.

(c) *Effective date.* A State plan amendment that is approved will become effective not earlier than the first day of the calendar quarter in which an approvable amendment is submitted in accordance with 45 CFR 201.3(g) and 447.253.

**§§ 447.258, 447.260, 447.265, 447.272 [Removed]**

9. Sections 447.258, 447.260, 447.265, 447.272 are removed.

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program)

Dated: December 13, 1982.

Carolyn K. Davis,  
*Administrator, Health Care Financing Administration.*

Approved: April 26, 1983.

Margaret M. Heckler,  
*Secretary.*

[FR Doc. 83-33334 Filed 12-16-83; 8:45 am]  
BILLING CODE 4120-03-M

**ACTION:** Adoption of LSC Instruction 83-10.

**SUMMARY:** The Legal Services Corporation requires that its recipient provide an opportunity for grievance and/or complaint to eligible clients and members of the public. This instruction provides guidance as to the implementation of those requirements.

**EFFECTIVE DATE:** January 18, 1984.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Opsut, Office of Compliance and Review, Legal Services Corporation, 733 15th Street, NW., Washington, D.C. 20005, (202) 272-4331.

*Authority:* Section 1008(e) of the Legal Services Corporation Act of 1974 as amended, 1977; 42 U.S.C. 2996g(e).

**I. Purpose**

The purpose of this instruction is to provide guidance as to the implementation of the Act, 45 CFR 1612.5, 45 CFR 1618, and 45 CFR 1621 to assure the opportunity for grievances and complaints to be appropriately resolved. The Act and regulations currently require recipients of LSC funding to adopt policies and procedures to allow eligible persons a grievance process. Recipients also have an affirmative responsibility under 45 CFR 1612.5 and 45 CFR 1618 to enforce provisions of the Act and regulations.

For these requirements to be effective, all segments of the public must have an opportunity to express their complaint or grievance. Access to the governing body is essential to assure enforcement and fulfillment of the governing body's responsibility. The real or perceived problem should be resolved in a timely manner at the local level whenever possible.

**II. Policy**

Consistent with Section 1006(b)(2) of the Legal Services Corporation Act of 1974 as amended, 1977, 45 CFR 1612.5, 45 CFR 1618, and 45 CFR Part 1621, the governing body of each grantee, subgrantee, or contractor who receives annualized funding shall adopt written procedures to assure any applicant for service or member of the public an opportunity to bring a complaint concerning denial of service, manner or quality of services, or a violation of the Act, regulation, instructions, or guidelines. The procedures must allow the opportunity for the complainant to have a prompt hearing before a committee of the governing body. A record shall be kept of the hearing, of the findings, and decisions of the committee. The decision shall be reviewable by the governing body as a

**LEGAL SERVICES CORPORATION**

**45 CFR Parts 1612, 1618 and 1621**

**Instruction on Implementation; LSC Instruction 83-10**

**AGENCY:** Legal Services Corporation.

whole. The record of the hearing, all findings, and decisions by the committee of the governing board shall be available for inspection by the Corporation.

Each recipient shall provide adequate notice of this procedure to all applicants for service as required in 45 CFR Part 1621 and upon request provide a copy of the written policy and procedure to any member of the public who requests it. The information provided must include notice that the complainant may also contact the:

Legal Services Corporation, Office of Compliance and Review, 733 Fifteenth Street, N.W., Washington, D.C. 20005.

By April 1, 1984, and at least annually thereafter, public notice by local publication must be given which includes a summary of the policy and procedure.

Dated: December 14, 1983.

Gregg L. Hartley,

Director, Office of Field Services.

[FR Doc. 83-33636 Filed 12-16-83; 8:45 am]

BILLING CODE 6820-35-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

#### Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie, Trustee)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Amendment No. 4 To Thirteenth Revised Service Order No. 1474.

**SUMMARY:** Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Public Law 96-254, this order authorizes various railroads to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracts and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

**EFFECTIVE:** 11:59 p.m., December 15, 1983, and continuing in effect until 11:59 p.m., March 31, 1984, unless otherwise modified, amended or vacated by order of this Commission.

**FOR FURTHER INFORMATION CONTACT:** M. F. Clemens, Jr., (202) 275-7840 or 275-1559.

Decided: December 13, 1983.

Upon further consideration of Thirteenth Revised Service Order No. 1474 (48 FR 6989, 13047, 28992 and 44559), and good cause appearing therefor:

*It is ordered,*

#### § 1033.1474 Revised Service Order 1474.

(a) Various railroads authorized to use tracks and/or facilities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, (Richard B. Ogilvie, trustee).

Thirteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., March 31, 1984, unless otherwise modified, amended or vacated by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., December 15, 1983.

This action is taken under authority of 49 U.S.C. 10304-10305 and Section 122, Pub. L. 96-254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

#### List of Subjects in 49 CFR Part 1033

##### Railroads.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-33570 Filed 12-16-83; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register

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Monday, December 19, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1126

[Docket No. AO-231-A51]

#### Milk in the Texas Marketing Area; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order.

##### Correction

In FR Doc. 83-32832 beginning on page 55290 in the issue of Monday, December 12, 1983, make the following correction:

On page 55290, first column, under **DATE**, "January 11, 1984" should have read "December 27, 1983".

BILLING CODE 1605-01-M

### Foreign Agricultural Service

#### 7 CFR Part 1540

#### Emergency Relief From Duty-Free Imports of Perishable Products

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes the procedure by which an entity representative of a U.S. industry producing perishable products can submit a request to the Department of Agriculture for emergency relief from increased, injurious imports of like perishable products entering duty-free from beneficiary countries under the provisions of the Caribbean Basin Economic Recovery Act.

**DATE:** Comments must be received on or before January 18, 1984.

**ADDRESS:** Mail comments to Leader, Inter-America Group, Western Europe and Inter-America Division, Foreign Agricultural Service, USDA, Room 5506-

S, 14th and Independence Ave., SW., Washington, D.C. 20250

**FOR FURTHER INFORMATION CONTACT:** Gretchen H. Stanton, Western Europe and Inter-America Division, International Trade Policy, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, Tel: (202) 392-1333.

**SUPPLEMENTARY INFORMATION:** The Caribbean Basin Economic Recovery Act of 1983, Title II of Pub. L. 98-67, 97 Stat. 384 (19 U.S.C. 2701 *et seq.*) (the "Act") provides for duty-free treatment of imports from beneficiary countries designated by Presidential proclamation.

Section 213(f) of the Act provides, in part, that if a petition is filed with the International Trade Commission pursuant to the provisions of Section 201 of the Trade Act of 1974, as amended, regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted by the President.

Under the proposed rule, a U.S. entity seeking emergency relief would submit a request to the Administrator, Foreign Agricultural Service, of this Department providing such information as is necessary to permit the Secretary of Agriculture to make a determination as to whether a recommendation should be made to the President that emergency relief should be granted. The request should provide identification of the perishable product concerned and its country of origin, evidence that increased imports of such perishable product are the substantial cause of serious injury or the threat of serious injury to a U.S. industry producing a perishable product like or directly competitive with the imported product, and a statement indicating why emergency action would be warranted.

The public is invited to submit comments and suggestions regarding the proposed rule to the above address. Each person submitting comments and suggestions regarding the proposed rule should include his/her name and address and should give reasons for suggested changes. Copies of all communications received will be available for examination by interested

persons in Room 5506 South Building, USDA during regular business hours.

This proposed rule has been reviewed under USDA procedures required by Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major" since the proposed rule, if made final, would not have any of the effects specified in those documents.

The Administrator, Foreign Agricultural Service (FAS), certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Its effect is to provide to a U.S. industry producing perishable products the opportunity to seek interim relief from imports during such time as their request under Section 201 of the Trade Act of 1974 is under consideration by the International Trade Commission. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The public is invited to comment on the impact of this proposed rule on small entities.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this proposed rule. The environmental assessment is available for review in Room 5506, South Building, USDA during normal business hours.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

#### List of Subjects in 7 CFR Part 1540

Agricultural commodities, Imports, International agricultural trade.

In accordance with the above, it is proposed to amend 7 CFR Chapter XV by adding the following new Part 1540—International Agricultural Trade:

## PART 1540—INTERNATIONAL AGRICULTURAL TRADE

### Subpart A Emergency Relief From Duty-Free Imports of Perishable Products

Sec.

1540.1 Applicability of Subpart.

1540.2 Definitions.

1540.3 Who may file request.

1540.4 Contents of request.

1540.5 Submission of recommendations.

1540.6 Information.

Authority: Sec. 213(f) Pub. L. 98-67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301.

Cross Reference: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a Section 201 petition, see 19 CFR Part 206.

#### § 1540.1 Applicability of Subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under Section 213(f) of the Caribbean Basin Economic Recovery Act of 1983, Title II of Pub. L. 98-67, 97 Stat. 384, (19 U.S.C. 2701 *et seq.*) (the Act).

#### § 1540.2 Definitions.

(a) "Perishable product" means:

(1) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(2) fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(3) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) "Beneficiary country" means any country listed in Section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

#### § 1540.3 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group of workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

#### § 1540.4 Contents of request.

A request for emergency action under Section 213(f) of the Act shall be submitted in duplicate to the

Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, D.C. 20250. Such request shall be supported by appropriate information and shall include to the extent possible: (a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury; (b) the beneficiary country(ies) of origin of the allegedly injurious imports; (c) data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative); (d) evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and (e) a statement indicating why emergency action would be warranted under Section 213(f) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of the duty-free treatment accorded under the Act). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

#### § 1540.5 Submission of recommendations.

If the Secretary has reason to believe that the perishable product which is the subject of a petition under section 1540.4 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.4 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action the Secretary shall publish a notice of such determination and will so advise the petitioner within 14 days after the filing of the petition.

#### § 1540.6 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of Section 213(f) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, D.C. 20250.

Issued at Washington, D.C. this 14th day of December 1983.

Leo V. Mayer,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 83-30600 Filed 12-14-83; 2:45 pm]

BILLING CODE 3410-10-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 240 and 270

[Release No. IC-13666; S7-1005]

#### Status of Savings and Loan Associations Under the Federal Securities Laws; Advance Notice of Possible Commission Action

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

**SUMMARY:** The Commission is considering whether to propose rules or recommend legislation which would have the effect of permitting certain savings and loan associations to: (1) Operate certain common and collective trust funds without registering them as investment companies and without registering interests in those funds as securities under the Federal securities laws and (2) to manage the funds and to otherwise act as an investment adviser without registering with the Commission as an investment adviser. Rulemaking or legislation would permit certain savings and loan associations to operate common and collective trust funds and to act as an investment adviser under exemptions from the Federal securities laws which are available to banks.

**DATE:** Comments must be received on or before February 13, 1984.

**ADDRESS:** Persons wishing to submit written comments on the matters discussed in this release should file three copies of the comments with George A. Fitzsimmons, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, D.C. 20549. Comments should refer to File No. S7-1005 and will be available for public inspection and copying in the Commission's Public

Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

**FOR FURTHER INFORMATION CONTACT:** Kathleen A. Jackson, Special Counsel to the Director, (202) 272-2751, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Stop 5-2, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission announced today that it is requesting public comment on whether the Commission should propose rules or recommend legislation giving certain savings and loan associations ("S&Ls") the same treatment as banks under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Company Act"), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) ("Advisers Act"), the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("1933 Act"), and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("1934 Act") with respect to certain advisory activities and the operation of common and collective trust funds. In general, a common trust fund is a trust fund maintained exclusively for the collective investment of moneys contributed to a person or an entity in its fiduciary capacity as trustee, executor, administrator or guardian. Such funds are generally exempt from the registration and reporting requirements of the federal securities laws when maintained by a bank. Collective trust funds may be defined, generally, as funds for the collective investment of assets of employee's stock bonus, pension or profit sharing plans. Collective trust funds and interests in them also generally are exempt from the registration and reporting requirements of the federal securities laws if the funds are maintained by a bank and consist solely of assets of trusts that meet the qualification requirements of Section 401 of the Internal Revenue Code of 1954 (26 U.S.C. 401).

During the past few years, Congress has given S&Ls many new powers, including trust powers. As a result, the traditional distinctions between banks and S&Ls are less clear, and some persons argue that today an S&L can fit literally within the definition of the term "bank" in the Advisers Act, the Company Act (collectively the "1940 Acts") and the 1934 Act and thus, is a bank for purposes of those Acts and for certain provisions of the 1933 Act. As a bank, an S&L would be entitled to certain exemptions from the federal securities laws that are available to banks and to certain bank-sponsored collective investment vehicles. Previously, however, S&Ls have not

been considered to be banks under the federal securities laws. Throughout the federal securities laws, S&Ls and banks are referred to separately and Congress has never expressly indicated that the Commission should treat S&Ls as banks for purposes of the exclusions provided for: (1) A bank from the definition of investment Adviser in the Advisers Act and (2) a common or collective trust fund maintained by a bank from the definition of an investment company in the Company Act<sup>1</sup> or the exemptions for interests or participations in such common or collective funds from the registration requirements of the 1933 Act and the registration, reporting and proxy requirements of the 1934 Act. This release describes alternative approaches for resolving questions concerning the availability of these "bank" exemptions to S&Ls.

### I. Background

In recent months, the Commission has received several requests for no-action and interpretative advice submitted on behalf of S&Ls that assert they are "banks" as defined by the 1940 Acts and as that term is used in Section 3(a)(2) of the 1933 Act (15 U.S.C. 77c3(a)(2)) and Sections 3(a)(12) and 12(g)(2)(H) of the 1934 Act (15 U.S.C. 781(a)(12) and 781(g)(2)(H)).<sup>2</sup> The resolution of the issue presented by these requests could have several important business and legal consequences. For example, if an S&L were to be viewed as a bank under the provisions mentioned above:

- (1) It would be able to operate common trust funds and collective trust funds for certain pension monies without being subject to the Company Act, the registration requirements of the 1933 Act or the registration, reporting and proxy requirements of the 1934 Act;
- (2) It would be able to act as an investment adviser without registering

<sup>1</sup> The terms "bank" and "S&Ls" are separately defined in the Company Act and such entities are separately exempted from the definition of investment company. See, text p. 10.

<sup>2</sup> Section 3(a)(12) of the 1934 Act, insofar as relevant here, defines an "exempted security" as "any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator or guardian . . . [and] . . . any interest or participation in . . . a collective trust fund maintained by a bank . . . which interest, participation or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954." Section 12(g)(2)(H) of the 1934 Act, *inter alia*, exempts from the registration requirements of the 1934 Act, interests in any collective trust fund maintained by a bank. References hereinafter to the Section 3(a)(12) exemption should be considered also to include that provided by Section 12(g)(2)(H).

with the Commission under the Advisers Act; and

(3) As a "bank" within the meaning of the Advisers Act, an S&L's designation as an investment manager of an account subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 *et seq.*) ("ERISA") by a named fiduciary of the account would relieve any plan trustee of the obligation to manage plan assets placed under the S&L's management or of liability for the S&L's acts or omissions.<sup>3</sup>

Although S&Ls could not satisfy the elements of the definition of the term bank contained in either the 1940 Act or the 1934 Acts<sup>4</sup> at the time those laws were enacted, some S&Ls argue that today, because of recent expansions of their powers, they come within the literal terms of the bank definition and are, therefore, "banks" for purposes of the 1940 Acts and certain provisions of the 1933 and 1934 Acts.

### II. Discussion

#### A. The Expanded Powers of S&Ls

The powers of S&Ls have changed substantially since the 1933, 1934 and 1940 Acts were enacted. For example, prior to 1968, Federal S&Ls could not accept deposits.<sup>5</sup> The Housing and

<sup>3</sup> Under ERISA, only a registered investment adviser, a qualified insurance company or a bank as defined in the Advisers Act may be designated as an investment manager for this purpose. Designation of an investment manager does not, however, relieve a plan trustee of liability for his own breach of fiduciary duty. (29 U.S.C. 1106(d)(2)). Moreover, the named fiduciary who appoints the investment manager has the ongoing responsibility to review, at reasonable intervals, the performance of the investment manager to ensure that it complies with the terms of the plan and statutory standards, and satisfies the needs of the plan. (29 CFR 2509.75-8).

<sup>4</sup> The definitions of the term "bank" contained in the 1940 Acts and the 1934 Act are for practical purposes identical. The only differences are (1) that the 1934 Act definition contains a reference to the Federal Reserve Act while the 1940 Acts refer to the Comptroller of the Currency, and (2) the 1940 Acts definition includes trust companies as well as banking institutions if a substantial portion of their business is receiving deposits or exercising fiduciary power whereas trust companies are not included in the 1934 Act definition. The term "bank" is defined in Section 3(a)(2) of the 1933 Act, but that provision expressly incorporates the definition of the term "bank" contained in the Company Act for purposes of the 1933 Act exemption from registration for interests or participations in common or collective trust funds maintained by a bank.

<sup>5</sup> Prior to 1968, Section 5(b) of the Home Owner's Loan Act of 1933 read:

Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board. Ch. 54, 48 Stat. 132 (emphasis added).

Urban Development Act of 1968 authorized S&Ls to accept both time and savings deposits.<sup>6</sup> The Depository Institutions Act of 1980 authorized Federal S&Ls to exercise fiduciary powers to the same extent as national banks and gave them commercial lending authority.<sup>7</sup> Among other things, the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain") permitted federal S&Ls to accept demand deposits and broadened their commercial and consumer lending powers.<sup>8</sup> The powers of state chartered S&Ls also have been broadened through state code parity clauses which provide state chartered S&Ls with the same powers as federal S&Ls.<sup>9</sup>

Although these legislative changes have expanded the powers of S&Ls, commercial banks today still are permitted to engage in a wider range of activities. For example, other than the limitations that are imposed on the amount of loans that can be made to any one borrower,<sup>10</sup> there are no limitations on the amount or type of commercial loans that a national bank may make. By contrast, federal S&Ls are permitted to commit only up to 5% of their assets (10% as of January 1, 1984) for commercial loans. Similarly, S&Ls are limited in the extent to which they can make consumer loans (30% of assets); tangible personal property investments (10% of assets); small business investment company investments (1% of assets); unsecured construction loans (5% of assets); and non-conforming loans (5% of assets).<sup>11</sup> Even with respect to deposit taking, banks have substantially greater powers than S&Ls. A national bank can offer a demand checking account to any individual or corporation while an S&L can only offer a demand checking account to a business customer with whom the S&L has a loan relationship or to facilitate payments to a business entity from a non-business customer.<sup>12</sup>

While Congress has provided S&Ls with greater banking powers, it has not clearly indicated that the possession or exercise of these new powers should cause S&Ls to be treated as banks under the federal securities laws. For example, the legislative history of the Depository Institutions Act is silent whether S&Ls should be permitted to manage common and collective trust funds without

complying with the disclosure or regulatory requirements of the federal securities laws.<sup>13</sup>

#### B. The "Bank" Exemptions

Sections 3(c)(3) and 3(c)(11) of the Company Act (15 U.S.C. 80a(c)(3) and (11)), respectively, except from the definition of an investment company, common trust funds for monies held by banks in strictly fiduciary capacities and collective trust funds maintained by banks consisting solely of the assets of employees' stock, bonus, pension or profit sharing trusts qualified under Section 401 of the Internal Revenue Code of 1954. Section 3(a)(2) of the 1933 Act (15 U.S.C. 77c(a)(2)) contains a parallel exemption from registration for interests or participations in common or collective trust funds maintained by a bank and provides that, for purposes of the common or collective trust fund exemptions, the term "bank" shall have the same meaning as in the Company Act.

Under Section 3(a)(12) of the 1934 Act (15 U.S.C. 78c(a)(12)), interests in bank-maintained common and collective trust funds are treated as exempted securities and are not required to be registered under Section 12(g) of the Act (15 U.S.C. 781(g)). Finally, because Section 202(a)(11)(A) of the Advisers Act (15 U.S.C. 80b-2(a)(11)(A)) excepts banks from the definition of an investment adviser, banks which act as trustees for single or collective trust funds or as managing agents are not required to register as investment advisers.

The terms "bank" and "S&L" are separately defined in the Company Act.<sup>14</sup> The Company Act definition of the term S&L was added by the Investment Company Act Amendments Act of 1970<sup>15</sup> incident to a proposed

amendment which would have allowed banks and S&Ls to manage commingled managing agency accounts.<sup>16</sup> The House Conference Committee, in considering the bill, dropped the section on commingled agency accounts but, without explanation retained the definition of an S&L.<sup>17</sup> Also, Section 3(c)(3) of the Company Act excepts both banks and S&Ls from the definition of an investment company while Sections 3(c)(3) and 3(c)(11) exempt common and collective trust funds only if they are maintained by a bank. In addition, the terms "bank" and "S&L" are referred to separately in various exemptive provisions of the 1933 and 1934 Acts. However, S&L could not manage common and collective trust funds when Sections 3(c)(3) and 3(c)(11) of the Company Act and the other exemptive provisions were enacted.

The definition of the term "bank" is the same under both of the 1940 Acts. Further, there do not appear to be material differences between the 1940 Acts definition of "bank" and the definition of that term in Section 3(a)(6) of the 1934 Act (15 U.S.C. 78c(a)(6)).<sup>18</sup> The 1940 Act's definition provides that a "bank" is:

(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purposes of evading the provision of this Title

An entity is a bank for purposes of the 1940 Acts if it meets the requirements of one of the three clauses of the bank definition. Clause (A) defines a bank as "a banking institution organized under the laws of the United States."<sup>19</sup> Although state chartered S&Ls cannot be clause (A) banks, those S&Ls which operate under federal charters granted by the FHLBB would be clause (A) banks if they are banking institutions. A clause (B) bank is a "member of the Federal Reserve System."<sup>20</sup> Although

<sup>6</sup> The Senate Report States that—

This legislation also gives Federal savings and loans associations the ability to offer trust services on the same basis as national banks with the same protections against inside-abuse. The FHLBB is expected by regulation to tailor permissible trust powers to those that enhance the ability of thrifts to offer complete financial services to the consumer.

S. Rep. No. 99-368, 96th Cong., 2d Sess. 13 (1979), reprinted in 1980 U.S. Code Cong. & Ad. News 236,248. If an S&L must comply with the registration and reporting requirements of the federal securities laws when operating common and collective trusts in connection with its exercise of trust powers, S&Ls would be treated differently from banks which are exempt from those requirements. It should be noted, however, that Congress did not specifically discuss common or collective trust funds, as compared to individual trusts, when it enacted the Depository Institutions Act.

<sup>14</sup> The term "bank" is defined in Section 2(a)(5) (15 U.S.C. 80a-2(a)(5)) of the Company Act while the term "S&L" is defined in Section 2(a)(45) (15 U.S.C. 80a-2(a)(45)).

<sup>15</sup> Pub. L. No. 91-547, 94 Stat. 1413.

<sup>16</sup> H. Rep. No. 1382, 91st Cong., 2d Sess. 16,31-32 (1970).

<sup>17</sup> Conf. Rep. No. 163, 91st Cong., 2d Sess., reprinted in (1970) U.S. Code Cong. and Ad. News 4697, 4943.

<sup>18</sup> See, note 4 *supra*.

<sup>19</sup> 15 U.S.C. 80a-2(a)(5)(A) and 80b-2(a)(2)(A).

<sup>20</sup> 15 U.S.C. 80a-2(a)(5)(B) and 80b-2(a)(3)

<sup>6</sup> 82 Stat. 608.

<sup>7</sup> Pub. L. No. 96-221, 94 Stat. 132.

<sup>8</sup> Pub. L. No. 97-320, 128 Cong. Rec. H. 8096, 97th Cong., 2d Sess. (September 30, 1982).

<sup>9</sup> See e.g., Ill. Ann. Stat. Ch. 17, section 3006(c) (Smith-Hurd).

<sup>10</sup> 12 U.S.C. 84.

<sup>11</sup> 12 U.S.C. 1462(c)(1)(B).

<sup>12</sup> 12 U.S.C. 1464(b)(1).

mutual savings banks, which are thrift institutions like S&Ls may become members of the Federal Reserve System,<sup>21</sup> neither Federal nor state S&Ls have a parallel option. An S&L, therefore, cannot be a clause (B) bank. To be a clause (C) bank, an institution must satisfy a series of conjunctive definitional prerequisites. It must be (1) a banking institution or trust company; (2) whether incorporated or not; (3) doing business under the laws of the United States or of any state; (4) a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those exercised by national banks under the authority of the Comptroller; (5) which is supervised by a state or federal authority having supervision over banks; and (6) which is not operated for the purposes of evading the 1940 Acts.

*C. Alternative ways that an S&L could operate common and collective trust funds*

Under the FHLBB's trust regulations, a federal S&L may exercise its fiduciary powers through a trust department within the association or through a corporate trust company subsidiary. If an S&L were to choose the latter course and the subsidiary were regulated as a trust company by the Comptroller or by appropriate state banking authorities the "bank" exemption under the 1940 Acts would appear to be available to that corporate subsidiary. As an alternative, an S&L could choose to register its common and collective trusts under the Company Act as banks have in connection with their funds for the collective investment of individual retirement accounts established with the bank. Pursuing this latter alternative would obviate the question or the availability of the "bank" exemption under the 1934 Act to such trusts because under Section 12(g)(2)(B) any security issued by a registered investment company is exempt from the registration provisions of the 1934 Act. However, registration of interests in the fund under the 1933 Act would be required. An S&L which chose to register its common or collective trusts under the Company Act also might have to apply for certain exemptions from that Act in order to function in a manner equivalent to the manner in which such trusts are now operated by banks. S&Ls which conduct any advisory business as to securities also would have to register under the Advisers Act, unless a separate subsidiary were created to

conduct its advisory business which could qualify independently for the "bank" exception contained in the Advisers Act.

**III. Preliminary Conclusions and Request for Comment**

The Commission believes that it should not, by administrative interpretation, without notice and opportunity for comment, eliminate the distinction which Congress appears to have drawn in the federal securities laws between banks and S&Ls solely because recent legislation has diminished the historical differences between these two types of entities. If it is appropriate for the Commission to take action which would have the effect of giving S&Ls status equal to that of banks for purposes of certain "bank" exemptions from the federal securities laws, the Commission believes that there are three alternative courses of action that could be pursued: (1) The adoption of definitional rules under the 1934 and 1940 Acts; (2) the adoption of exemptive rules under the 1934 and 1940 Acts; and (3) the development of a legislative proposal to expand the present "bank" exemptions to include certain S&Ls.

The definitional rules could be proposed under Section 202(a)(2) of the Advisers Act, Section 2(a)(5) of the Company Act and 3(a)(6) of the 1934 Act. A rule would not be necessary under the 1933 Act because Section 3(a)(2) of that Act incorporates the Company Act definition of the term "bank" for purposes of the common and collective trust fund exclusion. The proposal under the Advisers Act would provide that for purposes of the exclusion from the definition of investment adviser provided for banks by Section 202(a)(11)(A) of the Advisers Act, the term "bank" includes any savings and loan association which is a banking institution, supervised and examined by a state or federal authority having supervision over banks, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency. Terms used in the rule would be defined in the rule. The proposals under the Company Act and the 1934 Act would be similar except that each would be prefaced by the statement that certain S&Ls are included within the "bank" definition for purposes of the exclusions provided for bank-maintained common and collective trusts in provisions of those Acts which would be specified.

Exemptive rules could be proposed under Section 206A of the Advisers Act, Section 6 of the Company Act and Section 3(a)(12) of the 1934 Act. These rules could provide substantive relief under the 1934 Act and 1940 Acts that is the same as that available to banks under Section 202(a)(11) of the Advisers Act, Sections 3(c)(3) and 3(c)(11) of the Company Act and Section 3(a)(12) of the 1934 Act. However, if the Commission were to adopt an exemptive rule under the Company Act, S&Ls would still be required to register interests in their common or collective trust funds under the 1933 Act because, for purpose of the common and collective trust exemption, Section 3(a)(2) of the 1933 Act incorporates the Company Act definition of the term "bank". A similar result would obtain under ERISA if an exemptive rule for S&Ls were adopted under the advisers Act. The Commission does not have the power to adopt rules adding to the list of exempt securities in Section 3(a)(2) of the 1933 Act, except in the case of certain small business issues not relevant here. The Commission also does not have rulemaking authority with respect to ERISA.

**List of Subjects**

*17 CFR Part 230*

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 240*

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 270*

Confidential business information, Fraud, Investment companies, Reporting and recordkeeping requirements, Securities.

In addition to a general request for comment concerning whether the Commission should act affirmatively in this area and if so, in what form, the Commission requests specific comment as to the following:

1. Whether in view of their expanded powers, S&Ls can meet the definitional prerequisites of the term "bank" as defined in the 1934 and 1940 Acts.
2. If certain S&Ls can meet the statutory elements of the definition of the term "bank," how should the Commission clarify their status under the federal securities laws.
3. Whether in taking action on any of the alternatives discussed above, there are significant investor protection or

<sup>21</sup> 12 U.S.C. provides the procedures to be used by mutual savings banks in applying for admission to the Federal Reserve System.

public interest concerns that should be considered by the Commission.

4. The costs to an S&L to maintain common and collective trusts subject to the registration, reporting and proxy requirements of the federal securities laws.

5. The costs to an S&L of establishing a corporate subsidiary to engage in the trust business, the advisory business, or both.

6. Whether Commission action to implement any of the alternatives discussed above would create regulatory disparities that would be unjustified?

By the Commission.

Dated: December 12, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-33016 Filed 12-16-83; 6:45 am]

BILLING CODE 8010-01-M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 395

#### Employee Protection Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) proposes to revise its regulations to provide for implementation of the benefit schedules issued under section 701 of the Regional Rail Reorganization Act of 1973. The Board has been delegated the responsibility to administer these benefit schedules which were issued by the Secretary of Labor. The benefit schedules provide benefits for employees of the Consolidated Rail Corporation who have been deprived of employment. New Part 395 describes the types of benefits and the procedures to be followed in making claims for benefits.

**DATE:** Comments must be received on or before January 18, 1984.

**ADDRESS:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Walter Witkovich, Chief of Adjudication, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. (312) 751-4810 (FTS 387-4810).

**SUPPLEMENTARY INFORMATION:** Subchapter I of the Board's regulation is proposed to be revised by redesignating the title of Subchapter I, "Milwaukee Railroad Restructuring Act Regulations" to read "Employee Protection Benefits",

and by adding a new Part 395, "Regulations Under Title VII of the Regional Rail Reorganization Act".

The Northeast Rail Services Act of 1981 amended the Regional Rail Reorganization Act of 1973 by repealing title V of the latter Act which provided employee protection benefits for ConRail employees and replacing that title with a new title VII. Section 701 of title VII authorized the issuance of benefit schedules to provide employee protection benefits for ConRail employees who were protected under title V and who are deprived of employment. Benefit schedules were issued on December 11, 1981, by the Secretary of Labor. These benefit schedules provided that the Board was to administer the schedules and the Board has been doing so.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this regulation have been approved by the Office of Management and Budget under control number 3220-0134 and 3220-0135.

#### List of Subjects in 20 CFR Part 395

Employee benefit plans, Manpower training programs, Railroad employees, Railroad retirement, Relocation assistance.

Title 20 CFR Chapter II is amended as follows:

1. The table of contents for Title 20, Chapter II, Railroad Retirement Board, Subchapter I, is proposed to be amended by revising the title of Subchapter I, "Milwaukee Railroad Restructuring Act Regulations" to read "Employee Protection Benefits", and by adding a new Part 395, "Regulations Under Title VII of the Regional Rail Reorganization Act".

2. A new Part 395 is proposed to be added to Subchapter I and reads as follows:

#### PART 395—REGULATIONS UNDER TITLE VII OF THE REGIONAL RAIL REORGANIZATION ACT

Sec.

- 395.1 Duties and powers of the Board.
- 395.2 Definitions.
- 395.3 Application-Election of benefits.
- 395.4 Eligibility for a separation allowance.
- 395.5 Eligibility for a daily subsistence allowance.
- 395.6 Eligibility for health and welfare coverage.
- 395.7 Eligibility for new career training assistance.
- 395.8 Eligibility for relocation benefits.
- 395.9 Initial determinations, reviews and appeals.
- 395.10 Recovery of benefits.

Authority: 45 U.S.C. 362(1); 45 U.S.C. 797; Public Law 97-102, 95 Stat. 1442.

#### § 395.1 Duties and powers of the Board.

(a) The Railroad Retirement Board is delegated the responsibility for administering the benefit schedules prescribed by the United States Secretary of Labor on December 11, 1981 pursuant to section 701 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797), as enacted by section 1143 of the Northeast Rail Service Act of 1981, Public Law 97-35, August 13, 1981. The benefit schedules set forth what benefits are available to agreement and non-agreement Consolidated Rail Corporation employees who were protected by the compensatory provisions of Title V of the Regional Rail Reorganization Act, as amended, immediately prior to the effective date of the Northeast Rail Service Act on August 13, 1981 and who were deprived of employment on or after September 1, 1981, or are deprived of employment during the term of the benefit schedules, as a result of actions taken under the Regional Rail Reorganization Act and the Northeast Rail Service Act.

(b) Upon request, ConRail shall provide any information in its possession that the Board might reasonably require to determine eligibility for benefits under this Part. In requesting information, the Board will restrict its request to just that information that the Board needs for proper administration. In the event of any refusal to provide relevant information, the provisions of section 9(a) of the Railroad Unemployment Insurance Act and section 12(a) and (b) of that Act (45 U.S.C. 359(a) and 362(a) and (b)) shall be available to the Board to enforce its request.

(c) Benefit schedules have been distributed to each Railroad Retirement Board district office and may be inspected at any of those offices. Copies are available from the U.S. Department of Labor, Division of Employee Protections, Labor-Management Services Administration, Room N5639, 3rd Street and Constitution Avenue, Northwest, Washington, D.C., 20216.

#### § 395.2 Definitions.

As used in this part:

*Acquiring railroad* means a transferee of ConRail freight properties and service responsibilities under Title IV, section 305 or 308 of the Act or section 1161 of the Northeast Rail Service Act.

*Act* means the Regional Rail Reorganization Act of 1973.

*Board* Means the Railroad Retirement Board.

*Commuter authority* means any state, local, or regional authority, corporation, or other entity established for purposes of providing commuter services, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the Maryland Department of Transportation, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service.

*Compensatory provisions of Title V* means the provisions of section 505 (b) of Title V of the Act.

*ConRail* means the Consolidated Rail Corporation.

*Deprived of employment* means the inability of an employee to obtain a position with ConRail, National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad through the normal exercise of seniority, except that for purposes of seeking or claiming moving expenses under section 405 of the benefit schedule, and employee shall be deemed to be deprived of employment if required to make a change in residence in order to obtain or retain active employment or, in the case of an employee of ConRail, to retain a position that has been moved to another location and is covered by an agreement entered into pursuant to section 706 of the Act; provided, that an employee who is dismissed for cause or is unable to work due to sickness or disability shall not be deemed deprived of employment; and provided further, that an employee who is paid a termination allowance under section 702 of Title VII of the Act (45 U.S.C. 797a) shall not thereafter be deemed deprived of employment. In the case of a non-agreement employee, "deprived of employment" refers to his or her inability to obtain, by written application, a position with ConRail, National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad as defined in the Act (including a transferee under section 305 of the Act), except that for purposes of seeking or claiming moving expenses under section 405 of the benefit schedule, a non-agreement employee shall be deemed to be deprived of employment if required to make a change in residence in order

to obtain or retain employment with the employer; provided, that a non-agreement employee who is dismissed for cause or is unable to work due to sickness or disability shall not be deemed deprived of employment.

*Employee* means any individual, including one on furlough, having an employment relationship with ConRail or an acquiring railroad whose employment was governed by the terms of a collective-bargaining agreement and who was protected by the compensatory provisions of Title V of the Act immediately prior to August 13, 1981. *Non-agreement employee* means any individual having an employment relationship with ConRail (including a surplus employee) whose employment was not governed by the terms of a collective-bargaining agreement and who was protected by the compensatory provisions of Title V of the Act on and immediately prior to August 31, 1981. But the terms "employee" and "non-agreement employee" do not include any individual who refuses an offer of employment under section 411 of the Act or any individual who refuses a final offer of employment with an acquiring Class I or Class II railroad (including any entity attaining that status on the date of conveyance) under section 305 of the Act, as amended, under a procedure recommended or approved by the Secretary of Transportation.

*Group insurance carrier* means the Metropolitan Life Insurance Company (or such other insurance carrier, if any, through which the same types of group coverages, as those provided under the plan, may be made available to active non-agreement employees of ConRail pursuant to a contractual arrangement between ConRail and such insurance carrier).

*Normal exercise of seniority* means the ability of an employee deprived of employment to exercise his or her right under a collective-bargaining agreement to displace a junior employee holding a position in a position in a seniority district within which the employee deprived of employment is required by such agreement to exercise said right.

*Plan* means the railroad industry health and welfare program consisting of the Railroad Employees National Health and Welfare Plan, GA 23000, and the Railroad Employees National Early Retirement Major Medical Benefit Plan, GA 46000. The term "plan" also means the non-contributory group term life insurance, accidental death and dismemberment insurance and medical coverages (but excluding dental coverage) provided to active non-agreement ConRail employees through

the Group Insurance Carrier, except that group term life insurance and accidental death and dismemberment insurance coverage shall be limited to an individual maximum of \$10,000 and \$8,000, respectively.

*Resign* means to relinquish all rights to employment, whether established by law, contract or agreement, including but not limited to all seniority with ConRail, all seniority deriving from any agreement entered into under section 411 of the Act or section 508 of the Rail Passenger Service Act, any seniority with railroads acquiring properties under section 305 or 308 of the Act or section 1161 of the Northeast Rail Service Act.

### § 395.3 Application-Election of Benefits.

(a) *Election.* An application-election of benefits is to be made on the form prescribed by the Board and filed within the time limits set forth in paragraph (d) of this section. Any employee or non-agreement employee who is deprived of employment shall elect one or other of the following:

(1) Resign his or her ConRail seniority, as described in § 395.4, and accept a separation allowance under Article III of either benefit schedule;

(2) Remain in furlough status and receive benefits for which he or she may be eligible under Article IV of either benefit schedule.

(b) *Effect of election.* Except as provided in paragraph (f) of this section, an employee or non-agreement employee shall be bound by the election made pursuant to the preceding subsection and shall not be eligible for any payment under an option other than the one the employee selected on his or her application to the Board.

(c) *Waivers.* Any employee or any non-agreement employee who claims benefits under the benefit schedules shall consent to the following waivers:

(1) If such individual claims benefits under Article IV of the benefit schedules, he or she shall be credited with compensation under the Railroad Unemployment Insurance Act and Railroad Retirement Act with respect to the month in which he or she first timely files a claim for benefits, and he or she shall waive any right to claim any further compensation credits by reason of any other benefit claims or payments made pursuant to Article IV.

(2) If such individual claims benefits under Article IV of the benefit schedules, he or she shall waive any claim to an age and service annuity under the Railroad Retirement Act while claiming such benefits;

(3) If such individual claims any of the benefits provided under any provision of the benefit schedules, he or she shall waive:

(i) Any claim for payment under any employee benefit plan or agreement in effect on August 13, 1981.

(ii) Any cause of action for any alleged loss of benefits resulting from repeal of Title V of the Act or from any other provision of the Northeast Rail Service Act.

(iii) Any claim to a termination payment under section 702 of the Act, if the individual elected a separation allowance, or the amount of the section 702 termination allowance that equals the amount of benefits paid to the individual under Article IV of either benefit schedule.

(d) *Time limits.* An individual who was deprived of employment on or before March 31, 1982 had until June 30, 1982 to file an application-election form. An individual who is deprived of employment after March 31, 1982 has 60 days from the date he or she is deprived of employment in which to file an application-election form. The Board will excuse non-compliance with the filing deadline where a reason of genuine necessity exists.

(e) *Failure to file election.* If an employee or non-agreement employee does not comply with the time limits specified in paragraph (d) of this section, it shall be considered that he or she has elected to receive benefits under Article IV of the applicable benefit schedule.

(f) *Revocation of election.* In the absence of fraud or willful misrepresentation, an employee or non-agreement employee may revoke his or her initial election if all the following circumstances exist:

(1) No benefits have been paid pursuant to the initial election;

(2) A new application-election is filed within the time prescribed for filing an election, and if such time has passed, an explanation is furnished establishing that a reason of genuine necessity existed that prevented the individual from complying with the time limits; and

(3) ConRail has not separated an individual who has elected to separate and is willing to continue the employment relationship of such individual as if no election to separate had been filed.

(g) *Coverage of non-agreement employees.* Any non-agreement employee who is on leave of absence from a job covered by a collective-bargaining agreement and who elects to bid for a job covered by a collective-bargaining agreement shall, if successful and if subsequently deprived of

employment, be covered by the benefit schedule for agreement employees. If a non-agreement employee has rights to a position covered by a collective-bargaining agreement, the individual must exercise his or her rights to that position under the applicable agreement, provided that obtaining that position would not require a change in residence.

(h) *Determining protection under compensatory provisions of Title V.* If an individual had not exhausted his or her entitlement to a Title V monthly displacement allowance as of the date that Title V was repealed, the Board will consider that the individual was protected by the compensatory provisions of Title V immediately prior to the effective date of the Northeast Rail Service Act of 1981. An individual shall not be considered to be so protected under any of the following circumstances:

(1) He or she did not acquire eligibility for a Title V monthly displacement allowance because he or she was not an employee of ConRail or any of its predecessor companies as of January 2, 1974, the date of enactment of Title V of the Regional Rail Reorganization Act of 1973.

(2) He or she was paid a Title V separation or termination allowance.

(3) He or she could not receive any initial or continuing Title V monthly displacement allowances because he or she attained age 65, or retired, resigned, died or was dismissed for cause. But an individual shall not be deemed to have exhausted his or her Title V protection merely by reason of the payment to him or her of moving expense benefits under section 505(g) of Title V.

(i) *Death of employee (including non-agreement employee).* An employee's right to benefits under this Part shall terminate upon his or her death. Benefits due but not paid as of the date of death shall not be paid to any other person but shall instead be returned to the credit of the account from which paid. If an employee dies before filing the election called for by paragraph (a) of this section, no payment under the benefit schedule applicable to him or her shall be made.

#### § 395.4 Eligibility for a separation allowance.

(a) *Eligibility of agreement employees.* Any eligible agreement employee who is deprived of employment shall be paid a lump sum separation allowance if he or she:

(1) Resigns his or her ConRail seniority;

(2) Relinquishes all of his or her seniority deriving from any agreement entered into under section 411 of the

Act, or under section 508 of the Rail Passenger Service Act, and any seniority with an acquiring railroad;

(3) Relinquishes any seniority deriving from section 1165 of the Northeast Rail Service Act;

(4) Forfeits all reemployment rights with those employers;

(5) Files his or her application-election in accordance with § 395.3; and

(6) Has not been paid a termination allowance under section 702 of the Act.

(b) *Eligibility of non-agreement employee.* Any protected non-agreement employee who is deprived of employment and who elects to forego any customary privileges associated with the prior employment relationship as a non-agreement employee shall be eligible to receive a lump sum separation allowance under Article III of the benefit schedule for non-agreement employees, provided he or she files an application-election as called for in § 395.3.

(c) *Maximum amount of separation allowance.* The maximum amount of the separation allowance payable to any agreement or non-agreement employee shall be \$20,000 except that the amount of the allowance shall be reduced by the amount of any health and welfare premiums paid in behalf of any such employee pursuant to § 395.6.

(d) *Creditable service month.* The separation allowance paid to any agreement or non-agreement employee shall be credited as compensation under the Railroad Retirement Act and Railroad Unemployment Insurance Act for the month in which the employment relationship is terminated or, if requested, for the month during which such individual last worked.

(e) *Disqualification under the Railroad Unemployment Insurance Act.* Any agreement or non-agreement employee who is paid a separation allowance pursuant to this section shall be disqualified from receiving unemployment and sickness benefits in accordance with the provisions of section 4(a-1)(iii) of the Railroad Unemployment Insurance Act. The length of the disqualification period shall be calculated using the formula prescribed in section 4(a-1)(iii) of that Act (45 U.S.C. 354(a-1)(iii)).

(f) *Ineligibility for a separation allowance.* No agreement or non-agreement employee shall be eligible to receive a separation allowance if such individual:

(1) Has received a termination allowance under section 702 of the Act; or

(2) Was discharged for cause; or

(3) Is unable to work due to illness or injury; or

(4) Is otherwise found not deprived of employment.

(g) *Determinations on eligibility.* The Board shall be responsible for making determinations as to the eligibility of any agreement or non-agreement employee for a separation allowance.

(h) *Application-election form.* A properly completed and timely-filed application-election, which shows that an agreement or non-agreement employee has elected to receive a separation allowance, shall be sufficient basis for honoring such election. No employee shall be required to furnish any additional form for claiming a separation allowance.

(i) *Date of separation.* The employee's date of separation shall be considered to be the day following the date on which the Board determines that he or she is eligible to receive the separation allowance.

#### § 395.5 Eligibility for a daily subsistence allowance.

(a) *Eligibility of agreement and non-agreement employees.* An agreement or non-agreement employee who is deprived of employment and who has elected to receive benefits under Article IV of the benefit schedule for agreement employees by timely filing an application-election shall be eligible to receive a daily subsistence allowance for each day he or she is deprived of employment beginning September 1, 1981, not to exceed five days in a calendar week.

(b) *Calendar week.* For the purpose of determining the payment of subsistence allowances, a calendar week shall be considered to be the seven-day period beginning on Sunday and ending on Saturday.

(c) *Daily subsistence allowance claim period.* The claim period for daily subsistence allowance shall be a calendar week. The subsistence allowance payable to any employee shall be calculated based on a claim period comprised of a calendar week.

(d) *Claim form prescribed for daily subsistence allowance.* Any agreement or non-agreement employee who wishes to claim a daily subsistence allowance shall file the form prescribed by the Board for that purpose. The amount of subsistence allowance payable shall be determined based on calendar-week claim periods.

(e) *Amount of daily subsistence allowance.* (1) The amount of the daily subsistence allowance payable to any agreement or non-agreement employee is \$42. But the daily subsistence allowance shall be reduced by the

amount of any earnings during the claim period, to the extent that such earnings exceed the amount of benefits otherwise payable under the Railroad Unemployment Insurance Act. For the purpose of this calculation, it shall be considered that unemployment benefits are attributable to each day shown as a day of employment on the claim for daily subsistence allowance. Here is an example that illustrates how this calculation is made.

(2) For the calendar week January 10 through January 16, 1982, an employee is entitled to subsistence allowance of \$42 per day for up to five days, of \$210. If the employee works on two days and earns \$30 one day and \$35 the other day, the earnings for the claim period are \$65. Unemployment benefits of \$25 are considered attributable to each of the days worked. The difference between the employee's earnings for the claim period and the unemployment benefits is \$15. Therefore, the employee's subsistence allowance for the period is reduced by \$15. The amount payable to the employee is \$195.

(3) Daily subsistence allowances may not exceed the aggregate amount of \$20,000, minus any health and welfare premiums, retraining expenses and moving expenses paid to or on behalf of the individual.

(f) *Time limit for claiming daily subsistence allowance.* No daily subsistence allowance shall be payable with respect to days in any claim period in any month unless the claim for days in such months is received by the Board no later than 30 days after the last day of the month claimed.

(g) *Claiming in advance.* If a claim is signed prior to the last day of the month for which a daily subsistence allowance is claimed or is received by the Board before the last day of the month in which the allowance is claimed, it shall be returned to the employee with a request either to resubmit the claim at the proper time or to sign and date the claim again.

(h) *Late filing of claim form.* (1) If a claim is filed late, it shall be considered as timely filed if the employee tried to file on time but was prevented from doing so by circumstances beyond his or her control. Circumstances beyond an employee's control include, but are not limited to, the following:

(i) Delay by a Board office in furnishing a form to the employee;

(ii) Misinformation from a Board employee;

(iii) Misinformation from a railway labor organization official or a railroad employer official;

(iv) Delay, loss, or damage of the claim form in the mail;

(v) Injury or illness of the employee or member of his or her immediate family.

(2) In determining whether a claim is timely filed, the Board may require the employee to furnish a written statement of the actions he or she took to file his or her claim or of the circumstances the employee believes prevented him or her from filing on time. In no event shall a claim be considered filed on time if it is received by the Board more than a year after the month claimed or if the delay is attributable to lack of diligence, ignorance of the filing requirements or forgetfulness.

(i) *Termination of eligibility.* The eligibility of an agreement or nonagreement employee for a subsistence allowance shall terminate not later than five years from the date the employee makes the election for benefits. But such individual shall cease to be eligible upon his or her death, retirement, dismissal, or resignation from employment with ConRail.

(j) *Determinations on eligibility.* The Board shall make all determinations with regard to eligibility for daily subsistence allowances.

(k) *Withdrawal of claim.* In the absence of fraud, a claim for daily subsistence allowance may be withdrawn by the employee notifying the Board in writing that he or she no longer wishes to claim entitlement to daily subsistence allowance for that month.

#### § 395.6 Eligibility for health and welfare coverage.

(a) *Eligibility of agreement employee.* An agreement employee who is deprived of employment and who has not elected to resign his or her ConRail seniority pursuant to § 395.4 to accept a lump sum separation allowance under Article III of the benefit schedules covering agreement employees and who has not elected to forego health and welfare coverage pursuant to paragraph (c) of this section shall be eligible for health and welfare coverage under the Plan for any month for which he or she is not otherwise entitled to such coverage.

(b) *Eligibility of non-agreement employee.* A non-agreement employee who is deprived of employment and who has not elected to forego any customary privileges associated with the prior employment relationship as a non-agreement employee and accept a lump sum separation allowance under Article III of the benefit schedule for non-agreement employees and who has not elected to forego health and welfare coverage, as described in paragraph (c)

of this section, shall be eligible for health and welfare coverage under the Plan for any month for which he or she is not otherwise entitled to such coverage.

(c) *Election to forego health and welfare coverage.* Any employee or non-agreement employee deprived of employment and eligible for health and welfare coverage under section 403 of either benefit schedule may elect to forego such coverage by filing an application-election in accordance with the time limits set forth in § 395.3(d). If an election is not filed, the employee will receive health and welfare coverage under section 403 of the applicable benefit schedule unless he or she is otherwise covered under the Plan.

(d) *Establishing health and welfare coverage.* (1) The Board will assist in securing health and welfare coverage for any employee or non-agreement employee upon timely notification to the Board by ConRail that such employee is eligible for and not otherwise entitled to such coverage, provided that such employee has not elected to forego coverage. For each policy or plan under which coverage is to be provided, ConRail shall furnish monthly, in a form or manner acceptable to the Board, a notice of all surplus employees or non-agreement employees eligible for and not otherwise entitled to coverage under the policy or plan in the ensuing month. The notice shall identify the coverage month, the insurance carrier and group policy number and provide the social security account number, name, address and union affiliation of each eligible employee or non-agreement employee. Notices of health and welfare eligibility are to be sent to the Director of Unemployment and Sickness Insurance, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611.

(2) The Board will pay the health and welfare premiums of any individual described above until such time as he or she elects to receive a separation allowance under Article III of either benefit schedule. The amounts of the premiums so paid shall be considered to be part of the \$20,000 that the individual could receive as a separation allowance. In the case of an individual who elects to receive a separation allowance, the Board will pay the health and welfare premiums on his or her behalf from the month the employer's obligation to pay such premiums ceases until the effective date of the employee's separation from service.

(e) *Verification of entitlement.* Upon receipt of a notice of health and welfare eligibility, the Board will verify that the employee or non-agreement employee has not elected to accept a lump sum

separation allowance under Article III of the appropriate benefit schedule or to forego health and welfare coverage and that such employee's entitlement to health and welfare coverage has not otherwise been terminated or exhausted.

(f) *Ineligibility for health and welfare coverage.* No agreement or non-agreement employee shall be eligible for health and welfare coverage under this section if such individual:

(1) Has received a termination allowance under section 702 of the Act; or

(2) Elected to resign and accept a lump sum separation allowance under Article III of either benefit schedule; or

(3) Has elected to forego health and welfare coverage as described in paragraph (c) of this section; or  
(4) Is otherwise entitled to health and welfare coverage under the Plan.

(g) *Termination or suspension of health and welfare coverage.* The eligibility of an agreement or non-agreement employee for health and welfare coverage under this section shall terminate:

(1) If an aggregate of 19 months of coverage has been extended to such employee under section 403 of either benefit schedule; or

(2) If the employee has received the maximum individual benefit of \$20,000 in a combination of subsistence allowances, retraining expenses, moving expenses and health and welfare benefits; or

(3) Not later than five years from the date the employee makes the election for benefits; or

(4) If the employee otherwise ceases to be eligible for benefits under section 701 of the Act, i.e., by reason of resignation, retirement or death.

#### § 395.7 Eligibility for new career training assistance.

(a) For the purpose of this section, except where the language or context indicates otherwise:

(1) *Educational materials* are the personally-owned items required of every student pursuing the same educational program.

(2) *Expenses for board* are charges for meals, laundry, and cleaning and pressing of clothes incurred while occupying temporary lodging described in paragraph (a)(6) of this section or the charges for meals otherwise incurred at the educational institution.

(3) *Fees* are payments other than tuition required by an educational institution from every student taking a particular course.

(4) *New career training* is any educational program that is pursued at

or under the auspices of a qualified educational institution and that is intended to assist in the acquiring of skills and knowledges to facilitate the acquisition of employment, provided that such program began after August 31, 1981.

(5) *Qualified institution* is:

(i) An educational institution accredited for payment by the Veterans Administration under chapter 36 of title 38 of the United States Code, or

(ii) A state-accredited institution that has been in existence for not less than two years, or

(iii) ConRail, but only with respect to a program of retraining explicitly approved by the Department of Labor or the Department of Transportation.

(6) *Room expenses* are the lodging charges or room rates of the educational institution or third party from whom temporary lodging is obtained for lodging that is necessary to enable the student to complete his or her course of study and is separate from and in addition to the student's permanent residence.

(7) *Tuition* is the normal charge for instruction that an educational institution requires from all similarly circumstanced persons pursuing the same education program.

(b) *Eligibility.* An employee or non-agreement employee who is deprived of employment shall be eligible for reimbursement for retraining expenses incurred after August 31, 1981 in a qualified institution for the purpose of acquiring the skills and knowledge necessary to obtain new employment. The retraining expenses for which reimbursement is available are limited to those defined in § 395.7(a). The employee shall be required to pay such expenses initially and shall then be reimbursed upon submission to the Board of acceptable proof that the employee incurred a reimbursable expense. Such proof shall consist of an authorized receipt issued by a qualified institution, except that if reimbursement is claimed for educational materials not purchased from such institution, the applicant shall submit a statement from the institution that the materials purchased are necessary to a course of instruction in which he or she is enrolled and a receipt from the seller of the materials.

(c) *Claim for new career training assistance.* An employee or nonagreement employee shall file a claim for new career training assistance within six months of having incurred expenses in an amount equal to or greater than \$50 for which the employee is eligible for reimbursement in

accordance with this Part. Claims for amounts less than \$50 shall be held by the Board until at least \$50 is claimed unless the applicant indicates on the application that it is his or her final claim. All claims shall be made on the form prescribed by the Board and shall be filed with the Bureau of Unemployment and Sickness Insurance, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, together with acceptable proof of the expenses for which reimbursement is claimed.

(d) *Amount of benefits.* New career training assistance shall be payable in reimbursement for actual expenses for room, board, tuition, fees, or educational materials in a total amount not to exceed \$3,000.

#### § 395.8 Eligibility for relocation benefits.

(a) *Moving expenses for agreement employees.* An agreement employee who is required by normal exercise of seniority to make a change in residence in order to obtain or retain active employment with ConRail (including an employee who must make a change in residence in order to retain a position that has been moved to another location and is covered by an agreement entered into pursuant to section 706 of the Act), the National Railroad Passenger Corporation, Amtrak Commuter Services Corporation, a commuter authority, or an acquiring railroad, shall be reimbursed as set forth in paragraph (c) of this section, to the extent that reimbursement is not made to or for the employee under then-existing agreements or corporate policy.

(b) *Moving expenses for non-agreement employees.* The following non-agreement employees shall be reimbursed as set forth in paragraph (c) of this section, to the extent that reimbursement is not made to or for the non-agreement employee under then-existing agreements or ConRail policy:

(1) A non-agreement employee who is deprived of employment and who is required to make a change in residence in order to obtain active employment in a position covered by a collective-bargaining agreement with ConRail, Amtrak Commuter Services Corporation, or a commuter authority, or an acquiring railroad as defined in the Act (hereinafter referred to in this section as "employing railroads"); and

(2) A non-agreement employee who has been deprived of employment, who is offered a non-agreement position with an employing railroad, and who is required to make a change in residence to obtain such non-agreement position.

(c) *Reimbursable expenses.* (1) An eligible individual shall be reimbursed

for all expenses incurred in moving his or her household and other personal effects, for the traveling expenses of himself or herself and members of his or her family, including living expenses for himself or herself and his or her family, and for his or her own actual wage loss, not to exceed 10 working days. The maximum amount of reimbursement available is \$20,000, but such maximum will be reduced by the amount of any benefits paid under §§ 395.5, 395.6, or 395.7.

(2) If the individual owns, or is under a contract to purchase, his or her own home in the locality from which he or she is required to move and elects to sell said home, he or she shall be reimbursed for any loss suffered in the sale of his or her home for less than its fair market value. In each case the fair market value of the house in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby.

(3) An individual may elect to waive the provisions of paragraph (c)(2) of this section to receive, in lieu thereof, an amount equal to his or her closing costs which are ordinarily paid for and assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs may include a real estate commission paid to a licensed realtor (not to exceed \$3,000 or six per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(4) If the individual holds an unexpired lease on a dwelling that the individual occupies as his or her home, he or she shall be protected from all necessary costs or loss in securing the cancellation of said lease.

(5) An individual who claims lost wages under this subsection shall not be eligible to receive a daily subsistence allowance for the same period.

(d) *Controversy.* (1) If a controversy arises with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, costs or loss in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the individual, or his or her representative, and the Board. If they are unable to agree, the controversy may be referred by either party to a board of competent real estate appraisers.

(2) The Board of Competent Real Estate Appraisers shall be comprised of one to be selected by the individual or his or her representative and one by the Railroad Retirement Board and these

two, if unable to agree upon a valuation within 30 days, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(3) The Board shall have the authority to settle a dispute or controversy by compromise if the amount in dispute is equal to or less than the cost of settlement procedures involving the hiring of appraisers. The Board may consider paying to the individual half the disputed amount in such a situation.

(e) *Change in residence.* As used in this section a "change in residence" means change of place of residence occasioned by a change in work location to a place that is more than 30 normal highway route miles from the residence and also farther from the residence than the former work location.

(f) *Filing claims.* Any claim for relocation benefits under this section shall be filed with the Board on the form prescribed by the Board. The claim must be received at the Board within 90 days of the date on which the expenses were incurred.

#### § 395.9 Initial determinations, reviews, and appeals.

(a) *Initial determinations with respect to applications and claims.* Each claim for benefits under this Part shall be adjudicated and the initial determination with respect thereto shall be made upon the basis of the claim, the application, and any statement or supplements filed in connection therewith, the evidence submitted by the claimant, and evidence otherwise available. Claims shall be adjudicated and initial determinations shall be made in accordance with instructions issued by the Director of Unemployment and Sickness Insurance.

(b) *Notice of initial determination.* Notice of an initial determination that denies in whole or in part a claim for benefits shall contain a brief statement of the reason for the denial and shall be

communicated in writing to the claimant within 15 days after such initial determination is made. Such notice shall contain an explanation of the claimant's right to review as provided in paragraph (c) of this section and of his or her right to appeal as provided in paragraph (d) of this section. Notice shall be deemed to have been communicated to the claimant when it is mailed to the claimant at the latest address furnished by him or her.

*(c) Review of initial determination and notice of decision upon review.*

(1) *Review.* Within 60 days after notice of an initial determination has been communicated to a claimant, the claimant may make an oral or written request for a review of the initial determination. The Director of Unemployment and Sickness Insurance shall review the determination, shall take any further action that may be required, and shall decide whether to sustain or reverse such determination.

(2) *Notice of decision.* Notice of the decision made upon review shall be communicated to the claimant in writing within 15 days after such decision is made. If the effect of the decision is that the claim is still denied in whole or in part, the claimant shall be notified of his or her right to appeal as provided in paragraph (d) of this section.

(d) *Appeal from an initial determination.* (1) Any claimant may appeal from an initial determination denying his or her claim for benefits in whole or in part whether or not a review of such determination has been made under the provisions of paragraph (c) of this section. A claimant may file an appeal from an initial determination by mailing a letter to the Bureau of Hearings and Appeals, stating the basis for the appeal. An appeal from an initial determination shall be considered to have been filed when it is received in an office of the Board. Such appeal shall be filed within 60 days from the date on which notice of an initial determination is communicated to the appellant or within 30 days from the date on which notice of the decision made upon review is communicated to the appellant, whichever period ends later. Unless an appeal from an initial determination is filed by the appellant in the manner and within the time provided herein, all rights to further review of the initial determination shall be forfeited.

(2) Within a reasonable time, but not to exceed 45 days, after an appellant has filed an appeal, the Director of Hearings and Appeals shall appoint a referee to act in the appeal. Such referee shall not have any interest in the parties or in the outcome of the proceeding, or have directly participated in the initial

determination from which the appeal is made, or have any other interest that might prevent a fair and impartial hearing.

(3) In the development of an appeal, the referee shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

(4) Promptly after being appointed, the referee shall notify all parties properly interested of their right to participate in the proceeding. Upon scheduling a hearing on an appeal, written notice of the hearing specifying the place and time there of shall be given to the properly interested parties at least seven days before the date of the hearing, unless such notice is waived by the parties. Such notice shall be mailed to the parties at the latest addresses furnished by them.

(5) The appellant, or the appellant's representative, shall be afforded full opportunity to present evidence upon any question of fact, orally or in writing or by means of exhibits, to examine and cross-examine witnesses, and to present argument in support of the appeal. If in the judgment of the referee, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the referee may obtain such evidence upon the referee's own initiative. If new evidence is obtained by the referee subsequent to an oral hearing, the referee shall notify the appellant or his or her representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have the right to submit rebuttal evidence or argument or to an oral hearing to confront and challenge such new evidence. The referee shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(6) If the referee finds that not factual issues are presented by an appeal and that the only issues concern the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim, but no oral hearing shall be held.

(7) All evidence presented by any party or by the party's duly authorized representative and all evidence developed by the referee shall be preserved. Such evidence, together with a record of the arguments, oral or written, and the file previously made in the adjudication of the claim, shall constitute the record. After an appeal from an initial determination is filed, the

compilation of the record shall be initiated by the inclusion therein of the file made in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record at any time during the pendency of an appeal shall be available for examination by any properly interested party or by the party's duly-authorized representative.

(e) *Decision of referee.* As soon as practicable after the completion of the record, the referee shall render a decision. The decision shall be based on the record and shall be in writing. Such decision shall contain a brief statement of:

- (1) The issue of issues raised,
- (2) The evidence submitted,
- (3) The findings of fact,
- (4) The decision made, and
- (5) The reasons therefor.

Within 15 days after rendition of the decision, a copy of the decision shall be mailed to each interested party at the last address of record. The referee's decision shall be the final decision of the Board.

**§ 395.10 Recovery of benefits.**

(a) *Authorization.* If it is determined that benefits under any provision of this Part have been paid erroneously, the erroneous payment shall be recovered in full unless a compromise is approved under paragraph (c) of this section. An erroneous payment may be recovered by any one or a combination of the methods described in paragraph (b) of this section.

(b) *Methods of recovery.* (1) *Recovery by cash payment.* The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash, and any debtor shall have the absolute right to repay such amount recoverable in this manner. However, if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible, installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

(2) *Recovery by setoff.* An erroneous payment of benefits may be recovered by setoff against any benefit to which the employee is entitled under section 701 of the Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Act. In the case of that individual's death, the erroneous

payment may be recovered from any payments due under those Acts to his or her estate, designee, next of kin, legal representative, or surviving spouse. If full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this Part. If the individual dies before recovery is completed, recovery shall be made from his or her estate or heirs.

(c) *Compromise of amounts recoverable.* (1) The Board or its designee, the Director of Unemployment and Sickness Insurance, may compromise an amount recoverable, provided such amount does not exceed \$20,000. Compromise of an amount recoverable may not be considered in any case in which there is an indication of fraud, the presentation of a false claim, or misrepresentation. Compromise is at all times within the discretionary authority of the Board or its designee.

(2) The following indicate the character of reasons that will be considered in approving a compromise:

- (i) The debtor's ability to repay the full amount within a reasonable time;
- (ii) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(iii) Doubt concerning the Board's ability to prove its case in court for the full amount; or

(iv) The cost of collecting the amount recoverable does not justify the enforced collection of the full amount.

(d) *Suspension or termination of collection action.* Collection action on a Board claim may be suspended or terminated under the following conditions:

(1) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe that future collection action may be productive or that collection may be effected by setoff in the near future.

(2) Collection action may be terminated when:

- (i) The debtor is unable to make any substantial payment;
- (ii) The debtor cannot be located and setoff is too remote to justify retention of the claim;
- (iii) The cost of collection action will exceed the amount recoverable;
- (iv) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: November 17, 1983.

By Authority of the Board.

Beatrice Ezerski,  
Secretary to the Board.

[FR Doc. 83-33561 Filed 12-16-83; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 131

[Docket No. 83N-0366]

#### Cream Products; Advance Notice of Proposed Rulemaking on the Possible Amendment of U.S. Standards of Identity and Establishment of a New Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is offering to interested persons an opportunity to review the "Recommended International Standard for Cream for Direct Consumption" (Codex standard No. A-9) and to comment on the desirability of and need for amending the U.S. standards of identity for certain cream products and for establishing a new standard of identity for "double cream" to achieve consistency with the Codex standard. The Codex standard was submitted to the United States for consideration of acceptance by the Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. If the comments received do not support the need for amendments to the U.S. standards of identity for these foods, or establishment of a new U.S. standard of identity for "double cream," FDA will not propose such amendments or new standard.

**DATE:** Comments by February 17, 1984.

**ADDRESS:** Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Eugene T. McGarrah, Bureau of Foods (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0116.

**SUPPLEMENTARY INFORMATION:** The Food and Agriculture Organization (FAO) and the World Health Organization (WHO) jointly sponsor the

Codex Alimentarius Commission, which conducts a program for developing worldwide food standards. Codex standards for milk and milk products, including the standard for cream for direct consumption, are developed by the FAO/WHO Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, a subsidiary body of the Codex Alimentarius Commission. Under the FAO/WHO program, a large number of food standards have been developed and submitted to governments for acceptance.

As a member of the Codex Alimentarius Commission, the United States is under treaty obligation to consider all Codex standards for acceptance. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. A commitment to accept at a designated future date constitutes target acceptance. A country's acceptance of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country. A participating country which concludes that it will not accept a Codex standard is requested to indicate the ways in which the requirements of the nonaccepting country differ from the recommended international standard. Member nations of the FAO/WHO Codex Alimentarius Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products, Animal Production and Health Divisions, FAO, Rome, Italy, of their decision. Should a sufficient number of governments accept the standard, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of the standard by the Codex Alimentarius Commission as a worldwide standard in light of acceptances received.

For the United States to accept some or all of the provisions of a Codex standard for any food to which the Federal Food, Drug, and Cosmetic Act (the act) applies, it is necessary either to establish a U.S. standard under authority of section 401 of the act (21 U.S.C. 341), or to revise an existing standard to incorporate the provisions with the U.S. standard. At present the United States has standards of identity for four of the five cream products defined by the Codex standard. The U.S.

standards of identity in §§ 131.150 (21 CFR 131.150), 131.155 (21 CFR 131.155), and 131.157 (21 CFR 131.157), and 131.180 (21 CFR 131.180) for "heavy cream," "light cream," "light whipping cream," and "half and half," respectively, differ in some respects from the Codex standard. Also there is no separate U.S. standard of identity for "double cream," the fifth cream product defined by the Codex standard.

Under the procedure prescribed in 21 CFR 130.6(b)(3), FDA is providing an opportunity for review and informal comment on: (1) The desirability of and need for amending the U.S. standards of identity for the cream products and the establishment of a new U.S. standard, (2) the specific provisions of the Codex standard, (3) additional or different requirements that should be in the U.S. standards of identity, and (4) any other pertinent points.

FDA advises that if comments received do not support the need to amend the U.S. standards of identity for cream products or the need to establish a new U.S. standard of identity for "double cream," no proposal will be published. If this decision is reached, the Technical Secretary for the Committee

on the Code of Principles Concerning Milk and Milk Products will be informed of the differences between the Codex and U.S. requirements and that imported foods may move freely in interstate commerce in this country, providing they comply with the applicable U.S. laws and regulations which include the U.S. standards of identity for the cream products in 21 CFR Part 131.

Because of the large number of countries, often with diverse food regulations, which are associated with the development of Codex standards, certain provisions of the Codex standards may not be consistent with aspects of U.S. policy and regulations. Codex standards customarily include hygiene requirements, certain basic labeling requirements such as declaration of the net quantity of contents, name of manufacturer and country of origin, and other factors. These factors are not considered a part of U.S. food standards under section 401 of the act; rather, they are dealt with under the authority of other sections of the act.

The Codex standard for cream for direct consumption does not specify analytical methods by which

compliance with provisions of the standard is to be determined. As stated in 21 CFR 2.19, it is FDA's policy to employ the methods in the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists," when these are available, in preference to other methods. FDA will adhere to this policy in any amendments to the U.S. standards of identity proposed pursuant to this notice.

For the benefit of interested persons who may wish to submit comments relative to this notice, FDA points out that the following major differences exist between the Codex standard for cream for direct consumption and the U.S. standards of identity for cream products:

The Codex standard in section 3 defines five cream products in terms of composition and quality factors. The following chart provides a comparison of the compositional requirements for cream products as defined by the Codex standard and by the respective U.S. standards of identity. The Codex name of the product is followed, in parentheses, by the name or names provided for in the U.S. standards of identity.

Product name	Milkfat content, percent by weight	
	Codex standard	U.S. standard of identity
Cream (light cream/coffee cream or table cream)	18 percent minimum	18 percent minimum but less than 30 percent maximum.
Half cream (half and half)	10 percent minimum but less than 18 percent maximum.	10.5 percent minimum but less than 18 percent maximum.
Whipping and whipped cream (light whipping cream/whipping cream)	20 percent minimum	30 percent minimum but less than 36 percent maximum.
Heavy whipping and whipped heavy cream (heavy cream/heavy whipping cream)	35 percent minimum	36 percent minimum.
Double cream	45 percent minimum	

Three of the Codex requirements for minimum milkfat content, in "half cream," "whipping cream," and "heavy whipping cream," are lower than those of the respective U.S. cream products. Also the Codex standard defines a fifth product, "double cream," for which the U.S. has no separate standard of identity. However, a cream product containing 45 percent milkfat or more comes within the scope of the U.S. standard for "heavy cream."

In § 3.2, the Codex standard provides for the optional addition of sugar only in whipping and whipped cream at levels consistent with good manufacturing practice and for milk solids not fat or caseinates at specified maximum levels of use. The U.S. standards permit the use of safe and suitable nutritive sweeteners in all cream products and the use of milk solids not fat (by definition in § 131.3 for cream (21 CFR 131.3)) to adjust the composition of the cream but do not provide for the use of caseinates.

The Codex standard in 4.1 provides for the use of stabilizers in creams and in 4.2 for thickeners or modifying agents in whipped pasteurized creams or in ultra heat-treated cream and sterilized cream intended for whipping at specified maximum levels of use. The U.S. standards provide for the use of safe and suitable stabilizers and emulsifiers in all cream products without specifying the levels of use.

The Codex standard in 4.3 specifies that whipped creams may be packaged under pressure with carbon dioxide and nitrous oxide. Although neither of these gases is mentioned in the U.S. standards of identity for light whipping cream and heavy whipping cream, carbon dioxide and nitrous oxide are generally recognized as safe for use in foods in 21 CFR 182.1240 and 182.1545, respectively.

The Codex standard in 4.4 limits the flavors to be used to vanilla extracts, vanillin, and ethyl vanillin. The U.S. standards provide for the use of any safe and suitable characterizing

flavoring ingredients, including fruit and fruit juices and natural and artificial food flavoring.

The Codex standard and the U.S. standards provide for the sterilization of cream products. The U.S. standards provide for optional homogenization of the creams while the Codex standard does not.

The Codex standard in 5.1.4 provides for the label declaration of the animal species from which the cream was derived if the source is other than cow's milk. The U.S. standards for cream do not provide for the use of cream other than that derived from cow's milk.

The Codex standard in 5.1.5 requires label declaration of the percent by weight of milkfat contained. The U.S. standards do not require label declaration of the milkfat content.

Under § 130.6(c), all persons who wish to submit comments are encouraged and requested to consult with different interested groups (consumers, industry,

academic community, professional organizations, and others) in formulating their comments, and to include a statement of any meetings or discussions that have been held with other groups.

#### List of Subjects in 21 CFR Part 131

Cream, Food standards, Milk, Yogurt.  
The Codex standard under consideration is as follows:

#### Recommended International Standard For Cream For Direct Consumption (Codex Standard No. A-9)

##### 1. Scope

This standard applies to cream, half cream, whipping cream, whipped cream and double cream subjected to pasteurization, sterilization, UHT or ultra pasteurization.

##### 2. Definitions

##### 2.1 Product Definition

Cream is the milk product comparatively rich in fat separated from milk which takes the form of an emulsion of fat-in-skimmed milk. The final composition may be adjusted by the addition of milk or skimmed milk.

##### 2.2 Process Definitions

2.2.1 Pasteurized creams have been subjected to the process of pasteurization by a recognized heat treatment, or which have been manufactured from pasteurized milk.

2.2.2 Sterilized creams have been subjected to a process of sterilization by recognized heat treatment in the container in which they are supplied to the consumer.

2.2.3 Ultra heat-treated creams (UHT) or ultra pasteurized creams have been subjected to a process of UHT or ultra pasteurization in continuous flow by a recognized heat treatment and have been packaged aseptically.

##### 2.3 Forms

Air spray (aerosol) creams have been packaged under pressure in rigid containers (atomizers) made of materials suited to their use and containing an appropriate gas and permitting the distribution, by use of a valve, of the product contained in the atomizer.

#### 3. Essential Composition and Quality Factors

##### 3.1 Creams

3.1.1 Cream, Minimum milk fat content: 18% m/m

##### 3.1.2 Half Cream

Maximum milk fat content: 10% m/m  
Minimum milk fat content: less than 18% m/m

3.1.3 Whipping and Whipped Cream, Minimum milk fat content: 28% m/m

3.1.4 Heavy Whipping and Whipped Heavy Cream, Minimum milk fat content: 35% m/m

3.1.5 Double Cream, Minimum milk fat content: 45% m/m

##### 3.2 Optional additions, Maximum level

Sugar (in whipping and whipped cream only) GMP

Milk solids not fat, or 2%

Caseinates 0.1%

4. Food Additives<sup>1</sup>, Maximum level

##### 4.1 Stabilizers

Sodium, potassium and calcium salts of:

hydrochloric acid, 0.2% m/m singly

citric acid, carbonic acid,

orthophosphoric acid,

polyphosphoric acid, 0.3% m/m in

combination, expressed as

anhydrous substances

4.2 Thickening and modifying agent (for use only in whipped pasteurized creams or in UHT cream and sterilized cream intended for whipping)

Carrageenan, Alginate, Na, K, Ca,

Gelatine, Lecithin, Pectins,

Carboxymethylcellulose, sodium,

Microcrystalline cellulose, Mono-

and diglycerides, Preparations of

rennin, Agar agar; Vegetable gums:

Acacia gum, Guar gum, Locust bean

gum, Xanthan gum, 0.5% m/m singly

or in combination

4.3 Harmless gases (for creams packaged under pressure and whipped creams only)

Carbondioxide (CO<sub>2</sub>), Nitrous oxide (N<sub>2</sub>O), GMP

4.4 Flavours: Vanilla extracts, Vanillin, Ethyl vanillin, GMP

##### 5. Labelling

In addition to Sections 1, 2, 4 and 6 of the Recommended International General Standard for the Labelling of Pre-packaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

##### 5.1 The name of the Food

5.1.1 The name of the product shall be (a) "Cream" (b) "Half Cream" (c) "Whipped Cream" (d) "Whipping Cream" (e) "Whipped Heavy Cream" (f) "Heavy Whipping Cream", or (g) "Double Cream" as appropriate. The use of appropriate alternative qualifying terms in place of "Half", "Heavy" and "Double" is permitted.

5.1.2 The addition of sugar and flavouring agent(s) as listed under 4.4 shall be declared in association with the name of the product.

5.1.3 Creams should, in addition to the designations listed in 5.1.1 and 5.1.2 have a declaration of the heat treatment i.e., "pasteurized", or "sterilized" or "ultra heat-treated" or "UHT" or "ultra-pasteurized".

<sup>1</sup> Subject to endorsement by the Codex Committee on Food Additives.

5.1.4 Where milk other than cow's milk is used for the manufacture of the product or any part thereof, a word or words denoting the animal or animals from which the milk has been derived should be inserted immediately before or after the designation of the product except that no such insertion need be made if the consumer would not be misled by its omission.

5.1.5 The percentage by weight of the milkfat content shall be declared on the label.

##### 5.2 List of ingredients

A complete list of ingredients shall be declared on the label in descending order of proportion.

##### 5.3 Net contents

The net contents shall be declared by weight in either the metric ("Système international" units) or avoirdupois or both systems of measurement or by volume in one or more of the following systems of measurement: metric ("Système international"), U.S. or British units as required by the country in which the product is sold.

##### 5.4 Name and address

The name and address of the manufacturer, packer, distributor, importer or vendor, shall be declared.

##### 5.5 Country of origin (Manufacture)

The country of manufacture of the food shall be declared except that foods sold within the country of manufacture need not declare the country of manufacture.

##### 5.6 Date marking

There shall be a clear indication of the minimum durability date.

##### 5.7 Lot identification

Each container shall be permanently marked in code or in clear to identify the producing factory and the lot.

Note.—Decision No. 5 applies to the products covered by this standard.

For the convenience of the reader, FDA is also including the texts of the existing U.S. standards of identity for heavy cream, light cream, light whipping cream, and half and half which are as follows:

#### § 131.150 Heavy cream.

(a) *Description.* Heavy cream is cream which contains not less than 36 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Emulsifiers.

(2) Stabilizers.

(3) Nutritive sweeteners.

(4) Characterizing flavoring ingredients (with or without coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Natural and artificial food flavoring.

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Nomenclature.* (1) The name of the food is "Heavy cream" or alternatively "Heavy whipping cream". The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(i) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

(ii) The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

(2) The following terms may appear on the label:

(i) The word "pasteurized" if the food has been pasteurized.

(ii) The word "homogenized" if the food has been homogenized.

(e) *Label declaration.* When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

#### § 131.155 Light cream.

(a) *Description.* Light cream is cream which contains not less than 18 percent but less than 30 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Stabilizers.

(2) Emulsifiers.

(3) Nutritive sweeteners.

(4) Characterizing flavoring ingredients (with or without coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Natural and artificial food flavoring.

(c) *Method of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Nomenclature.* The name of the food is "Light cream", or alternatively "Coffee cream" or "Table cream". The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(1) The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(i) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

(ii) The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

(2) The following terms may appear on the label:

(i) The word "pasteurized" if the food has been pasteurized.

(ii) The word "homogenized" if the food has been homogenized.

(e) *Label declaration.* When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

#### § 131.157 Light whipping cream.

(a) *Description.* Light whipping cream is cream which contains not less than 30 percent but less than 36 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Emulsifiers.

(2) Stabilizers.

(3) Nutritive sweeteners.

(4) Characterizing flavoring ingredients (with or without coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Natural and artificial food flavoring.

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), section 16.114, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Nomenclature.* The name of the food is "Light whipping cream" or alternatively "Whipping cream". The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(1) The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(i) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

(ii) The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

(2) The following terms may appear on the label:

(i) The word "pasteurized" if the food has been pasteurized.

(ii) The word "homogenized" if the food has been homogenized.

(e) *Label declaration.* When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

#### § 131.180 Half-and-half.

(a) *Description.* Half-and-half is the food consisting of a mixture of milk and cream which contains not less than 10.5 percent but less than 18 percent milkfat. It is pasteurized or ultra-pasteurized, and may be homogenized.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Emulsifiers.

(2) Stabilizers.

(3) Nutritive sweeteners.

(4) Characterizing flavoring ingredients (with or without coloring) as follows:

(i) Fruit and fruit juice (including concentrated fruit and fruit juice).

(ii) Natural and artificial food flavoring.

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th Ed. (1970), § 16.114, under "Fat, Roesse-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies are available from the Division of Food Technology, Bureau of Foods (HFF-210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(d) *Nomenclature.* The name of the food is "Half-and-half". The name of the food shall be accompanied on the label by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter.

(1) The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half the height of the letters used in such name:

(i) The word "ultra-pasteurized" if the food has been ultra-pasteurized.

(ii) The word "sweetened" if no characterizing flavoring ingredients are used, but nutritive sweetener is added.

(2) The following terms may appear on the label:

(i) The word "pasteurized" if the food has been pasteurized.

(ii) The word "homogenized" if the food has been homogenized.

(e) *Label declaration.* When used in the food, each of the ingredients specified in paragraph (b) of this section shall be declared on the label as required by applicable sections of Part 101 of the chapter.

Interested persons may, on or before February 17, 1984, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Each comment should identify the title of the Codex standard and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Any comments submitted in support of amending the U.S. standards of identity for cream products or establishing a U.S. standard of identity for "double cream" should be supported by appropriate information and data regarding impact on small businesses consistent with the provisions of the Regulatory Flexibility Act (Pub. L. 96-354). (Executive Order 12291 does not apply to regulations issued in

accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.)

Dated: December 2, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-33301 Filed 12-16-83; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[LR-201-82]

#### Information Returns Required of Certain Foreign-owned Corporations and Information Returns Required of United States Persons With Respect to Certain Foreign Corporations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of Proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to information returns required of United States persons with respect to certain foreign corporations, and information returns required of certain foreign-owned corporations with respect to transactions with related corporations, under sections 6038 and 6038A, respectively, of the Internal Revenue Code of 1954. These proposed regulations set forth the requirements for who must report, the information required to be reported, the time and manner for filing the information returns, and penalties for failure to report information. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations would provide the public with the guidance needed to comply with that Act.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by February 17, 1984. The amendments under section 6038 with respect to penalties are proposed to be effective for information required with respect to annual accounting periods of the foreign corporations ending after September 3, 1982. The remaining amendments under section 6038 are proposed to be effective for taxable years beginning after the date that is 30 days after publication of final regulations pursuant to this notice of proposed rulemaking. The amendments under section 6038A are proposed to be

effective for taxable years beginning after December 31, 1982.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-201-82), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** David J. Dean of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR-201-82), (202) 566-3289, not a toll-free call.

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6038 and 6038A of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to sections 338 and 339 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 631) and are to be issued under the authority contained in sections 6038 (74 Stat. 1010, 26 U.S.C. 6038), 6038A (96 Stat. 631, 26 U.S.C. 6038A), and 7805 (98A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

##### Description of Proposed Regulations

##### Proposed Amendments to Regulation § 1.6038-2

Section 6038 requires that certain information be reported by every United States person with respect to any foreign corporation which such person controls. Current regulations under section 6038 describe the taxpayers that must report, the information to be reported, the time and manner for filing returns, and a penalty of reduction of creditable foreign taxes for failure to furnish required information. The Tax Equity and Fiscal Responsibility Act of 1982 added a dollar amount penalty to section 6038 of the Code, in addition to the existing foreign tax credit penalty, because the existing penalty is complicated and was perceived as being unduly harsh or potentially ineffective depending on the circumstances. The new penalty can be more uniformly applied to various taxpayers, while the other penalty is retained as an alternative for its potentially significant effect. If creditable taxes are reduced under the foreign tax credit penalty, the amount of the reduction is decreased by the amount of the dollar amount penalty which is imposed.

The proposed amendments incorporate the new penalty provision into the regulation and also update the regulation to reflect other changes in the

relevant tax law and tax forms. Changes have also been made to clarify the descriptions of the information that should be reported concerning sales and purchases of stock in trade and other tangible property and concerning loan transactions.

#### Proposed Regulation § 1.6038A-1

Section 6038A requires that certain information be reported by every corporation that is controlled by a foreign person and is either a domestic corporation or is a foreign corporation engaged in a trade or business within the United States (reporting corporations). Section 6038A gives the Secretary authority to prescribe by regulations: (1) The information which is required to be reported with respect to identification of related corporations (domestic or foreign) with which the reporting corporation has had transactions, and with respect to transactions between the reporting corporation and related foreign corporations, and (2) the time and manner for reporting such information. The purpose of this requirement is to facilitate determinations by the Internal Revenue Service as to whether income is being accurately reported and whether adjustments under § 482 are needed to prevent evasion of taxes or clearly to reflect the income of certain corporations.

The proposed regulation requires every reporting corporation to make a separate annual information return for each related corporation with which the reporting corporation has had a transaction during the taxable year. The proposed regulation describes reporting corporations and related corporations, and requires reporting of information about the reporting corporation and the related corporation. It also requires reporting of information about transactions between the reporting corporation and each related corporation that is a foreign corporation. The information to be reported includes the location of the related corporation's books and records, the relationship between the reporting corporation and related corporation, a summary of the monetary consideration paid and monetary consideration received for transactions between the reporting corporation and related foreign corporations, and a description of any transactions between the reporting corporation and related foreign corporations which involved non-monetary consideration or no consideration. An exception is provided for transactions which would not affect any United States income tax liability.

The proposed regulation prescribes that the required returns are to be filed with the reporting corporation's income tax return. The proposed regulation also sets forth the penalties for failure to timely provide information required under section 6038A, and describes how those penalties may be avoided or reduced by showing reasonable cause for failure to comply with this reporting requirement. The regulation is proposed to be effective for taxable years beginning after December 31, 1982.

#### Comments and Requests for a Public Hearing

Before adopting as final regulations the proposed regulations referred to in this document, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

#### Certification of Nonapplicability of Regulatory Flexibility Act of 1980 and Executive Order 12291

The Secretary of the Treasury has certified that these regulations will not have significant economic impact on a substantial number of small entities and are, therefore, not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). These regulations will generally only affect United States persons that have significant holdings in foreign corporations and certain foreign-owned corporations that have transactions with related corporations. The Commissioner of Internal Revenue has determined that these proposed rules are not major regulations subject to Executive Order 12291.

#### Drafting Information

The principal author of these proposed regulations is David J. Dean of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

#### List of Subjects in 26 CFR 1.6001-1 Through 1.6109-2

Income taxes, Administration and procedure, Filing requirements.

#### Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

**Paragraph 1.** Section 1.6038-2 is revised to read as follows:

**§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.**

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return with respect to each annual account period (described in paragraph (e) of this section) beginning after December 31, 1962, of each foreign corporation which that person controls (as defined in paragraph (b) of this section) for an uninterrupted period of 30 days or more during such annual accounting period. Such information shall not be required to be furnished, however, with respect to a corporation defined in section 1504(d) of the Code which makes a consolidated return for the taxable year. The return shall be made, with respect to annual accounting periods ending with or within the United States person's taxable year, on—

(1) Form 2952 if such taxable year ends before December 31, 1982,

(2) Form 5471 if such taxable year ends on or after December 31, 1983, or

(3) Either Form 5471 or Form 2952 if such taxable year ends on or after December 31, 1982 and before December 31, 1983.

(b) *Control.* A person shall be deemed to be in control of a foreign corporation if at any time during that person's taxable year it owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock of the foreign corporation. A person in control of a corporation which, in turn, owns more than 50 percent of the combined voting

power, or of the value, of all classes of stock of another corporation is also treated as being in control of such other corporation. The provisions of this paragraph may be illustrated by the following example:

*Example.* Corporation A owns 51 percent of the voting stock in Corporation B. Corporation B owns 51 percent of the voting stock in Corporation C. Corporation C in turn owns 51 percent of the voting stock in Corporation D. Corporation D is controlled by Corporation A.

(c) *Attribution rules.* For the purposes of determining control of domestic or foreign corporations the constructive ownership rules of section 318(a) shall apply, except that:

(1) Stock owned by or for a partner or a beneficiary of an estate or trust shall not be considered owned by the partnership, estate, or trust when the effect is to consider a United States person as owning stock owned by a person who is not a United States person;

(2) A corporation will not be considered as owning stock owned by or for a 50 percent or more shareholder when the effect is to consider a United States person as owning stock owned by a person who is not a United States person; and

(3) If 10 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, section 318(a)(2)(C) shall apply. The constructive ownership rules of section 318(a) apply only for purposes of determining control as defined in paragraph (b) of this section.

(d) *U.S. person.* For purposes of section 6038 and this section, the term "United States person" has the meaning assigned to it by section 7701(a)(30) of the Code, except that—

(1) With respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would be excluded from gross income under section 933(1).

(2) With respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under subtitle A (relating to income taxes) of the Code for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both

within and outside the Virgin Islands into the treasury of the Virgin Islands.

(3) With respect to a corporation organized under the laws of Guam or the Northern Mariana Islands, such term does not include an individual who is a bona fide resident of Guam or the Northern Mariana Islands, respectively, and who is relieved of liability for income tax to the United States under section 935 (c) (3) of the Code or section 601 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94-241), respectively, for such individual's taxable year referred to in paragraph (e) of this section, and

(4) With respect to a corporation organized under the laws of any possession of the United States (other than Guam, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands), such term does not include an individual who is a bona fide resident of such possession for the entire taxable year and whose income derived from sources within any possession of the United States is not, by reason of section 931(a), includible in gross income under subtitle A (relating to income taxes) of the Code for the taxable year.

An individual for whom an election under section 6013 (g) or (h) is in effect shall, subject to the exceptions contained in this paragraph (d), be considered a United States person for purposes of section 6038 and this section.

(e) *Period covered by return.* The information required under paragraphs (f) and (g) of this section with respect to a foreign corporation shall be furnished for the annual accounting period of the foreign corporation ending with or within the United States person's taxable year. For purposes of this section, the annual accounting period of a foreign corporation is the annual period on the basis of which that corporation regularly computes its income in keeping its books. The term "annual accounting period" may refer to a period of less than one year, where, for example, the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than one year as described in section 902(c)(2). If more than one annual accounting period ends with or within the United States person's taxable year, separate annual information returns shall be submitted for each annual accounting period.

(f) *Contents of return.* The return on Form 2952 or Form 5471 shall contain the

following information with respect to each foreign corporation:

(1) The name, address, and employer identification number, if any, of the corporation;

(2) The principal place of business of the corporation;

(3) The date of incorporation and the country under whose laws incorporated;

(4) The name and address of the foreign corporation's statutory or resident agent in the country of incorporation;

(5) The name, address, and identifying number of any branch office or agent of the foreign corporation located in the United States;

(6) The name and address of the person (or persons) having custody of the books of account and records of the foreign corporation, and the location of such books and records if different from such address;

(7) The nature of the corporation's business and the principal places where conducted;

(8) As regards the outstanding stock of the corporation—

(i) A description of each class of the corporation's stock, and

(ii) The number of shares of each class outstanding at the beginning and end of the annual accounting period;

(9) A list showing the name, address, and identifying number of, and the number of shares of each class of the corporation's stock held by, each United States person who is a shareholder owning at any time during the annual accounting period 5 percent or more in value of any class of the corporation's outstanding stock;

(10) For the annual accounting period, the amount of the corporation's:

(i) Current earnings and profits;

(ii) Foreign income, war profits, and excess profits taxes paid or accrued;

(iii) Distributions out of current earnings and profits for the period; and

(iv) Distributions other than those described in paragraph (f)(10)(iii) of this section and the source thereof;

(11) A summary showing the total amount of each of the following types of transactions of the corporation, which took place during the annual accounting period, with the person required to file this return, any other corporation controlled by that person, or any United States person owning at the time of the transaction 10 percent or more in value of any class of stock outstanding of the foreign corporation, or of any corporation controlling that foreign corporation:

(i) Sales and purchases of stock in trade;

- (ii) Purchases of tangible property other than stock in trade;
- (iii) Sales and purchases of patents, inventions, models, or designs (whether or not patented), copyrights, trademarks, secret formulas or processes, or any other similar property rights;
- (iv) Compensation paid and compensation received for the rendition of technical, managerial, engineering, construction, scientific, or like services;
- (v) Commissions paid and commissions received;
- (vi) Rents and royalties paid and rents and royalties received;
- (vii) Amounts loaned and amounts borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (f)(11) that arise and are collected in full in the ordinary course of business);
- (viii) Dividends paid and dividends received;
- (ix) Interest paid and interest received; and
- (x) Premiums received for insurance or reinsurance; and
- (12) Such other information as the form shall prescribe which is similar or related in nature to that specified in paragraph (f)(1) through (f)(11) of this section.

For purposes of paragraph (f)(11) of this section, if the United States person is a bank, as defined in section 581, or is controlled within the meaning of section 368(c) by a bank, the term "transactions" shall not, as to a corporation with respect to which a return is filed, include banking transactions entered into on behalf of customers; in any event, however, deposits in accounts between a foreign corporation, controlled (within the meaning of paragraph (b) of this section) by a United States person, and a person described in paragraph (f)(11) of this section and withdrawals from such accounts shall be summarized by reporting end-of-month balances.

(g) *Financial statements.* The following information with respect to the foreign corporation shall be attached to and filed as part of the return required by this section:

- (1) A statement of the corporation's profit and loss for the annual accounting period;
- (2) A balance sheet as of the end of the annual accounting period of the corporation showing—
  - (i) The corporation's assets,
  - (ii) The corporation's liabilities,
  - (iii) The corporation's net worth;
- (3) An analysis of changes in the corporation's surplus accounts during the annual accounting period including both opening and closing balances.

The information listed in this paragraph (g) shall be prepared in conformity with generally accepted accounting principles, and in such form and detail as is customary for the corporation's accounting records.

(h) *Method of reporting.* All amounts furnished under paragraphs (f) and (g) of this section shall be expressed in United States currency with a statement of the exchange rates used. All statements submitted on or with the return required under this section shall be rendered in the English language.

(i) *Time and place for filing return.* Returns on Form 2952 or Form 5471 required under paragraph (a) of this section shall be filed with the United States person's income tax return on or before the date required by law for the filing of that person's income tax return. District directors are authorized to grant reasonable extensions of time for filing returns on Form 2952 or Form 5471 in accordance with the applicable provisions of § 1.6081-1 of this chapter. An application for an extension of time for filing a return of income shall also be considered as an application for an extension of time for filing returns on Form 2952 or Form 5471.

(j) *Two or more persons required to submit the same information—(1) Return jointly made.* If two or more persons are required to furnish information with respect to the same foreign corporation for the same period, such persons may, in lieu of making separate returns, jointly make one return. Such joint return shall be filed with the income tax return of any one of the persons making such joint return.

(2) *Persons exempted from furnishing information—(i) Conditions.* Any person required to furnish information under this section with respect to a foreign corporation need not furnish that information provided all of the following conditions are met:

- (A) Such person does not directly own an interest in the foreign corporation;
- (B) Such person is required to furnish the information solely by reason of attribution of stock ownership from a United States person under paragraph (c) of this section; and
- (C) The person from whom the stock ownership is attributed furnishes all of the information required under this section of the person to whom the stock ownership is attributed.

(ii) *Illustrations.* The rule of this paragraph (j)(2) is illustrated by the following examples:

*Example (1).* A, a U.S. person owns 100 percent of the stock of M, a domestic corporation. A also owns 100 percent of the stock of N, a foreign corporation organized under the laws of foreign country Y. A. in

filing the information return required by this section with respect to N Corporation, in fact furnishes all of the information required of M Corporation with respect to N Corporation. M Corporation need not file the information.

*Example (2).* X, a domestic corporation, owns 100 percent of the stock of Y, a domestic corporation. Y Corporation owns 100 percent of the stock of Z, a foreign corporation. X Corporation is not excused by this paragraph (j)(2) from filing information with respect to Z Corporation because X Corporation is deemed to control Z Corporation under the provisions of paragraph (b) of this section without recourse to the attribution rules in paragraph (c) of this section.

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) or (j)(2) of this section shall file a statement with his return indicating that such liability has been (or, in the case of a joint return made under paragraph (j)(1) of this section, will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

(k) *Failure to furnish information—*

(i) *Dollar amount penalty—(i) In general.* In any person required to file Form 2952 or Form 5471 under section 6038 and this section fails to furnish any information described in paragraphs (f) and (g) of this section within the time prescribed by paragraph (i) of this section, such person shall pay a penalty of \$1,000 for each annual accounting period of each foreign corporation with respect to which such failure occurs.

(ii) *Increase in penalty for continued failure after notification.* If a failure described in paragraph (k)(1)(i) of this section continues for more than 90 days after the date on which the district director mails notice of such failure to the person required to file Form 2952 or Form 5471, such person shall pay a penalty of \$1,000, in addition to the penalty imposed by section 6038(b)(1) and paragraph (k)(1)(i) of this section, for each 30-day period (or fraction thereof) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038(b)(2) and this paragraph (k)(1)(ii) shall be limited to a maximum of \$24,000 for each failure.

(iii) *Effective date.* The penalty imposed by section 6038(b) and this paragraph (k)(1) shall apply with respect to information for annual accounting periods ending after September 3, 1982.

(2) *Penalty of reducing foreign tax credit—(i) Effect on foreign tax credit.* Failure of a United States person to furnish, in accordance with the

provisions of this section, any return or any information in any return, required to be filed for a taxable year under authority of section 6038 on or before the date prescribed in paragraph (i) of this section may affect the application of section 901 as provided in paragraph (k)(2)(ii) of this section and may affect the application of sections 902 and 960 as provided in paragraph (k)(2)(iii) of this section. Such failure may affect the application of sections 902 and 960 to any such United States person which is a corporation or to any person who acquires from any other person any portion (but only to the extent of such portion) of the interest of such other person in any such foreign corporation.

(ii) *Application of section 901.* In the application of section 901 to a United States person referred to in paragraph (k)(2)(i) of this section, the amount of taxes paid or deemed paid by such person for any taxable year, with or within which the annual accounting period of a foreign corporation for which such person failed to furnish information required under this section ended, may be reduced by 10 percent. However, no tax reduced under paragraph (k)(2)(iii) of this section or deemed paid under section 904(c) shall be reduced under the provisions of this paragraph (k)(2)(ii).

(iii) *Application of sections 902 and 960.* In the application of sections 902 and 960 to a United States person referred to in paragraph (k)(2)(i) of this section for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation for the accounting period or periods for which such person was required for the taxable year of the failure to furnish information under this section may be reduced by 10 percent. The 10-percent reduction is not limited to the taxes paid or deemed paid by the foreign corporation with respect to which there is a failure to file information but may apply to the taxes paid or deemed paid by all foreign corporations controlled by that person. In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this paragraph (k)(2) shall not apply for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes.

(iv) *Reduction for continued failure after notice.* (A) If the failure referred to in paragraph (k)(2)(i) of this section continues for more than 90 days after the date on which the district director mails notice of such failure to such United States person, then the amount of the reduction referred to in paragraph (k)(2) (ii) and (iii) of this section may be

10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure continues after the expiration of such 90-day period.

(B) No taxes shall be reduced under this paragraph (k)(2) more than once for the same failure. Taxes paid by a foreign corporation when once reduced for a failure shall not be reduced again for the same failure in their status as taxes deemed paid by a corporate shareholder. Where a failure continues, each additional periodic 5-percent reduction, referred to in paragraph (k)(2)(iv)(A) of this section, shall be considered as part of the one reduction.

(v) *Limitation on reduction of foreign tax credit.* The amount of the reduction under this paragraph (k)(2) for each failure to furnish information with respect to a foreign corporation as required under this section shall not exceed the greater of:

(A) \$10,000, or

(B) The income of the foreign corporation for its annual accounting period with respect to which the failure occurs.

For purposes of this section if a person is required to furnish information with respect to more than one foreign corporation, controlled (within the meaning of paragraph (b) of this section) by that person, each failure to submit information for each such corporation constitutes a separate failure.

(vi) *Offset for dollar amount penalty imposed.* The total amount of reduction or reductions which, but for this paragraph (k) (2) (vi), may be made under this paragraph (k) (2) with respect to any separate failure, shall not exceed the maximum amount of such reductions which may be imposed, reduced (but not below zero) by the amount of the dollar amount penalty imposed by paragraph (k) (1) of this section with respect to such separate failure.

(3) *Reasonable cause*—(i) For purposes of section 6038 (b) and (c) and this section, the time prescribed for furnishing information under paragraph (i) of this section, and the beginning of the 90-day period after mailing of notice by the district director under paragraph (k)(i)(ii) and (k)(2)(iv)(A) of this section, shall be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(ii) To show that reasonable cause existed for failure to furnish information as required by section 6038 and this section, the person required to report such information must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a

declaration that it is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return is required to be filed. The district director or the director of the service center shall determine whether the failure to furnish information was due to reasonable cause, and if so, the period of time for which such reasonable cause existed.

(4) *Other penalties.* The information required by section 6038 and this section must be furnished even though there are no foreign taxes which would be reduced under the provisions of this section, and even though the information required may not affect the amount of any tax due under the Internal Revenue Code.

For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

(5) *Illustrations.* The provisions of this paragraph may be illustrated by the following examples.

*Example (1).* M, a domestic corporation, owns 100 percent of the stock of N, a foreign corporation. Both M and N use the calendar year as a taxable year and annual accounting period, and all of the following events occur in or with respect to the 1980 taxable year. The dividend from N is the only dividend from a foreign corporation received by M during the taxable year, and the foreign taxes listed are the only foreign taxes paid or deemed paid by M and N for the taxable year. On March 15, 1981, M filed its income tax return and paid its income tax, but M did not file Form 2952 with respect to N's 1980 annual accounting period. On June 1, 1981, the district director mailed notice to M of M's failure to file Form 2952 with respect to N. On November 30, 1981, M filed a complete Form 2952 with respect to N's 1980 annual accounting period.

(a) Gains, profits, and income of N—\$100,000

(b) Foreign tax paid by N with respect to such gains, profits, and income—\$40,000

(c) Reduction of foreign tax paid by N (for purposes of M's section 902 deemed paid credit) resulting from M's failure to file information with respect to N as required under section 6038(a) and this section: failure to file within the time prescribed in paragraph (i) of this section, 10-percent reduction; continued failure for one additional 3-month period after 90-day period after notice mailed, 5-percent reduction; total reduction, 15 percent (\$40,000 times 15 percent)—\$6,000

(d) Foreign tax paid by N after section 6038 (c)(1)(B) reduction—\$34,000

(e) Dividend paid by N to M—\$45,000

(f) Accumulated profits of N as defined in section 902(c)(1) (determined without regard to the section 6038(c)(1)(B) reduction)—\$100,000

(g) Accumulated profits of N as described in section 902(a) (determined without regard

to the section 6038(c)(1)(B) reduction—  
\$60,000

(h) For purposes of the section 902 credit, M is deemed to have paid the same proportion of foreign taxes paid (reduced as provided under section 6038(c)) with respect to the accumulated profits described in section 902(a) (determined without regard to the reduction provided under section 6038(c)) as the amount of the dividend (determined without regard to section 78) bears to such amount of accumulated profits—\$25,500

$(45,000 + 60,000) \times 34,000$

M must include \$25,500 in gross income as a dividend under the provisions of section 78 of the Code. This example illustrates that the reductions in foreign taxes paid by the foreign corporation provided under section 6038(c) are taken into account in determining the amount included in gross income of the domestic corporation under section 78 of the Code as foreign taxes deemed paid, but such reductions are not taken into account in computing accumulated profits for purposes of determining the portion of foreign taxes deemed paid with respect to a particular dividend. The dollar amount penalty imposed by section 6038 (b) and paragraph (k)(1) of this section does not apply with respect to information for annual accounting periods ending before September 4, 1982, and therefore does not apply to M with respect to M's failure to file Form 2952 in this example.

*Example (2).* The facts are the same as in example (1) except that all of the events occur in or with respect to the 1982 taxable year. On March 15, 1983, M filed its income tax return and paid its income tax, but M did not file Form 2952 or Form 5471 with respect to N's 1982 annual accounting period. On June 1, 1983, the district director mailed notice to M of M's failure to file Form 2952 or Form 5471 with respect to N. On November 30, 1983, M filed a complete Form 5471 with respect to N's 1982 annual accounting period. Under paragraph (k)(1)(i) of this section, M is subject to a penalty of \$1,000. Under paragraph (k)(1)(ii) of this section, that penalty is increased by \$4,000 because the failure continued for 92 days (three full 30-day periods and a fraction of a fourth 30-day period) after the end of the 90-day period following mailing of the notice by the district director, bringing M's dollar amount penalty under paragraph (k)(1) of this section to \$5,000. For purposes of determining the foreign tax credit available to M, there may be imposed a reduction of foreign tax paid by N of \$6,000 which would be the total of reductions under paragraph (k)(2) of this section with respect to M's failure to file under section 6038 for N's 1982 annual accounting period, before application of paragraph (k)(2)(vi) of this section. Under said paragraph (k)(2)(vi), the amount of the foreign tax reduction imposed is reduced by the amount of the dollar amount penalty, leaving a foreign tax reduction penalty of \$1,000 which may be imposed in addition to the \$5,000 dollar amount penalty. If imposed, the \$1,000 tax reduction would then be applied in the calculation of taxes deemed paid by M under section 902, as in example (1), items (c), (d), and (h).

**Par. 2.** There is added after § 1.6038-2 the following new section.

**§ 1.6038A-1 Information returns required of certain foreign-owned corporations.**

(a) *Requirement of return.* Every corporation which at any time during its taxable year is a reporting corporation (described in paragraph (b)(1) of this section) shall make a separate annual information return on Form 5472 with respect to each related corporation (described in paragraph (b)(4) of this section) with which such reporting corporation has had any transaction described in paragraph (c)(2) of this section during such taxable year.

(b) *Definitions.* (1) *Reporting corporation.* For purposes of section 6038A and this section, a corporation is a reporting corporation if—

(i) It is a domestic corporation or is a foreign corporation engaged in a trade or business within the United States, and

(ii) It is controlled (as defined in paragraph (b)(2) of this section) by a foreign person.

Nevertheless, a foreign corporation all of whose income is not subject to United States taxation is not a reporting corporation for purposes of section 6038A and this section.

(2) *Control.* (i) *Generally.* A corporation shall be deemed to be controlled by a foreign person if at any time during that corporation's taxable year such foreign person owns stock possessing at least 50 percent of the total combined voting power of all classes of outstanding stock of the corporation entitled to vote, or stock possessing at least 50 percent of the total value of outstanding shares of all classes of stock of the corporation. A corporation that is controlled (by this same test) by another corporation, which, in turn, is controlled by a foreign person, is also treated as being controlled by such foreign person. The provisions of this paragraph (b)(2)(i) are illustrated by the following example:

*Example.* F, a foreign person, owns 50 percent of the voting stock of X, a domestic corporation. X owns 50 percent of the total value of shares of all classes of stock of Y, also a domestic corporation. Y is controlled by F for purposes of section 6038A and this section.

(ii) *Attribution rules.* For the purpose of determining ownership of stock of domestic or foreign corporations under section 6038A and this section, the constructive ownership rules of section 318(a) shall apply, except that section 318(a)(2)(C) shall be applied by substituting the phrase "10 percent" for the phrase "50 percent".

(3) *Foreign person.* For purposes of section 6038A and this section, a foreign person is—

(i) Any individual who is not a citizen or resident of the United States, including any individual who is a citizen of any possession of the United States but is not otherwise a citizen of the United States and is not a resident of the United States;

(ii) Any partnership, association, company, or corporation which is not created or organized in the United States or under the law of the United States or any State thereof; or

(iii) Any foreign trust or foreign estate, as defined in section 7701(a)(31).

(4) *Related corporation.* For purposes of section 6038A and this section, a related corporation is any corporation which is a member of the same controlled group (as defined in paragraph (b)(5) of this section) as the reporting corporation. The term "member" shall include any component member, excluded member, or additional member (as defined in section 1563(b)) of such group.

(5) *Controlled group.* For purposes of section 6038A and this section, the term "controlled group" has the meaning given to such term by § 1563(a), except that—

(i) Section 1563(a)(1) shall be applied by substituting the term "at least 50 percent" for the term "at least 80 percent" each time it appears;

(ii) Section 1563(a)(2)(B) shall be applied by substituting the term "at least 50 percent" for the term "more than 50 percent" each time it appears; and

(iii) Section 1563(a)(4), (b)(2)(C), and (e)(3)(C) shall not apply.

(c) *Contents of return.* (1) *The related corporation.* The return on Form 5472 shall contain such information as the form shall prescribe, with respect to each related corporation with which the reporting corporation has had a transaction required to be reported under paragraph (c)(2) of this section during its taxable year, relating to:

(i) The name, address, and U.S. employer identification number, if any, of the corporation;

(ii) The nature of the corporation's business or businesses and the principal place or places where conducted;

(iii) The country in which the corporation is organized, and each country in which the corporation is resident (as determined under the laws of such country);

(iv) If the corporation is a foreign corporation, the name and address of the corporation's statutory or resident agent in its country of organization and each country of residence, and the name

and address of the principal branch office or agent of such corporation located in the United States;

(v) If the corporation is a domestic corporation for which an address in the United States was not provided under paragraph (c)(1) (i) or (ii) of this section, the name and address of such corporation's office or agent in the United States;

(vi) The name and address of the person or persons having custody of the books of account and records of the corporation, and the location of such books and records if different from such address; and

(vii) The relationship of the reporting corporation to the related corporation (such as reporting corporation controls related corporation, reporting corporation is controlled by related corporation, or reporting and related corporations are under common control).

(2) *Transactions with related foreign corporations*—(i) *Transactions for which monetary consideration was paid or received.* If the related corporation is a foreign corporation, the return on Form 5472 shall contain, with respect to transactions (other than transactions excepted by paragraph (c)(2)(iii) of this section) of the reporting corporation with the related corporation, a summary showing the total dollar amount of each of the following types of transactions for which monetary consideration (U.S. currency and/or foreign currency) was the sole consideration paid or received, during the taxable year of the reporting corporation:

(A) Sales and purchases of stock in trade;

(B) Sales and purchases of tangible property other than stock in trade;

(C) Rents and royalties paid and received (other than amounts reported under paragraph (c)(2)(i)(D) of this section);

(D) Sales, purchases, and amounts paid and received as consideration for the use of intangible property such as copyrights, designs, formulas, inventions, models, patents, processes, trademarks, and other similar property rights;

(E) Consideration paid and received for the rendition of accounting, clerical, construction, engineering, managerial, scientific, technical, and other types of services;

(F) Commissions paid and received;

(G) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (c)(2)(i) that arise and are collected in full in the ordinary course of business;

(H) Interest paid and received;

(I) Premiums paid and received for insurance and reinsurance; and

(J) Such other transactions as the form shall prescribe.

(ii) *Transactions involving non-monetary consideration or no consideration.* If the related corporation is a foreign corporation, the return on Form 5472 shall contain descriptions of any transactions of the types listed in paragraph (c)(2)(i) of this section (other than transactions excepted by paragraph (c)(2)(iii) of this section), of the reporting corporation with the related corporation, for which any consideration paid or received was other than monetary consideration described in paragraph (c)(2)(i) of this section, or for which no consideration was paid or received. A description of a transaction required under this paragraph (c)(2)(ii) shall describe—

(A) All property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the related corporation and from the related corporation to the reporting corporation.

(B) All services performed by the reporting corporation for the related corporation and by the related corporation for the reporting corporation, and

(C) The fair market value of all such property, rights, obligations, and services that are involved in the transaction.

(iii) *Exception.* This paragraph (c)(2) shall not apply to any transaction if neither party to the transaction is a United States person and the transaction—

(A) Does not give rise to any income or gain which is from sources within the United States or which is effectively connected with the conduct of a trade or business within the United States,

(B) Does not give rise to any expense, loss, or other deduction properly allocable or apportionable to such income, and

(C) Does not, in any way, affect any United States income tax obligation of either party to the transaction or any person that controls either party to the transaction in any taxable year.

(iv) *Accrued payments and receipts.* For purposes of this section, in the case of an accrual basis taxpayer the terms "paid" and "received" shall include accrued payments and receipts, respectively.

(d) *Method of reporting.* All statements required on or with the return on Form 5472 under this section shall be rendered in the English language. All amounts of consideration or value required to be reported under this section shall be expressed in terms

of United States currency, with a statement of any exchange rates used.

(e) *Time and place for filing return.* Returns on Form 5472 required under this section shall be filed with the reporting corporation's income tax return on or before the date required by law (including extensions of time) for the filing of such income tax return or March 15, 1984, whichever is later.

(f) *Penalty for failure to furnish information*—(1) *In general.* If a corporation required to file Form 5472 under section 6038A and this section fails to furnish any information described in paragraph (c) of this section within the time prescribed by paragraph (e) of this section, such corporation shall pay a penalty of \$1,000 for each taxable year with respect to which such information is not timely reported.

(2) *Increase in penalty for continued failure after notification.* If a failure described in paragraph (f)(1) of this section continues for more than 90 days after the date on which the district director mails notice of such failure to the reporting corporation, that corporation shall pay a penalty of \$1,000, in addition to the penalty imposed by section 6038A(d)(1) and paragraph (f)(1) of this section, for each 30-day period (or fraction thereof) during which such failure continues after such 90-day period has expired. The additional penalty imposed by section 6038A(d)(2) and this paragraph (f)(2) shall be limited to a maximum of \$24,000 for each failure.

(3) *Reasonable cause*—(i) For purposes of section 6038A(d) and this section, the time prescribed for furnishing information under paragraph (e) of this section, and the beginning of the 90-day period after mailing of notice by the district director under paragraph (f)(2) of this section, shall be treated as being not earlier than the last day on which reasonable cause existed for failure to furnish the information.

(ii) To show that reasonable cause existed for failure to furnish information as required by section 6038A and this section, the reporting corporation must make an affirmative showing of all facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return is required to be filed. The district director or the director of the service center shall determine whether the failure to furnish information was due to reasonable

cause, and if so, the period of time for which such reasonable cause existed.

(4) *Other penalties.* The information required by section 6038A and this section must be furnished even though it may not affect the amount of any tax due under the Internal Revenue Code. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

(g) *Effective date.* This regulation is effective for taxable years beginning after December 31, 1982.

Roscoe L. Egger, Jr.,  
Commissioner of Internal Revenue.

[FR Doc. 83-33540 Filed 12-16-83; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Part 1

[LR-152-79]

### Minimum Addition to Reserve for Losses on Loans of Mutual Savings Banks

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations imposing a requirement of a minimum addition of reserve for losses on loans of mutual savings banks and other organizations to which section 593 of the Internal Revenue Code of 1954 applies. Certain of the proposed regulations reflect changes to the applicable law under the Economic Recovery Tax Act of 1981; others are intended to clarify existing regulations provisions. The proposed regulations would provide affected financial institutions with the necessary guidance in complying with the tax laws.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by February 17, 1984. Generally, the amendments are proposed to apply to taxable years beginning more than sixty days after publication of this notice as a final Treasury decision. With respect to certain distributions in redemption, the amendments are proposed to apply to certain distributions made on or after January 1, 1981. The amendments treating certain stock associations as mutual savings banks are proposed to be effective for taxable years ending after August 13, 1983.

**ADDRESS:** Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-152-79), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Susan Thompson Baker or George T. Magnatta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to clarify the Income Tax Regulations (26 CFR Part 1) under section 593 of the Internal Revenue Code of 1954. In addition, these amendments are proposed to conform the regulations to sections 243 and 245 of the Economic Recovery Tax Act of 1981 (95 Stat. 255). These amendments 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).

##### New Rules

This notice of proposed rulemaking contains new rules applicable to mutual savings banks, domestic building and loan associations, and cooperative banks without capital stock organized and operated for mutual purposes and without profit (section 593 organizations). These new rules, which require that section 593 organizations make a minimum addition to their reserves for losses on qualifying real property loans and nonqualifying loans, are proposed in order to achieve consistency with the regulations under section 585, which contain a similar requirement with respect to other banking institutions.

##### Changes Made by the Economic Recovery Tax Act of 1981

Section 243 of the Economic Recovery Tax Act of 1981 (ERTA) created an exception to the rule of section 593(e) that distributions from excess bad debt reserves of certain section 593 organizations are recaptured as ordinary income. Under the Act, this recapture rule does not apply to distributions to the Federal Savings and Loan Insurance Corporation in redemption of an interest in a section 593 organization originally received in exchange for financial assistance.

Additionally, ERTA provided that a bank (1) which has capital stock represented by shares, and (2) which is subject to, and operates under, Federal or State laws relating to mutual savings banks, is an organization that is eligible to compute its bad debt deduction under section 593. However, these organizations must compute their bad debt deduction under the percentage of

taxable income method under the same rules applicable to building and loan associations (*i.e.*, 82 percent of their assets must be invested in qualified assets in order to receive the full 40-percent deduction and the reduction will be at three-fourths of one percent). ERTA also requires these stock organizations to recapture excess deductions to the extent required by section 593(e). Finally, ERTA provides that amounts paid to depositors of these organizations are deductible under section 591.

##### Clarifying and Conforming Changes

These proposed amendments to the regulations also include clarifying changes to existing regulations. These changes include a renumbering of certain sections of the regulations under section 593 and the deletion of certain of those sections that pertained to taxable years beginning before January 1, 1963, or to taxable years beginning before July 12, 1969. These proposed amendments also clarify that section 593 organizations, like banking institutions subject to section 585, may adjust the amount of their addition to bad debt reserves, and thus change the amount of their bad debt deduction, within the applicable period of limitations, subject only to the maximum and minimum requirements set forth in these regulations.

##### Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

##### Non-Application of Executive Order 12291

The Treasury Department has determined that this proposed regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the order dated April 29, 1983.

##### Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and

no general notice of proposed rulemaking is required by 5 U.S.C. 533(b). Accordingly, no Regulatory Flexibility Analysis is required.

#### Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

#### Drafting Information

The principal authors of these proposed regulations are Susan Thompson Baker and George T. Magnatta of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

#### List of Subjects in 26 CFR 1.581-1—1.601-1

Income taxes, Banks.

#### Proposed Amendments to the Regulations

#### PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

##### § 1.166-4 [Amended]

Paragraph 1. Paragraph (d)(3) of § 1.166-4 is amended by removing "§§ 1.593-1 through 1.593-11" and inserting "§§ 1.593-1 through 1.593-8" in lieu thereof.

##### § 1.581-2 [Amended]

Par. 2. Section 1.581-2(b) is amended by removing the phrase "See section 593 and § 1.593-1" and inserting in its place "See section 593 and §§ 1.593-1 through 1.593-8".

##### § 1.591-1 [Amended]

Par. 3. Section 1.591-1 is amended as follows:

1. Paragraph (a)(2) is amended by inserting "or a mutual savings bank described in section 591(b)" after "domestic building and loan association".

2. Paragraph (c)(2) is removed and paragraph (c)(1) is redesignated as paragraph (c)(2).

3. Paragraph (c)(2) as so redesignated is amended by inserting "and before the first day of the taxpayer's first taxable year ending after August 13, 1981," after "October 16, 1962," and by removing "; and" and inserting a period in lieu thereof.

4. A new paragraph (c)(1) is added which reads as follows:

##### § 1.591-1 Deduction for dividends paid on deposits.

\* \* \* \* \*

(c) *Effective date.* \* \* \*

(1) Dividends or interest paid or credited during a taxable year ending after August 13, 1981, by any taxpayer which (at the time of such payment or credit) qualifies as (i) a mutual savings bank (including a mutual savings bank which has capital stock represented by shares and which is subject to, and operates under, Federal or State laws relating to mutual savings banks), (ii) a domestic building and loan association (as defined in section 7701(a)(19)), (iii) a cooperative bank (as defined in section 7701(a)(32)), or (iv) any other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law; and

\* \* \* \* \*

##### § 1.593-1 [Removed]

Par. 4. Section 1.593-1 is removed.

##### § 1.593-2 [Removed]

Par. 5. Section 1.593-2 is removed.

##### § 1.593-3 [Removed]

Par. 6. Section 1.593-3 is removed.

##### § 1.593-3 [Redesignated as § 1.593-1]

Par. 7. Section 1.593-4 is redesignated as § 1.593-1. Section 1.593-1 as so redesignated is revised to read as follows:

##### § 1.593-1 Organizations to which section 593 applies.

The provisions of section 593 and §§ 1.593-2 through 1.593-8 (except 1.593-7), for taxable years ending after December 31, 1962, apply to (1) a mutual savings bank (including, for taxable years ending after August 13, 1981, a mutual savings bank described in section 591(b)), (2) a domestic building and loan association, or (3) a cooperative bank without capital stock organized and operated for mutual purposes and without profit. The term "thrift institution", as used in this section and §§ 1.593-2 through 1.593-8, refers to any such financial institution. For definition of the terms "domestic

building and loan association" and "cooperative bank", see paragraphs (19) and (32), respectively, of section 7701(a).

##### § 1.593-5 [Redesignated as § 1.593-2]

Par. 8. Section 1.593-5 is redesignated as § 1.593-2 and is revised to read as follows:

##### § 1.593-2 Addition to reserves for bad debts.

(a) *In general.* As an alternative to a deduction from gross income under section 166(a) for specific debts which become worthless in whole or in part, a thrift institution is allowed a deduction under section 166(c) for a reasonable addition to a reserve for bad debts provided that the thrift institution adopts or has adopted the reserve method of treating bad debts in accordance with paragraph (b) of § 1.166-1. The amount of the reasonable addition shall not exceed a maximum addition computed under § 1.593-3(a) and, for taxable years beginning after sixty days after the publication of this notice as a final Treasury decision, shall be an amount at least equal to the amount computed under § 1.593-3(b). For each taxable year the thrift institution shall include in its income tax return (or amended return) a computation of the amount of the addition determined under section 593 and the regulations thereunder showing the method used to determine that amount. The use of a particular method in the return for a taxable year is not a binding election by the taxpayer to apply that method either for that taxable year or for subsequent taxable years. A thrift institution which adopts the reserve method is not entitled to charge off any bad debts under section 166(a) with respect to a loan (as defined in § 1.593-8(a)).

(b) *Crediting to reserves.* The amount of the reasonable addition to a reserve for bad debts computed under §§ 1.593-3 and 1.593-4 shall be credit to a reserve for losses on qualifying real property loans or to a reserve for losses on nonqualifying loans, whichever is applicable. The reserves for bad debts of a thrift institution shall be established and maintained in accordance with the rules set forth in § 1.593-5.

Par. 9. A new § 1.593-3 is added to read as follows:

##### § 1.593-3 Amount of addition to reserves.

(a) *Maximum addition.* The maximum reasonable addition to the reserve for losses on nonqualifying loans of a thrift institution is an amount computed, with respect to such nonqualifying loans, in the manner provided under section

585(b)(3) and § 1.585-2(c). The maximum addition to the reserve for losses on qualifying real property loans is an amount equal to the larger of (i) the amount allowable under section 593(b)(2) and § 1.593-4(b) (relating to the percentage of taxable income method); (ii) the amount allowable under section 593(b)(3) and § 1.593-4(c) (relating to percentage method); or (iii) the amount allowable under sections 593(b)(4), 585(b)(3) and § 1.585-2(c)(1) (relating to the experience method), computed taking into account only qualifying real property loans.

(b) *Minimum addition.* For taxable years beginning after sixty days from the date of publication of this notice as a final Treasury decision, a thrift institution shall make a minimum addition to the reserve for losses on qualifying real property loans and a minimum addition to the reserve for losses on nonqualifying loans. The minimum addition to the reserve for losses on nonqualifying loans is an amount computed in the manner provided in section 585(b)(3)(A) and § 1.585-2(c)(1)(ii). The minimum addition to the reserve for losses on qualifying real property loans is an amount equal to the lesser of (1) the amount allowable under section 593(b)(2) and § 1.593-4(b) (relating to the percentage of taxable income method); (2) the amount allowable under section 593(b)(3) and § 1.593-4(c) (relating to the percentage method); or (3) the amount allowable under section 585(b)(3)(A) and § 1.585-2(c)(1)(ii) (relating to the experience method) computed taking into account only qualifying real property loans. In the event that the lesser of the amounts referred to in the preceding sentence is zero, the minimum addition to the reserve for losses on qualifying real property loans is zero.

§ 1.593-6 [Removed]

Par. 10. Section 1.593-6 is removed.

§ 1.593-6A [Redesignated as 1.593-4 and amended]

Par. 11. Section 1.593-6A is redesignated as § 1.593-4. Section 1.593-4 as so redesignated is amended as follows:

1. Its caption is revised to read "Addition to reserve for losses on qualifying real property loans".

2. Paragraph (b)(3) is amended by inserting "(which is not described in section 593(b))" after "mutual savings bank" in each of the two places where it appears, and by removing "paragraph (a)(1)(i) of § 1.593-5" and inserting "§ 1.593-2(a)" in lieu thereof in each of the two places where it appears.

3. Paragraph (b)(5)(i) is amended by removing "§ 1.593-10" and inserting "§ 1.593-7" in lieu thereof.

4. Paragraph (b)(5)(iv) is amended by inserting "(eighteen forty-sixths, for taxable years ending after December 31, 1978)" after "three-eighths" in each of the two places where it appears.

5. Paragraph (e) is amended by removing "paragraph (a)(1)(i) of § 1.593-5" and inserting "§ 1.593-2(a)" in lieu thereof and by removing the last sentence of paragraph (e).

6. Paragraphs (a)(1) and (b)(2)(i) are revised as set forth below. Paragraph (b)(2)(ii) is amended by redesignating the example therein as "Example (1)", and by adding new examples (2) and (3) immediately following example (1) as so redesignated and by adding new paragraph (f) immediately following paragraph (e). The revised and added provisions read as follows:

§ 1.593-4 Addition to reserve for losses on qualifying real property loans.

(a) *In general*—(1) *Amount of additional determined for the taxable year.* For purposes of paragraph § 1.593-2(a), the amount of the addition to the reserve for losses on qualifying real property loans for any taxable year beginning after July 11, 1969, is the amount which the taxpayer determines to constitute a reasonable addition to such reserve for such year. However, the amount so determined for such year shall be determined without regard to any amount charged for any taxable year against the reserve for losses on qualifying real property loans pursuant to § 1.593-7 (relating to certain distributions to shareholders by a domestic building and loan association). The addition to the reserve shall be determined under section 593(b)(2), (3), or (4) (relating, respectively, to the percentage of taxable income method, the percentage method, and the experience method). See § 1.593-3, for the maximum and minimum additions allowed. For each taxable year the taxpayer must include in its income tax return (or amended return) for such year a computation of the amount of the addition determined under this section. The use of a particular method in the return for a taxable year is not a binding election by the taxpayer to apply such method either for such taxable year or for subsequent taxable years. Thus, for example, in the case of a subsequent adjustment with respect to the income tax return (whether initiated by the taxpayer or by the Commissioner) which has the effect of increasing or decreasing taxable income, the amount of the addition to the reserve for losses on qualifying real property loans may be

recomputed (subject to the rules of § 1.593-3) under whichever method the taxpayer selects for the purpose of such recomputation, irrespective of the method initially applied for such taxable year.

(b) *Percentage of taxable income method.* \* \* \*

(2) *Reduction of applicable percentage in certain cases*—(i) *General rules.* If for the taxable year the percentage of the assets of a thrift institution, which are assets described in section 7701(a)(19)(C) (relating to assets of a domestic building and loan association) is less than—

(a) 82 percent of the total assets in the case of a thrift institution other than a mutual savings bank which is not described in section 591(b), the applicable percentage for such year provided by subparagraph (1) of this paragraph is reduced by three-fourths of 1 percentage point for each 1 percentage point of such difference; or

(b) 72 percent of the total assets in the case of a thrift institution which is a mutual savings bank which is not described in section 591(b), the applicable percentage for such year provided by subparagraph (1) of this paragraph is reduced by 1½ percentage points for each 1 percentage point of such difference.

If such percentage is less than 60 percent (50 percent for a taxable year beginning before 1973 in the case of a mutual savings bank not described in section 591(b)) of the total assets in the case of any thrift institution, section 593(b)(2) and this paragraph are not applicable. The percentage of total assets specified in this subparagraph is computed as of the close of the taxable year or, at the option of the taxpayer, may be computed on the basis of the average assets outstanding during the taxable year. Such average is determined by computing such percentage either as of the close of each month, as of the close of each quarter, or as of the close of each semiannual period during the taxable year and by using the yearly average of the monthly, quarterly, or semiannual percentages. A thrift institution which is a mutual savings bank (as defined in section 591) and which determines the amount of the reasonable addition for the taxable year to the reserve for losses on qualifying real property loans under this paragraph shall file for such taxable year a statement which shall show the amount of assets defined in paragraph (e) of § 301.7701-13A as of the close of the taxable year and a brief description and

the amount of all other assets, together with a description of the method used in determining such amounts. If the percentage specified in this subparagraph is computed by such thrift institution on the basis of the average assets outstanding during the taxable year, the statement shall also show such information as of the end of each month, each quarter, or each semiannual period and the manner of calculating the average.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

*Example (1).* \* \* \*

*Example (2).* N is a mutual savings bank which has capital stock represented by shares (as defined in section 591(b)) to which section 593 applies. For its taxable year beginning in 1983, 80.5 percent of N's assets (computed as of the close of that year) constitute assets described in section 7701(a)(19)(C). N's assets which are assets described in section 7701(a)(19)(C), when computed on semiannual, quarterly, and monthly bases, constitute 79.8, 79.6 and 79.5 percent, respectively, of its total assets computed on the corresponding bases. N's applicable percentage for 1983 is 39.25 percent, determined as follows:

	Percents
Percentage of total assets specified in (a) of subdivision (i) of this subparagraph	82.0
Percentage of total assets constituting assets described in section 7701(a)(19)(C)	80.5
Difference	1.15
Applicable percentage determined under table in subparagraph (1) of this paragraph	40.0
Reduction of applicable percentage required by (a) of subdivision (i) of this subparagraph (¼ of 1 percentage point for each full percentage point of difference)	.75
Applicable percentage	39.25

*Example (3).* Assume the same facts as in example (2) except that N is a mutual savings bank other than a mutual savings bank described in section 593(b) and 70.5 percent of N's assets (computed as of the close of that year) constitute assets described in section 7701(a)(19)(C). N's assets which are assets described in section 7701(a)(19)(C), when computed on semiannual, quarterly, and monthly bases, constitute 69.8, 69.6 and 69.5 percent, respectively, of its total assets computed on the corresponding bases. N's applicable percentage for 1983 is 38.5 percent, determined as follows:

	Percent
Percentage of total assets specified in (b) of subdivision (i) of this subparagraph	72.0
Percentage of total assets constituting assets described in section 7701(a)(19)(C)	70.5
Difference	1.5
Applicable percentage determined under table in subparagraph (1) of this paragraph	40.0
Reduction of applicable percentage required by (b) of subdivision (i) of this subparagraph (1½ percentage points for each full percentage point of difference)	1.5
Applicable percentage	38.5

(f) *Definitions.* For purposes of this section—

(1) *Surplus, undivided profits, and reserves.* The term "surplus, undivided profits, and reserves" means the amount by which the total assets of the taxpayer exceed its total liabilities. The determination of such total assets and total liabilities shall conform to the method of accounting employed by the taxpayer in determining taxable income and to the rules applicable in determining its earnings and profits. Total deposits or withdrawable accounts (as defined in subparagraph (3) of this paragraph but determined as of the beginning of the taxable year) shall be considered a liability. In the case of a domestic building and loan association or a mutual savings bank described in section 591(b) having permanent nonwithdrawable capital stock represented by shares, the paid-in amount of such stock shall also be considered a liability. However, reserves for contingencies and other reserves which are mere appropriations of surplus are not liabilities for purposes of this section.

(2) *Total assets.* The term "total assets" means the sum of money (including time or demand deposits with, or withdrawable accounts in, any financial institution), plus the aggregate of the adjusted basis (determined under § 1.1011-1) of the property other than money held by the taxpayer. For special rules with respect to adjustments to basis in the case of property acquired by the taxpayer in a transaction described in section 595(a), see section 595.

(3) *Total deposits or withdrawable accounts.* The term "total deposits or withdrawable accounts" means the total of the amounts placed with the taxpayer for deposit or investment. Such term also includes earnings outstanding on the books of account of the taxpayer at the close of the taxable year which have been credited as dividends or interest upon such deposits or withdrawable accounts prior to the close of such taxable year, and which are withdrawable on demand subject only to customary notice of intention to withdraw. In the case of a domestic building and loan association or a mutual savings bank described in section 591(b), however, such phrase does not include permanent nonwithdrawable capital stock represented by shares, or earnings credited thereon.

§ 1.593-7 [Redesignated as 1.593-5 and amended]

Par. 12. Section 1.593-7 is redesignated as § 1.593-5. Section 1.593-

5 as so redesignated is amended as follows:

1. Paragraph (a)(1) is amended by removing "paragraph (b) of § 1.593-5"; and inserting in its place "§ 1.593-2".

2. Paragraph (a)(2)(ii) is amended by removing "subparagraph (1) or (2) of § 1.593-5(a) (whichever applies) as the addition to such reserve for such year year" and inserting "§ 1.593-3" in lieu thereof.

3. Paragraph (b)(1)(ii) is amended by removing "(determined under § 1.593-1 or § 1.593-2)" and inserting "(determined under section 593)" in lieu thereof.

4. Example (1)(i) of paragraph (b)(5) is amended by removing "under § 1.593-1 (relating to additions to reserve for bad debts) by reference to § 1.593-9 (relating to taxable income for taxable years beginning in 1962 and ending in 1963)".

5. Also, in § 1.593-5 as so redesignated, the references "§ 1.593-4", "§ 1.593-5", "§ 1.593-8", and "§ 1.593-10" are removed and "§ 1.593-1", "§ 1.593-2", "§ 1.593-6", and "§ 1.593-7", respectively, are inserted in lieu thereof in each place they appear as a reference.

§ 1.593-6 [Redesignated as 1.593-6 and amended]

Par. 13. Section 1.593-8 is redesignated as § 1.593-6. Section 1.593-6 as so redesignated is amended as follows:

1. The references "§ 1.593-4" and "§ 1.593-7" are removed and "§ 1.593-1" and "§ 1.593-5", respectively, are inserted in lieu thereof in each place that they appear as a reference in § 1.593-6 as so redesignated.

2. Paragraph (b)(1)(i) is amended by removing the phrase "(under the principles of paragraph (d)(2) of § 1.593-1)".

3. Paragraph (c)(1)(ii) is amended by removing the phrase "(under the principles of paragraph (d)(2) of § 1.593-1)".

4. The first sentence of paragraph (d) is removed and the following new sentence is inserted in its place: "Any portion of the taxpayer's pre-1952 surplus which, under paragraph (a) of this section, is deemed to be included in the opening balance of the reserve for losses on qualifying real property loans shall not be treated as a reserve for bad debts for any purpose other than computing for any taxable year the amount determined under the method described in paragraph (b), (c), or (d) of § 1.593-4 (relating, respectively, to the percentage of taxable income method, the percentage method, and the experience method)."

**§ 1.593-9 [Removed]**

Par. 14. Section 1.593-9 is removed.

**§ 1.593-3 [Redesignated as 1.593-7 and amended]**

Par. 15. Section 1.593-10 is redesignated as § 1.593-7. Section 1.593-7 as so redesignated is amended as follows:

1. Paragraph (b) (1) and (2) is amended by inserting "or institution" after "association" in both places that "association" appears.

2. Paragraph (b)(3)(i) is amended by removing "§ 1.593-6 or § 1.593-6A (whichever is applicable)" and inserting "§ 1.593-4" in lieu thereof.

3. Paragraph (b)(3)(ii)(b) is amended by removing "paragraph (d) of § 1.593-6 or paragraph (d) of § 1.593-6A, whichever is applicable" and inserting "§ 1.593-4" in lieu thereof.

4. Examples (1)(i), (2)(i), and (3)(i) of paragraph (d) are amended by removing the phrase "described in paragraph (d) of § 1.593-6".

5. The references "section 593(f)", "§ 1.593-7", and "§ 1.593-8" are removed and "section 593(e)", "§ 1.593-5", and "§ 1.593-6", respectively, are inserted in lieu thereof in each place that they appear as a reference or as part of a reference in § 1.593-7 as so redesignated.

6. Paragraph (a) is revised to read as follows:

**§ 1.593-7 Certain distributions to shareholders by a domestic building and loan association.**

(a) *In general.* Section 593(e) provides that if a domestic building and loan association (as defined in section 7701(a)(19) and the regulations thereunder) distributes property after December 31, 1962, or an institution that is treated as a mutual savings bank under section 591(b) distributes property during a taxable year ending after August 13, 1981, to a shareholder with respect to its stock and if the amount of such distribution is not allowable to the association as a deduction under section 591 (relating to deduction for dividends paid on deposits), then, notwithstanding any other provision of the Code, the distribution shall be treated as provided in paragraphs (b) and (c) of this section. For purposes of the preceding sentence, the term "distribution" includes any distribution in redemption of stock to which section 302(a) or 303 applies, or in partial or complete liquidation of the association or institution, as well as any other distribution which the association or institution may make to a shareholder with respect to its stock. For definition of the term "property", see section 317(a). For determination of the amount

of a distribution, see section 301(b). For taxable years beginning after July 11, 1960, this paragraph is not applicable to any transaction to which section 381 (relating to carryovers in certain corporate acquisitions) and the regulations thereunder apply. This paragraph also does not apply to any distribution made on or after January 1, 1981, to the Federal Savings and Loan Insurance Corporation in redemption of an interest in an association, if the interest was originally received by the Federal Savings and Loan Insurance Corporation in exchange for financial assistance under section 406(f) of the National Housing Act (12 U.S.C. 1729(f)).

**§ 1.593-11 [Redesignated as § 1.593-8 and amended]**

Par. 16. Section 1.593-11 is redesignated as § 1.593-8. In paragraph (b)(1) of § 1.593-8 as so redesignated, the phrase "For purposes of §§ 1.593-4 through 1.593-10," is removed and the phrase "For purposes of §§ 1.593-1 through 1.593-7," is inserted in its place. In paragraph (c) of § 1.593-8 as so redesignated, the phrase "For purposes of §§ 1.593-4 through 1.593-9," is removed and the phrase "For purposes of §§ 1.593-1 through 1.593-6," is inserted in its place.

Roscoe L. Egger, Jr.,  
*Commissioner of Internal Revenue.*

[FR Doc. 83-33611 Filed 12-16-83; 8:45 am]

BILLING CODE 4830-01-M

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1926**

[Docket No. S-370]

**Underground Construction**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Extension of written comment period; notice of informal public hearing.

**SUMMARY:** This notice extends the comment period for written responses to OSHA's notice of proposed rulemaking on Underground Construction (48 FR 35774) from October 4, 1983 to February 17, 1984 in order to assure the fullest participation of interested parties.

In addition, OSHA is scheduling an informal public hearing concerning the proposed rule on Underground Construction.

**DATES:** Notices of intention to appear at the informal public hearing must be received by February 3, 1984. Written

comments must be received by February 17, 1984. In addition, testimony and all evidence which will be introduced into the hearing record must also be received by February 17, 1984. The hearing will begin at 9:30 a.m. on March 13, 1983, in Washington, D.C. and may continue for more than one day based on the number of notices of intention to appear which are received.

**ADDRESSES:** Written comments must be submitted, in quadruplicate, to the Docket Officer, Docket S-370, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7894.

Notices of intention to appear, and testimony and documentary evidence which will be introduced into the hearing record, must be submitted to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7178.

The hearing will be held in the Auditorium, Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:**

*Hearing:* Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3662, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7178.

*Proposal:* Mr. James Foster, Occupational Safety and Health Administration, Office of Information, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7178.

**SUPPLEMENTARY INFORMATION:** OSHA published a Notice of Proposed Rulemaking on August 5, 1983 (48 FR 35774), which proposed to revise safety and health standards for Underground Construction (formerly called Tunnels and Shafts), 29 CFR 1926.800. Interested persons were given until October 4, 1983 to submit comments pertaining to the proposal. The notice of proposed rulemaking also informed the public of the opportunity to request an informal public rulemaking hearing on the proposal.

OSHA received 31 written comments in response to the proposal, including requests for an extension of the comment period and for an informal hearing.

### Extension of Comment Period

To assure the fullest participation of interested parties, OSHA is extending the period in which written comments may be submitted on the proposed rule until February 17, 1984. All written comments will become part of the record upon which the final rule will be based. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposal.

### Public Hearing

OSHA has scheduled an informal hearing to be held on March 13, 1983 in response to the requests of commenters. The hearing is being held to examine specific issues raised in the hearing requests. In addition to those issues, OSHA seeks additional information on several other issues. The issues on which comments and testimony are specifically invited are listed below.

1. OSHA seeks comment on whether the scope of the standard should be broadened, as proposed in paragraph (a), to cover other underground operations in addition to tunnels and shafts, such as cut-and-cover or pipe jacking operations.

2. OSHA seeks comment regarding the proposed check-in and check-out requirement of paragraph (d). Further information is requested as to the need for a check-in and check-out system for small jobs such as pipe jacking operations. Information is also requested on how to best monitor equipment operators who continuously drive in and out of a portal entrance.

3. OSHA seeks comment on the appropriateness of paragraph (i)(2) which would require NIOSH/MSHA approved self-rescuers of a 60 minute duration for all employees who might be trapped by smoke or gas. An alternative to such a requirement might be to base the duration of the device selected on the circumstances at this job site. OSHA solicits comments and data on possible criteria which could be used in developing such a basis for self-rescuer selection.

4. OSHA seeks further comment on the application of proposed paragraph (i)(5)(i), which would require the availability of two rescue crews for small jobs, such as a pipe jacking operation or one with very few employees, and for job sites in areas not likely to experience a cave-in. What alternative measures are available for employee rescue in the event of an underground emergency at such job sites?

5. OSHA seeks comment on whether the air quality monitoring requirements in the proposal are sufficient to assure that employees' air quality is acceptable, and whether these requirements would make it unnecessary also to require 30 ft. per minute of air flow in inactive unsealed areas as proposed in paragraph (k)(2)(i). OSHA seeks additional information as to whether employees entering such inactive, unsealed areas would be adequately protected without an air flow requirement.

6. OSHA seeks comment on whether the proposed paragraph (k)(2)(iii) requiring above ground controls for reversing the air flow is appropriate for all underground operations, particularly those where ventilation systems are continuously run on exhaust (i.e., drawing air instead of forcing it). OSHA solicits information on the use of above ground control systems and on alternate means of reversing mechanical air flow in a below-ground emergency.

7. OSHA seeks comment on whether diesel-powered equipment used underground in atmospheres other than gassy operations, should be allowed to use catalytic converters, as long as the air quality is maintained within acceptable levels, or should such equipment be either MSHA approved or fully equivalent as proposed in paragraph (k)(2)(ii). What air quality parameters should be considered in this determination?

8. OSHA seeks comment on whether piping diesel fuel to underground locations under controlled conditions might be a safer alternative than hoisting drums of fuel in the shaft and storing a day's supply underground, as proposed by paragraph (m)(4)(ii). Commenters have suggested a dry pipe system running from an above ground tank to a service station type nozzle underground. Additional protection might be provided by personnel operating a valve at both above and below ground locations.

9. OSHA seeks comment on whether ground support required by paragraph (o) is sufficient protection for locomotive operators, or whether falling object protective structures (FOPS), as proposed by paragraph (r)(4)(i), are also necessary. OSHA also solicits additional comments on the impact of the additional height of FOPS on locomotives in those underground operations where the clearances are minimal.

10. OSHA seeks comment on whether automatic coupling devices, as proposed by paragraph (r)(12)(i), significantly reduce hazards to employees during connecting and disconnecting

operations. Do automatic couplers require alignment before connection? If so, are there methods available to eliminate exposure of the employees' hands?

11. OSHA seeks comment on whether the use of safety chains or other connections, as proposed by paragraph (r)(12)(iii), are compatible with the rotary type (fully inverted) muck cars.

12. OSHA seeks comment on the impact of proposed paragraphs (t)(1)(iv) (B), (C) and (B) on current hoisting practices. OSHA seeks comment as to the hazards associated with hoisting free-swinging skips or buckets in shafts lined with bumpers or fenders. OSHA also seeks comment on the appropriate depth at which to require guides and safeties.

13. OSHA seeks comment on the appropriate frequency of testing safety devices on a hoist. Specifically, is it appropriate to test weekly, as required by paragraph (t)(4)(i)(I), or would some lesser testing frequency be sufficient?

14. OSHA seeks further data and recommendations regarding acceleration and deceleration devices on hoists, as required by paragraph (t)(4)(ii) (D).

Commenters may submit additional data on these and other relevant issues raised by the proposal following the requirements for submittal contained in this notice.

### Economic Analyses

OSHA continues to seek information on the cost of compliance and economic impact of the proposal for underground construction. Interested persons are encouraged to submit relevant economic information to OSHA to facilitate a complete determination of the regulatory impact of the standard. It is most important that parties submitting economic analyses also provide all underlying data and assumptions on which these analyses are based so that OSHA may evaluate fairly the conclusions of each analysis. In addition, OSHA invites submission of any economic information regarding the impact of the standard on small businesses and other small entities, so that OSHA may fully carry out its responsibilities under the Regulatory Flexibility Act (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*))

### Public Participation

Written comments on the proposal or on the issues listed in this notice must be received, in quadruplicate, by February 17, 1984. These comments should be submitted to the Docket Office, Docket No. S-370, Room S-8212, U.S. Department of Labor, 200

Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 523-7894. All materials submitted will be available for inspection and copying at this address. In addition, under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing.

#### Notice of Intention To Appear

Persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N-3662, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. Telephone (202) 523-7178. This notice must be received by February 3, 1984.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center-Docket Office (address previously listed), must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issue(s) that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

#### Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony, including all documentary evidence to the OSHA Division of Consumer Affairs. This material will be available for inspection and copying at the Technical Data Center-Docket Office. This material must be received by February 17, 1984. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with the above requirement may be limited to a 10 minute presentation, and may be requested to

return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

#### Conduct of the Hearing

The hearing will commence at 9:30 a.m. on March 13, 1984, in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. Proposed § 1926.800 will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the earlier written comments and evidence received through the public hearing.

#### Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Sec. 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333); Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, D.C. this 15th day of December, 1983.

Thorne G. Auchter,  
Assistant Secretary of Labor.

[FR Doc. 83-35871 Filed 12-16-83; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 913

#### Permanent State Regulatory Program of Illinois; Consideration of Modification of Deadline

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

**SUMMARY:** The Office of Surface Mining (OSM) is considering modifying the deadline for Illinois, at the request of the State, to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern sediment ponds and covering coal seams with water.

**DATE:** Comments must be received by January 18, 1984 at the address below, no later than 4:30 p.m.

**ADDRESS:** Written comments must be mailed or hand-delivered to: Office of Surface Mining, Springfield Field Office, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Fulton, Field Office Director, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 Federal Register.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the

program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d) and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d) and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983). On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). On August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

#### Proposal To Extend Deadline

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South v. Watt* (Civ. No. 82-2229) case to the Secretary for review in light of legal developments that have occurred since the approval date. Conditions (b) and (c) concern subjects that are directly at issue in the litigation and which may be affected by the Secretary's review on remand. The

litigation and remand are the subject of a separate Federal Register notice (48 FR 55580, December 14, 1983). In order to avoid rulemaking proceedings which may prove to be unnecessary, the State has requested a six-month extension of the December 1, 1983 deadline. Illinois stated that in the interim it would continue to enforce the relevant regulations in accordance with the Federal regulations.

In accordance with the State's request, OSM is proposing that the deadline for the State to meet these conditions be extended until June 1, 1984. OSM requests comments on this proposed extension.

#### Procedural Matters

1. *Compliance With the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

#### List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, underground mining.

#### PART 913—ILLINOIS

##### § 913.11 [Amended]

1. Section 913.11 is amended in paragraph (b) and (c) by substituting "June 1, 1984" for "December 1, 1983" each time it appears.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Accordingly, Part 913 of Title 30 is proposed to be amended as set forth herein.

Dated: December 13, 1983.

J. Roy Spradley,

Acting Director, Office of Surface Mining.

[FR Doc. 83-33499 Filed 12-19-83; 8:45 am]

BILLING CODE 4310-05-M

#### Bureau of Land Management

#### 43 CFR Part 5400

#### Advertised Sales; General

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The proposed rulemaking would enable the authorized officer of the Bureau of Land Management to offer certain timber sales on a competitive basis without acquiring legal access to the sale area. The proposed rulemaking would revise Subpart 5401 by adding an exception granting authority to the authorized officer to hold a competitive timber sale without acquiring access when he or she determines that there is competitive interest in the timber sale and that the sale would normally be negotiated due to lack of legal access.

**DATE:** Comments should be submitted by February 17, 1984. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Charles Frost, (202) 653-8864.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management published a proposed rulemaking concerning acquisition of access for competitive timber sales on June 29, 1983 (48 FR 29890). This proposed rulemaking proposed to amend the existing regulations at 43 CFR 5401.0-6(a) by removing the third sentence in its entirety. That sentence provides that "No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid."

The Bureau of Land Management has reviewed the public comments received in response to that proposed rulemaking. Most of the comments expressed opposition to the proposed change. The decision has been made not to finalize that proposed rulemaking. However, in order to assure that under certain circumstances exceptions will be allowed to the general policy of holding competitive sales only when access has been acquired by the Bureau of Land Management, this new proposed rulemaking is being issued. The general policy of acquiring access to competitive timber sales will remain in effect.

The Bureau of Land Management has identified a specific need to offer competitive timber sales without acquiring legal access. Many Bureau timber lands are scattered, or are small in size or volume and have low timber values. In these cases, it is neither feasible nor economical to acquire access to the parcels. There is, however, a demand for the timber on these parcels by local mills. Although, normally this timber is sold to individuals or firms on a negotiated basis and the purchaser has the responsibility to acquire access to the parcel, there are situations where there is competitive interest. The Bureau of Land Management needs to be able to sell timber competitively when there is a competitive interest in the area. The proposed rulemaking would provide

authority to sell timber of these tracts competitively without incurring the cost of acquiring access.

It is hereby determined that this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.).

The Department of the Interior has also determined that this rule is not a major rule within the meaning of the Regulatory Flexibility Act (5 U.S.C. 801 et seq.). The proposed rulemaking will not have a significant impact on a substantial number of small entities under the Act.

The proposed rulemaking contains no information collection requirements which require review by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

The principal author of this proposed rulemaking is Charles Frost, Division of Forestry, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

#### List of Subjects in 43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and Recordkeeping Requirements.

Under the authority of the Act of August 28, 1937 (43 U.S.C. 1181(a)), and the Act of July 31, 1947 (30 U.S.C. 601 et seq.), it is proposed to amend Subpart E, Chapter II, Title 43 of the Code of Federal Regulations as set forth below.

#### PART 5401—[AMENDED]

##### § 5401.0-6 [Amended]

1. Section 5401.0-6(a) is amended by revising the third sentence and adding a fourth sentence to read:

\* \* \* \* \*

(a) \* \* \* "Competitive sales shall be offered by the authorized officer when access to the sale area is available to anyone who is qualified to bid. Further, timber that would normally be sold by negotiated sale because of lack of legal access may be sold competitively without access if the authorized officer determines that there is competitive interest in the sales."

\* \* \* \* \*

Garrey E. Carruthers,  
*Assistant Secretary of the Interior.*

November 16, 1983.

[FR Doc. 83-33577 Filed 12-16-83; 9:45 am]

BILLING CODE 4310-84-M

# Notices

Federal Register

Vol. 48, No. 244

Monday, December 19, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-063]

#### Certain Iron-Metal Castings From India; Final Results of Administrative Review of Countervailing Duty Order

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Final Results of Administrative Review of Countervailing Duty Order.

**SUMMARY:** On August 23, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India. The review covers the period January 1, 1980 through December 31, 1981.

We gave interested parties an opportunity to comment on our preliminary results. After review of all comments received, the final results are the same as the preliminary results.

**EFFECTIVE DATE:** December 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** Susan Silver or Josephine Russo, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 23, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 38267) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India (45 FR 68650; October 16, 1980). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of the Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. Such merchandise is currently classifiable under items 657.0950 and 657.0990 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1980 through December 31, 1981 and four programs: (1) A rebate upon export of indirect taxes under the Cash Compensatory Support Program ("CCS"); (2) pre-shipment export loans; (3) tax deductions under the Export Markets Development Allowance; and (4) grants through the Market Development Assistance Program.

In addition, we reviewed new allegations by the petitioner, Pinkerton Foundry, Incorporated.

#### Analysis of Comments Received

We provided interested parties an opportunity to comment on our preliminary results. At the request of the petitioner, we held a hearing on October 11, 1983.

*Comment 1:* With regard to the CCS program, the petitioner argues that the Department erred in its preliminary conclusion that the linkage test has been satisfied in this case. The petitioner claims the Indian government undertook the 1980 review of the castings industry's indirect tax incidence expressly to satisfy U.S. law. The petitioner further states that the administrative record in this case does not indicate how or whether the Indian government used the industry study of November 1980 as the basis for setting the revised rebate in January 1981. Absent contemporaneous evidence that the Indian government based the new rate on a reasonable and documented calculation of the industry's tax incidence, linkage cannot be demonstrated.

*Department's Position:* The Department has concluded that the Indian government satisfied the linkage test with respect to the 1981 revision of the CCS rate for "sanitary" castings (including all merchandise covered by the order). In verifying the requisite linkage, we examined evidence showing that the CCS program operates primarily to rebate indirect taxes, that those eligible for the CCS rebate also are subject to such indirect taxes, and that the Indian government reasonably

calculated and documented the actual indirect tax incidence borne by the merchandise prior to establishing the new rate of rebate. Although the Indian government may have conducted the 1980 review with an eye toward the outstanding U.S. countervailing duty order, we do not believe this precludes the Indian government from curing past deficiencies, as long as it does so prospectively. Again, we have found that the requisite linkage existed because of actions prior to the Indian government's announcement of the revised rate of rebate.

With respect to petitioner's second point, the Department did not release certain portions of the official record under administrative protective order. Nonetheless, the official record does demonstrate a reasonable and documented calculation of the tax incidence prior to and as part of the setting of the new CCS rebate.

*Comment 2:* The petitioner contends that the actual indirect tax incidence was not reasonably calculated and documented because the November 1980 study by the Engineering Export Promotion Council ("EEPC") was not audited.

*Department's Position:* The criteria for meeting the linkage test do not include a standard that the industry's calculation of its tax incidence be audited. Rather, they require that the government's calculation be reasonable and be documented. In this regard, the Department examined during verification voluminous official and company source documents supporting the November 1980 study. We found such evidence adequately reflected the companies' tax incidence during the period.

*Comment 3:* Pinkerton asserts that the CCS payment exceeds the level of indirect tax incidence in a number of respects. First, Pinkerton claims that the Steel Development Levy ("SDL") is not an allowable indirect tax which may be rebated. Second, Pinkerton alleges the Department used incorrect raw material input ratios for pig and scrap iron. It believes the wastage elements of the ratios are too high. Finally, Pinkerton Foundry argues that the Department should disallow taxes attributable to suppliers of the materials in computing the overall level of indirect tax incidence.

*Department's Position:* With regard to the SDL, the Department reviewed new evidence during verification demonstrating that, under the Department's criteria, such levy is allowable in calculating any overrebate. We found that it is a charge levied by the Indian government on the purchase of all pig iron and is not otherwise rebated to the castings manufacturer or exporter. The SDL is also not a fee for a particular service. We consider it to have all the elements of an indirect tax and that its inclusion correctly reflects the indirect tax incidence facing the castings exporters during the period of review.

The Department has also concluded that the ratios for pig and scrap iron are based on adequate substantiation through official and company books and records. Even with the deduction of factory scrap, which is the recycled portion of these raw materials, we still compute ratios that result in a level of indirect tax incidence which exceeds the CCS payment.

Finally, consistent with our past practice regarding all such programs, we included indirect taxes levied at prior stages of production in our calculation of the aggregate indirect taxes borne by each input physically incorporated in the final product. We relied on reasonable evidence of the level of such taxes in our calculation of the indirect tax incidence facing the castings manufacturers on exporters.

*Comment 4:* The petitioner argues that the Department understated the benefits of the CCS program when it calculated the one subsidy rate for all of 1981. Since the original 12.5 percent rebate applied to eligible shipments through March 31, 1981, the petitioner estimates, using U.S. Census import statistics, that one-quarter of the yearly imports would yield a benefit of 3.01 percent instead of the Department's 1.35 percent.

*Department's Position:* In computing the 1981 level of subsidy for this program, the Department relied on the verified evidence of the value of the shipments of this merchandise and the rate of rebate actually received for each shipment. Such evidence included export documents, bank certificates, applications to the Indian government for the CCS payment, official notices of payment of the rebate, and actual check entries showing the amounts. The petitioner's use of estimated figures is not appropriate since those figures do not represent the precise level of exports contracted for by January 29, 1981 and exported by April 1, 1981. These are the only shipments eligible to receive the original 12.5 percent rate of rebate.

*Comment 5:* The petitioner argues that the Department incorrectly reduced the 1980 tax benefit from the Export Markets Development Allowance ("Article 35B") by assuming that the final tax deductions in 1980 would be in the same proportion to the original claim as in previous years. The Department further erred by computing the after-tax effects of the Article 35B benefit and not taking the full value of the tax deduction as the subsidy.

*Department's Position:* In computing the subsidy for 1980, the Department used the tax deductions granted by final assessment orders of the Indian government, or relied on the full value of certain types of deductions allowed by the tax authorities in at least two previous years' orders. In our review of the orders, we found the tax authorities consistently allowed those deductions and later retained them as permissible when it curtailed the program in 1981. Using those deductions presented a more accurate estimate of the Article 35B benefit likely to be bestowed at final assessment. Further, we view the tax savings from a preferential tax program as the benefit, not the mechanism of savings, *i.e.* the deduction.

*Comment 6:* Pinkerton states that castings exporters received benefits under the Market Development Assistance ("MDA") program in the way of services by the EEPC, trade fairs and similar activities not addressed by the Department in this review. Since the Department only focused on direct grants to the companies in determining the subsidy rate for the program, it has understated the true level of benefit.

*Department's Position:* The Department examined in its final affirmative countervailing duty determination the full extent of services, trade fairs, grants, etc., encompassed by the MDA program. We found that only the direct grants to the companies provided countervailable benefits. The other aspects were found not to be countervailable. Absent new evidence that the nature of these other activities has changed, the Department will not reinvestigate these same areas.

*Comment 7:* The petitioner states that we undervalued the benefit from the preferential export financing program by not taking into account the delayed payment of interest on certain loans. During verification, the Department found that certain banks require payment of interest on a quarterly basis rather than payment of interest when the loan principal is repaid. Therefore, for loans repaid during the quarter, the petitioner claims that the exporters

received an added interest benefit attributable to the period between the loan's repayment of principal and the quarterly interest payment.

*Department's Position:* We do not believe that this constitutes a countervailable subsidy but reflects common bank practice in the market. We found during verification that certain commercial loans received the same treatment. In addition, we reviewed official and company documents concerning the operation of the program and did not find any evidence that such delayed payment was a part of the program. We also encountered other banks providing preferential export loans which required full payment of interest and principal as each loan became due.

*Comment 7:* Pinkerton Foundry states that we did not quantify the benefits available to 100 percent export-oriented companies, programs offering import licenses, or raw material allocation.

*Department's Position:* During this review Department examined both import licensing and raw material allocation. We found no evidence showing that the exporters earned income on the sale of any such licenses or benefitted from preferential pricing of raw materials. These are the only aspects of either program which would be countervailable. With regard to the 100 percent export-oriented units, this allegation was posed late in the review. We will include it in the Department's next administrative review.

*Comment 8:* The exporters request that the Department use newly submitted responses concerning preferential export financing.

*Department's Position:* The responses concern the level of borrowing on pre-shipment export loans, information that the Department first requested in January 1983. We have not used this new data because they were submitted after the publication of our preliminary results.

#### Final Results of the Review

After consideration of all of the comments received, we determine the aggregate net subsidy to be 15.26 percent *ad valorem* for the period January 1, 1980 through December 31, 1980, and 2.85 percent *ad valorem* for the period January 1, 1981 through December 31, 1981.

Section 707(a) of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of duty under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final

duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of the affirmative injury determination by the International Trade Commission, in this case, October 8, 1980 (45 FR 66915). The Department will instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after May 23, 1980, the date of the preliminary affirmative countervailing duty determination (45 FR 34945), and exported on or before December 31, 1980. With regard to 1981, countervailing duties of 2.85 percent of the f.o.b. invoice price shall be assessed for shipments exported on or after January 1, 1981 and on or before December 31, 1981.

Further the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.50 percent of the entered value, as provided for in subsection 751(a)(1) of the Tariff Act, on any shipment of Indian certain iron metal castings entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct now the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: December 12, 1983.

Alan F. Holmer,  
Deputy Assistant Secretary, Import Administration.

[FR Doc. 83-33547 Filed 12-16-83; 8:45 am]  
BILLING CODE 3510-05-M

#### Applications for Duty-Free Entry of Scientific Instruments; Duke University, et al.

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent

scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83-348. Applicant: Duke University Medical Center, Department of Anatomy, Durham, NC 27710. Instrument: Combined Scanning Interferometer and Densitometer and Accessories. Manufacturer: Vickers Instruments Ltd., United Kingdom. Intended use: Study of live and preserved cells and isolated cell structures in native and modified states. First studies will be on contractile fibrils from striated muscle fibers and retinal photoreceptor rods and cones. Later work will include mass volume measurements of whole cells, including heart, kidney, cancer cells and macrophages. Education—Training of graduate students wishing to use the instrument in their experiments. Application received by Commissioner of Customs: November 10, 1983.

Docket No.: 83-352. Applicant: National Bureau of Standards, Electrical Measurements and Stds. Division, Bldg. 220, Rm. B258, Washington, DC 20234. Instrument: Superconducting Magnet System and Accessories. Manufacturer: Thor Cryogenic Ltd., United Kingdom. Intended use: Study of the quantum Hall effect with the objective of developing a new resistance standard by which the United States' unit of resistance will be maintained. The quantum Hall effect will become the new resistance standard. Application received by Commissioner of Customs: November 10, 1983.

Docket No.: 83-353. Applicant: Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM 87545. Instrument: Soft X-Ray Streak Camera. Manufacturer: Hamamatsu Photonics, Japan. Intended use: Experiments fundamental to the success of laser fusion which include: (1) time-resolved thermal temperature determination of the plasma, (2) time-resolved energy transport measurements, (3) time-resolved measurements of hydrodynamic motion, and (4) time-resolved measurements of atomic states in the plasma. The objective of these measurements is to determine fundamental plasma physical characteristics. This knowledge is in

turn used to design more successful laser fusion efforts. Application received by Commissioner of Customs: November 10, 1983.

Docket No.: 83-354. Applicant: The University of Texas Health Science Center at Houston, Dental Branch, 6516 John Freeman Avenue, Houston, TX 77030. Instrument: Electron Microscope with Eucentric Side Entry Goniometer Stage, JEM-100 CX. Manufacturer: JEOL Ltd., Japan. Intended use: Studies of cell components of human or animal periodontium (gingiva, alveolar bone, cementum, and periodontal ligament), cells of tumors of the periodontium, and cultured cells of periodontal tissues. Experiments will relate to tissue repair following periodontal disease and confirmation by ultrastructure of the tissue repair process. Application received by Commissioner of Customs: November 14, 1983.

Docket No.: 83-355. Applicant: University of California, Department of Botany, Robbins Hall, Davis, CA 95616. Instrument: Sputter Cryo. Manufacturer: Emscope Laboratories, Ltd., United Kingdom. Intended use: Rapidly freeze biological materials to a vitreous ice state, allowing the more-or-less controlled fracturing of this frozen specimen in a vacuum, and allowing for the controlled etching (or not) of the freshly exposed tissue surface, followed by coating of the exposed frozen surface with a metal or carbon by an evaporation or sputtering process. The specimen is then inserted into a scanning electron microscope where it may be examined by various methods as the experiment demands. Application received by Commissioner of Customs: November 14, 1983.

Docket No.: 83-357. Applicant: Tulane University School of Medicine, Department of Ophthalmology, 1430 Tulane Avenue, New Orleans, LA 70112. Instrument: Stereomicroscope with Lighting and Photography Systems. Manufacturer: Wild Heerbrugg, Switzerland. Intended use: Assist in the dissection of Descemet's membrane from donor corneas and for transplantation experiments involving the transfer of cultured corneal endothelial cells to denude corneas or to artificial growth surfaces. The lighting system allows for the visualization of unstained low contrast material and the photographic system will record the procedural details of dissection as well as record the results of the transplantation experiments. Application received by Commissioner of Customs: November 14, 1983.

Docket No.: 83-358. Applicant: The Regents of the University of California,

c/o Material Management Department, Riverside, CA 92521. Instrument: Research Sonar & Apparatus for Maintenance. Manufacturer: University of Canterbury, New Zealand. Intended use: Research involving the rearing of several infant monkeys, blind from birth, with the sonar worn on the head as a replacement for vision to determine if and to see if there will be accompanying changes in the development of the brain. The experiments will involve behavioral testing of the animals as well as neuroanatomical examination of sections of their brains. Application received by Commissioner of Customs: November 14, 1983.

Docket No.: 83-359. Applicant: U.S. Army Medical R & D Command. ATTN: SGRD-RMA, Fort Detrick, Frederick, MD 21701. Instrument: Automatic TLC Sampler I Accessories. Manufacturer: CAMAG, Switzerland. Intended use: Automatic spot testing of samples on thin layer chromatography plates. Application received by Commissioner of Customs: November 14, 1983.

Docket No.: 83-361. Applicant: DHHS/PHS/Food & Drug Administration, Procurement Property Management Branch, Receiving Platform, Garage Level, 2nd & C Streets, SW., Washington, DC 20204. Instrument: Automatic Sampler I, Dosage Syringe & Sample Capillaries. Manufacturer: CAMAG, Switzerland. Intended use: Accurate spotting of thin layer chromatography and high performance thin layer chromatography plates during rapid quantitative analysis of food, drug and/or cosmetic colors. Application Received by Commissioner of Customs: November 14, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff

[FR Doc. 83-3550W Filed 12-16-83; 8:45 am]

BILLING CODE 3510-05-M

[C-201-015]

### Unprocessed Float Glass From Mexico; Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to the manufacturers,

producers, or exporters in Mexico of unprocessed float glass, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 1.63 percent *ad valorem*.

Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the products subject to this determination which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by February 23, 1984.

EFFECTIVE DATE: December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-1756.

SUPPLEMENTARY INFORMATION:

#### Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Mexico of unprocessed float glass (float glass), as described in the "Scope of Investigation" section of this notice.

We find the net estimated bounty or grant to be 1.63 percent *ad valorem*.

#### Case History

On September 16, 1983, we received a petition from counsel for PPG Industries, Inc., filed on behalf of the United States industry producing unprocessed float glass. The petition alleges that the government of Mexico bestows bounties or grants upon the production or exportation of unprocessed float glass within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and on October 6, 1983, we initiated a countervailing duty investigation (48 FR 47039). We stated that we would issue a preliminary determination on or before December 12, 1983.

Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and, therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is dutiable. Therefore, under this section the domestic industry is not required to allege that, and the

U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U. S. industry.

On October 21, 1983, we presented a questionnaire concerning the allegations in the petition to the government of Mexico in Washington, D.C. On November 23, 1983, we received the response to our questionnaire from the government of Mexico.

#### Scope of Investigation

The product covered by this investigation is unprocessed float glass, which is currently imported under items 543.21000 through 543.89000 of the *Tariff Schedules of the United States Annotated (TSUSA)*. This investigation covers unprocessed float glass, a type of flat glass, a type of flat glass produced by floating molten glass over a bed of molten tin.

The period for which we are measuring bounties or grants is January 1, 1983 to September 30, 1983. For the preliminary determination we are measuring bounties or grants on the basis of benefits received by Vitro Flotado, S.A. and Vidrio Plano de Mexico, S.A., the only known exporters to the United States during the period of investigation.

#### Analysis of Programs

In its response, the government of Mexico provided data for the applicable period. Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

1. *Termination of Investigation and Rescission of Initiation.* We are terminating the investigation and rescinding the initiation on the following two allegations because we have determined in prior investigations that these programs are not countervailable. We have received no further information in this case to cause us to review this decision.

A. *Preferential Prices on Natural Gas Used by the Domestic Industries.* Petitioner alleges that the Mexican government, through Petroleos Mexicanos (PEMEX), charges domestic industrial consumers of natural gas prices below the world market price and below the price PEMEX charges foreign purchasers for natural gas.

We have determined that the existence of a price differential between export and domestic sales of natural gas, or between domestic and "world market" prices, does not, in and of itself, confer a bounty or grant (See "Final Negative Countervailing Duty Determination on Anhydrous and Aqua

Ammonia from Mexico", 48 FR 28523; "Final Affirmative Countervailing Duty Determination on Portland Hydraulic Cement and Cement Clinker from Mexico", 48 FR 43063). For our preliminary determination on whether the float glass industry pays less for natural gas than other industrial uses in Mexico see Section V below.

*B. Certificates of Fiscal Promotion (CEPROFIs) Granted for Wage Increases and for Investment in New Mexican-Made Capital Goods.* In 1979 the government of Mexico introduced a four-year National Industrial Development Plan (NIDP) which sets forth broad economic goals for the country. Tax credits, which are called CEPROFIs, are used to promote the NIDP goals, which include wage increases and investment in new Mexican-made capital goods.

We have determined that these specific types of CEPROFIs are not countervailable "because they are not targeted to a specific industry, group of industries, or to companies located in specific regions of the country" (see "Final Affirmative Countervailing Duty Determination on Portland Hydraulic Cement and Cement Clinker from Mexico", 48 FR 43063). For other types of CEPROFIs which we have found countervailable in prior cases, see Section III A below.

*II. Program Preliminarily Determined to Confer Bounties or Grants.* We preliminarily determine that a bounty or grant is provided to manufacturers, producers, or exporters in Mexico of float glass under the program listed below.

*Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX).* The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions which establish contracts for lines of credit with manufacturers and exporters.

In order for a company to be eligible for FOMEX financing for exports, the following requirements must be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (3) loans granted for pre-export must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign

currency acceptable to the Bank of Mexico; and (4) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate that credit institutions may charge borrowers for FOMEX pre-export financing is 8 percent, in Mexican pesos. The maximum annual interest rate for FOMEX export financing is 6 percent. Vitro Flotado, S.A. received short-term pre-export financing at 8 percent from FOMEX for production of float glass for export to the United States during the period for which we are measuring bounties or grants. These interest rates are less than interest rates obtainable for comparable commercially available loans. Therefore, we preliminarily determine that this program confers a bounty or grant upon the float glass industry.

To calculate the benefit from these loans we used as a benchmark for the commercial interest rate in Mexico the "Costo Porcentual Promedio de Captacion" (CPP), which is the average cost of funds to Mexicans banks, plus a spread of 10 percentage points. This is a change from the benchmark we used in prior investigations. We believe this benchmark is a more accurate reflection of the average short-term interest rate available to Mexican commercial borrowers. In addition, both Mexican companies and commercial banks lending in Mexico are familiar with the CPP rate plus a spread as a standard method for determining short-term interest rates and we have verified evidence that companies receive commercial loans at the CPP rate plus a spread. Our information suggests that a 10 point spread is the reasonable estimate for determining the nationwide benchmark interest rate for short-term loans.

We allocated the amount of the benefits over the value of all exports of float glass. Exports were used because FOMEX financing operates and is intended to stimulate export performance over domestic sales. On this basis, we calculated an *ad valorem* benefit of 1.63 percent.

*III. Programs Preliminarily Determined Not to be Used.* We preliminarily determine that the following programs have not been used by manufacturers, producers, or exporters in Mexico of float glass.

*A. Certificates of Fiscal Promotion (CEPROFIs).* CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay federal taxes. CEPROFIs are used to promote NIDP goals, which include increased employment, encouragement of regional decentralization, and

industrial development, particularly of small- and medium-sized firms (see "Final Affirmative Countervailing Duty Determination on Portland Hydraulic Cement and Cement Clinker from Mexico," 48 FR 43063). Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms (for an explanation of the latter, see Section IB above).

According to the Mexican government's response, no float glass companies received CEPROFIs for investment in "priority" industrial activities during the period for which we are measuring bounties or grants. *B. Import Duty Reductions and Exemptions.* Petitioner alleges that the Mexican government facilitates imports in certain priority sectors of the economy. It is claimed that, if at least one percent of the company's annual profits are used for research and the development of new technology and the company exports a significant amount of its total production, machinery and equipment not available in Mexico can receive a 75 percent exemption of applicable duty if the import will be used to produce capital goods. A 100 percent exemption is possible if the capital is considered a high priority item by the Mexican government.

In its response the Mexican government stated that the float glass companies have not received any type of import duty reductions or exemptions.

*C. Trust Fund for Coverage of Risks (FICORCA).* Petitioner alleges that the float glass industry is eligible for benefits under the FICORCA program. It is claimed that this program guarantees the rate at which a debtor's company buys foreign exchange to pay its external debt. Petitioner states that the float glass industry is in the process of a debt rescheduling agreement which may not be in accordance with commercial considerations because of the involvement of the Mexican government through FICORCA.

In its response, the government of Mexico stated that the float glass companies did not participate in FICORCA during the period of investigation.

*D. Extra-CEDIs.* Petitioner alleges that export consortia may receive "extra-CEDIs" provided that they export manufactured good, that the goods would have been eligible for a CEDI reimbursement and that they had an approved export program. The Mexican government's response stated that no additional "extra-CEDIs" were provided

to the companies which export float glass to the United States.

*E. Discounts and Rebates on Energy Used by the Float Glass Industry.* Petitioner alleges that discounts on energy are provided by the Mexican government to qualifying enterprises, including float glass companies, which are located in certain priority development regions established under the NIDP. The criteria for these price differentials available under the NIDP for energy products are contained in the Regulations Regarding Price Differentials published in the *Diario Oficial* on December 29, 1978, and June 19 and 21, 1979. Under certain conditions, Articles 8 and 9 of these regulations allow 30 percent discounts on the cost of industrial energy or basic petrochemical products to firms located in Priority Zone 1A.

Article 9C allows companies located in Priority Zone 1B that develop new industrial plants to receive a 30 percent discount on two of the following: Electric power, natural gas, combustibles or basic petrochemical products.

In its response the Mexican government stated that the float glass companies were not located in priority zones. The Mexican government further stated that the float glass industry did not receive price discounts on purchases of natural gas under the NIDP and that no discounts were granted on electricity through the Federal Electricity Commission.

*F. Encaje Legal.* Encaje Legal is a fund that provides short-term loans for pre-export financing at interest rates that are less than rates for comparable commercially available loans. According to the Mexican response, the float glass companies did not receive loans through Encaje Legal.

*G. Fund for Industrial Development (FONEI).* FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term preferential credit for the creation, expansion or modernization of enterprises in order to foster the efficient production of industrial goods, the production of goods capable of competing in the international market, and industrial decentralization.

According to the government of Mexico response, no float glass company received FONEI loans.

*H. Guarantee and Development Fund for Small and Medium Industries (FOGAIN).* FOGAIN provides financing at interest rates below prevailing commercial rates to small- and medium-sized firms in Mexico. The government

of Mexico stated that neither float glass company received FOGAIN loans.

*I. Mexican Institute for Foreign Trade (IMCE).* IMCE was created by a law published December 31, 1979 in the *Diario Oficial de la Federacion (Diario Oficial)*. IMCE has as its purpose the promotion of the foreign trade of Mexico and the coordination of efforts stimulating foreign trade. IMCE performs a number of functions including organizing and directing trade fairs abroad, promoting the visits of foreign trade missions to Mexico, carrying out investigations to identify national products or services which might be in demand abroad, and providing exporters with technical assistance. The government of Mexico has stated that the float glass companies have not received services offered by IMCE.

*J. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN).* This program is aimed at the development of industrial parks and cities. In its response, the government of Mexico stated that the float glass companies have not received any type of assistance under this program.

*K. National Preinvestment Fund for Studies and Projects (FONEP).* The primary objective of FONEP is to assist firms to invest in economic feasibility studies. The government of Mexico stated in its response that the float glass companies have not received benefits under FONEP.

*L. Fondo Nacional de Fomento Industrial (FOMIN).* FOMIN operates as a trust fund, providing funding to certain small- and medium-sized companies through, either stock acquisition or the provision of loans at rates below those of commercial lending institutions. The Mexican government's response stated that the float glass companies have not received benefits through FOMIN.

*M. Preferential State Investment Incentives.* It has been alleged in previous investigations that certain Mexican state offer industries partial or total exemption from states taxes, free or low cost land, or certain local infrastructure improvements as incentives for establishing or expanding industrial facilities or incentives for exporting. The government of Mexico has stated that the float glass companies have not received any of these benefits.

*N. Government Financed Technology Development.* Petitioner alleges that the float glass industry received benefits under the NIDP, in the form of grants to purchase technological services for its new plants. The government of Mexico stated that the float glass companies have not received such benefits.

*O. Preferential Vessel, Freight, Terminal, and Insurance Benefits.* It has been alleged in previous investigations that industries in Mexico have benefited from rebates or other discounts on transportation, storage, and insurance expenses involved in shipping float glass to the United States. The government of Mexico stated that the float glass companies have not received such benefits.

*P. Accelerated Depreciation.* It has been alleged in previous investigations that under a company-specific decree dated November 5, 1975, certain producers or exporters may be eligible for accelerated depreciation of certain equipment in which an investment was made at that time and which still has a useful life.

The government of Mexico stated that the float glass companies did not receive such benefits.

*IV. Program Determined to be Suspended.* We preliminarily determine that the following program has been suspended.

*Certificado de Devolucion de Impuesto (CEDI).* The Certificado de Devolucion de Impuesto (CEDI) is a tax certificate issued by the government of Mexico in an amount equal to a percentage of the f.o.b. value of the exported merchandise or, if national insurance and transportation are used, a percentage of the c.i.f. value of the exported product. The CEDIs are non-transferable and may be applied against a wide range of federal tax liabilities (including payroll taxes, value-added taxes, federal income taxes, and import duties) over a period of five years from the date of issuance.

The government of Mexico suspended eligibility for C&DI tax certificates by an Executive Order published on August 25, 1982, in the *Diario Oficial*. The order abrogates prior executive orders which contained the list of products eligible to receive CEDI certificates. Suspension of eligibility to apply for the CEDI was effective one day after publication of the Executive Order in the *Diario Oficial*.

Before this program was suspended, the float glass companies did receive CEDI tax rebates. However, according to the Mexican government CEDIs are used on a current basis and none remain outstanding. Since this program is suspended, it is unlikely that float glass from Mexico benefiting from CEDIs will enter the United States after the date of this preliminary determination. Therefore, we are not calculating a net bounty or grant for CEDIs received by the float glass industry before the suspension of this program.

If we issue a countervailing duty order and if this program is subsequently reactivated, the Department will review its applicability in an administrative review under section 751 of the Act.

**V. Program for Which More Information Is Needed; Preferential Prices on Natural Gas Used by the Float Glass Industry.** Petitioner alleges that the float glass industry pays a price for natural gas lower than the average price for all industries. In its response, the Mexican government provided "Natural Gas Prices for Industrial Use (1980-1982)." The response gave no indication whether the float glass industry received a different price than for industrial use.

We will seek additional information regarding these prices before making our final determination in this case.

#### Verification

In accordance with section 770(a) of the Act, we will verify all the information used in reaching our final determination.

#### Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of float glass from Mexico which are entered, or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice in the *Federal Register*, and to require a cash deposit or bond for each such entry of the merchandise in the amount of 1.63 percent *ad valorem*.

This suspension will remain in effect until further notice.

#### Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on January 27, 1984, at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by January 20, 1984. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: December 12, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-33858 Filed 12-16-83; 8:45 am]

BILLING CODE 3510-05-M

#### [A-351-010]

#### Carbon Steel Wire Rod From Brazil; Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of Allowance of Security in Lieu of Estimated Duty Pending Early Determination of Antidumping Duty.

**SUMMARY:** The Department of Commerce has determined that it has sufficient information from Companhia Siderurgica Da Guanabara and Companhia Siderurgica Belgo-Mineira to conduct an expedited review of the antidumping duty order on carbon steel wire rod from Brazil with respect to such merchandise manufactured by these firms. The Department will determine the appropriate foreign market values and United States prices by February 14, 1984. We will permit Companhia Siderurgica Da Guanabara and Companhia Siderurgica Belgo-Mineira to post bonds or other security in lieu of the cash deposit of estimated antidumping duties for carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and on or before February 14, 1984.

**EFFECTIVE DATE:** December 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** Larry Hampel or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2923/1130.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 16, 1983, the Department of Commerce ("the Department") published in the *Federal Register* an antidumping duty order on carbon steel wire rod from Brazil (48 FR 52110). The Department announced that, in addition to deposits of estimated normal customs duties, Customs officers were to require a cash deposit of estimated antidumping duties on all merchandise entered, or withdrawn

from warehouse, for consumption on or after November 16, 1983.

On November 10, 1983, Companhia Siderurgica Da Guanabara ("COSIGUA") and Companhia Siderurgica Belgo-Mineira requested that the Department waive the requirement for cash deposit of estimated antidumping duties and conduct an expedited review pursuant to section 736(c) of the Tariff Act of 1930 ("the Tariff Act").

Before granting a waiver of cash deposits of estimated antidumping duties we must be satisfied that we will be able to determine the appropriate foreign market values and United States prices within 90 days after the date of publication of the order. The Department is satisfied that it will be able to do so.

Accordingly, the Department is instructing the Customs Service to waive the cash deposits of estimated antidumping duties and accept bonds or other security for wire rod manufactured by COSIGUA and Belgo-Mineira entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and on or before February 14, 1984.

Interested parties may submit written comments within 30 days from the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. The Department will determine the results of this expedited review by February 14, 1984, including the results of its analysis of any such comment or hearing.

This notice is published in accordance with section 736(c)(2)(A) of the Tariff Act (19 U.S.C. 1673(e)(c)(2)).

Dated: December 8, 1983.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-33901 Filed 12-16-83; 8:45 am]

BILLING CODE 3510-05-M

#### [C-484-015]

#### Tomato Products From Greece; Preliminary Results of Administrative Review of Countervailing Duty Order

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the

countervailing duty order on tomato products from Greece. The review covers the period January 1, 1981 through December 31, 1981.

As a result of the review, the Department has preliminarily determined the amount of bounty or grant to range from 4.57 to 51.79 Greek drachmas per gross kilogram, depending on the specific product. Interested parties are invited to comment on these preliminary results:

**EFFECTIVE DATE:** December 16, 1983.

**FOR FURTHER INFORMATION CONTACT:** Jemmott or Brian Kelly, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 30420) the final results of its last administrative review of the countervailing duty order on tomato products from Greece (37 FR 6360, March 28, 1972) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

**Scope of the Review**

Imports covered by the review are tomato paste and sauce, peeled tomatoes and tomato juice. Such imports are currently classifiable under items 141.6520, 141.6540, 141.6600, and 166.3000 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1981 through December 31, 1981, and one program, "production aid" to processors of tomatoes.

**Analysis of Program**

On January 1, 1981, Greece entered the European Communities ("the EC") and the EC established production subsidies to Greek processors of tomatoes. This program replaces the Greek government program that was the subject of our last review. The EC grants the aid to tomato processors whose products meet the quality standards of the EC and who contract to pay tomato producers at or above the minimum Greek prices for tomatoes established by the EC.

EC information indicates that this aid program became effective on January 1, 1981 but that payments may not have started until July of 1981. Lacking clear information for the period January 1-

June 30, 1981, we applied our rate calculated for July 1-December 31, 1981 to the earlier six month period as the best information otherwise available. We calculated the amount of assistance provided to specific products on the basis of concentrate ratios provided by the Greek government in earlier submissions.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine the total bounty or grant during the period of review to be as shown in the appendix to this notice, ranging from 4.57 to 51.79 Greek drachmas per gross kilogram. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties as indicated in the appendix on all shipments of Greek tomato products exported on or after January 1, 1981 and on or before December 31, 1981.

As provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect cash deposits as indicated in the appendix on all shipments of tomato products from Greece entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 U.S.C. 355.41).

Dated: December 13, 1983.

Alan F. Holmer,  
Deputy Assistant Secretary, Import Administration.

**Appendix**

For January 1, 1981 through December 31, 1981.

(1) Tomato Paste and Sauce:

Concentration (percent)		Drachmas per gross kilogram (packing size)				
Not less than—	But less than—	More than 1.5 kg.	From 1.5 to 0.7 kg	From 0.7 to 0.25 kg	From 0.25 to 0.15	0.15 and less
12	14	7.64	8.95	9.68	11.73	13.20
14	16	8.34	9.78	10.56	11.49	14.41
16	18	9.04	10.60	11.47	13.89	15.83
18	20	9.76	11.44	12.38	15.00	16.87
20	22	10.46	12.27	13.27	16.08	18.08
22	24	11.17	13.09	14.16	17.16	19.30
24	26	11.87	13.92	15.06	18.24	20.52
26	28	12.57	14.74	15.95	19.32	21.73
28	30	13.28	15.57	16.84	20.40	22.95
30	32	13.98	16.39	17.73	21.48	24.17
32	34	14.69	17.22	18.63	22.57	25.38
34	36	15.39	18.04	19.52	23.65	26.60
36	38	16.09	18.87	20.41	24.73	27.81
38	40	16.81	19.71	21.32	25.83	29.05
40	42	17.51	20.54	22.21	26.91	30.27
42	44	18.22	21.36	23.11	27.99	31.49
44	46	18.92	22.19	24.01	29.08	32.71
46	48	19.63	23.01	24.91	30.16	33.93
48	50	20.33	23.84	25.81	31.24	35.15
50	52	21.04	24.66	26.71	32.32	36.37
52	54	21.74	25.49	27.61	33.40	37.59
54	56	22.45	26.31	28.51	34.48	38.81
56	58	23.15	27.14	29.41	35.56	40.03
58	60	23.86	27.96	30.31	36.64	41.25
60	62	24.56	28.79	31.21	37.72	42.47
62	64	25.27	29.61	32.11	38.80	43.69
64	66	25.97	30.44	33.01	39.88	44.91
66	68	26.68	31.26	33.91	40.96	46.13
68	70	27.38	32.09	34.81	42.04	47.35
70	72	28.09	32.91	35.71	43.12	48.57
72	74	28.79	33.74	36.61	44.20	49.79
74	76	29.50	34.56	37.51	45.28	51.01
76	78	30.20	35.39	38.41	46.36	52.23
78	80	30.91	36.21	39.31	47.44	53.45
80	82	31.61	37.04	40.21	48.52	54.67
82	84	32.32	37.86	41.11	49.60	55.89
84	86	33.02	38.69	42.01	50.68	57.11
86	88	33.73	39.51	42.91	51.76	58.33
88	90	34.43	40.34	43.81	52.84	59.55
90	92	35.14	41.16	44.71	53.92	60.77
92	94	35.84	41.99	45.61	55.00	61.99
94	96	36.55	42.81	46.51	56.08	63.21
96	98	37.25	43.64	47.41	57.16	64.43
98	100	37.96	44.46	48.31	58.24	65.65

(2) Tomato Juice: 4.57 drachmas per gross kilogram.

(3) Peeled Tomatoes: San Marzano Variety—7.39 Drachmas Per Gross Kilogram. Roma and Similar Varieties—5.55 Drachmas Per Gross Kilogram.

[FR Doc. 83-33606 Filed 12-16-83; 8:45 am]

**BILLING CODE 3510-05-M**

**National Oceanic and Atmospheric Administration**

**Salmon and Steelhead Advisory Commission; Meeting**

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meeting; change.

**SUMMARY:** This document changes a public meeting notice of the Salmon and Steelhead Advisory Commission that was published on November 28, 1983, 48 FR 53595.

**FOR FURTHER INFORMATION CONTACT:** H. A. Larkins, 206-527-6150.

**SUMMARY:** In FR Doc. 83-31709 appearing on page 53595, under the "DATES" heading, the first day of the meeting (December 19) is cancelled. The meeting on December 20, 1983, will be held as scheduled from 8:00 a.m. to 3:00 p.m., with a public comment period scheduled for 11:00 a.m. The location of the meeting remains as published earlier.

Dated: December 12, 1983.

William G. Gordon,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 83-33575 Filed 12-16-83; 8:45 am]

**BILLING CODE 3510-22-M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjusting the Import Levels for Certain Man-Made Fiber Apparel Products Produced or Manufactured in the Republic of Korea

December 13, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 19, 1983. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212.

#### Background

The CITA directive dated December 23, 1982, as amended (See 47 FR 58338, 48 FR 630 14737, and 48 FR 39113), established levels of restraint for cotton, wool, and man-made fiber textile and apparel products, produced or manufactured in the Republic of Korea and exported during 1983. At the request of the Government of the Republic of Korea, under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, the United States Government has agreed to increase the 1983 limits for man-made fiber textile products in Categories 633/634/635 (coats) and 638/639 (knit shirts) by the application of carryforward. To the extent used, this carryforward will be deducted from the limits established for these categories in 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

December 13, 1983.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs,

*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 23, 1982 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Korea and exported during 1983.

Effective on December 19, 1983, paragraph 1 of the directive of December 23, 1982 is hereby further amended to adjust levels of

restraint established for the following categories according to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea:<sup>1</sup>

Category	Adjusted 12-mo. level of restraint <sup>1</sup>
633/634/635	1,415,307 dozen of which not more than 180,901 dozen shall be in Cat. 633, not more than 833,342 dozen shall be in Cat. 634 and not more than 632,714 dozen shall be in Cat. 635.
638/639	5,709,851 dozen.

<sup>1</sup> The levels have not adjusted to reflect any imports reported after December 31, 1982.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Dec. 63-33999 Filed 12-19-83; 8:45 a.m.]

BILLING CODE 3510-DR-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Privacy Act of 1974; Revision to Systems of Records

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of revisions to systems of records.

**SUMMARY:** The Consumer Product Safety Commission is adding a disclosure notice to three of its Privacy Act systems of records in accordance with the Debt Collection Act of 1982 Pub. L. 97-365. Additionally, it proposes to add two illustrative paragraphs to the "Categories of Records" section of one of those systems.

**DATES:** Effective January 18, 1984.

#### FOR FURTHER INFORMATION CONTACT:

Robert T. Noonan, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone 301-492-6080.

**SUPPLEMENTARY INFORMATION:** The Debt Collection Act of 1982, Pub. L. 97-365, 96 Stat. 1749, authorizes agencies to disclose information from Privacy Act

<sup>1</sup> The bilateral agreement, as amended, provides, among other things, that: (1) During any agreement year specific limits and sublimits may be exceeded by designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specified conditions specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

record systems, about persons owing money to the Government, to consumer reporting agencies (credit reporting agencies) if certain requirements are met. One of those requirements is that the published notice for the pertinent record system indicate that such disclosures may be made. OMB Bulletin 83-21, September 21, 1983, directed all Executive agencies to implement the Debt Collection Act and report delinquent debts to credit reporting agencies. This notice is one of the steps the Commission is taking to implement the Debt Collection Act.

The Commission has identified three of its Privacy Act systems of records as being likely to contain information which would establish the existence of a debt owed to the Government. These systems are: CPSC-2, Advisory Committee Records, CPSC-13, Personnel Data System; and CPSC-17, Commissioned Officers Personnel Data File. Accordingly, the following notice is added to CPSC-2, CPSC-13, and CPSC-17.

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosure may be made from this system to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(9)).

Since these notices relate to disclosures specifically authorized by the Privacy Act itself (5 U.S.C. 552a(b)(12)), as added by the Debt Collection Act, they are not "routine uses" as referenced in 5 U.S.C. 552a(b)(3), and are accordingly not subject to the advance notice requirements of 5 U.S.C. 552a(e)(11), and are effective immediately.

The Commission is also adding two additional examples to the "Categories of Records" section of CPSC-13 to facilitate enforcement of the Debt Collection Act, as follows:

- • • • •
- 7. Financial data pertaining to travel.
- 8. Information on debts owed to the Government as a result of overpayment, refund owed, or a debt referred for collection by another agency.
- • • • •

These additions do not constitute a significant alteration to CPSC-13 since they merely provide additional illustrations of the types of information already covered by the existing system notice. Accordingly, this notice is effective immediately.<sup>1</sup>

<sup>1</sup> This notice was approved by the Commission by a majority vote of four Commissioners with Commissioner Armstrong abstaining.

Therefore, pursuant to the Debt Collection Act of 1982 and the Privacy Act of 1974, the CPSC systems of records designated CPSC-2, Advisory Committee Records; CPSC-13, Personnel Data System; and CPSC-17, Commissioned Officers Personal Data File are amended to read as follows:

**CPSC-2****SYSTEM NAME:**

Advisory Committee Records—CPSC-2.

**SYSTEM LOCATION:**

Consumer Product Safety Commission, Directorate for Health Sciences, 5401 Westbard Avenue, Washington, D.C. 20207.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals seeking or nominated for or selected for membership of CPSC Advisory Committees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of applicants contain an individual's name, address, personal history and qualifications, any correspondence with the individual and any Commission memoranda relating to the selection of the individual. Records of members additionally contain information about the member's financial compensation and Commission documents relating to the individual's service as a member.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

15 U.S.C. 2077 and 15 U.S.C. 1275.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records are used to select candidates for filling vacancies on advisory committees and to administer the operation of the committees.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosures pursuant to 5 U.S.C. 552a(b)(12).* Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Records are maintained in hard copy.

**RETRIEVABILITY:**

Records are indexed alphabetically by name of committee and then by name of applicant or member.

**SAFEGUARDS:**

Records are maintained in file cabinets in a secured area.

**RETENTION AND DISPOSAL:**

Applicants' and nominees' records are retained until new applications are solicited or committee is terminated and then destroyed. Members' records are retained for 2 years after termination of membership and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Committee Management Officer, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207.

**NOTIFICATION PROCEDURE:**

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

**RECORD ACCESS PROCEDURES:**

Same as notification.

**CONTESTING RECORD PROCEDURES:**

Same as notification.

**RECORD SOURCE CATEGORIES:**

Information is provided by applicants, nominees for, and members of Advisory Committees and by Commission staff.

**CPSC-13****SYSTEM NAME:**

Personnel Data System—CPSC-13

**SYSTEM LOCATION:**

Consumer Product Safety Commission, Associate Executive Director for Administration, 5401 Westbard Avenue, Washington, D.C. 20207, and the Headquarters unit or Regional Office to which an employee is assigned. Regional Office addresses are listed in Appendix I.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and former employees of CPSC.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records consist of payroll records, personnel security records, safety records, EEO records, and personnel

records. In addition, the system contains data necessary to update the Central Personnel Data File at the Office of Personnel Management, to process personnel actions, to perform detailed accounting distributions, to automatically provide for such tasks as mailing checks and bonds, and to prepare and mail tax returns and reports. Records include, but are not limited to the following categories of records:

1. Employee identification and status data such as name, social security number, date of birth, sex, work schedule, type of appointment, education, veteran's preference, military service, and race/national origin.
2. Relevant data such as service computation date for leave, date probationary period began, and date of performance rating.
3. Position and pay data such as pay plan, occupational series, grade, step, salary, merit pay, organization location.
4. Employment data such as merit pool identifier, position description, special employment program, and target occupational series and grade.
5. Payroll data such as time; attendance; leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.
6. Personnel security data such as security clearance level and basis with dates.
7. Financial data pertaining to travel.
8. Information on debts owed to the government as a result of overpayment, refund owed, or a debt referred for collection by another agency.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C., Part III, is the authority for the overall system. Specific authority for use of Social Security numbers is contained in Executive Order 9397, 28 CFR 31.6011(b)(2), and 28 CFR 31.6109-1. The authority for the personnel security clearance and statistical records is contained in Executive Order 19450, April 27, 1953, as amended; Executive Order 12065, June 28, 1978; 31 U.S.C. 686; and 40 U.S.C. 318(a) through (d).

**PURPOSE(S):**

This system supports the day to day operating requirements associated with personnel oriented program areas from hiring employees and paying employees to calculating estimated retirement annuities. Payroll-related outputs include a comprehensive payroll; detailed accounting distribution of costs; leave data summary reports; an employee's statement of earnings, deductions and leave every payday for

each employee; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; W-2 wage and tax statements; and reports of withholdings and contributions. Personnel-related reports include automated personnel actions as well as organization rosters, retention registers, retirement calculations, reports of the Federal civilian employment, employee master record printouts, length of service lists, and listings of within-grade increases. These records are used to provide data for agency reports and internal workforce statistics and information regarding such matters as average grade, minority, veteran and handicap employment, retention-standing, within-grade due dates, occupational groupings, geographic employment and others related to the operation of the personnel office.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine uses of records maintained in the system include:

- a. Providing data to the Office of Personnel Management's Central Personnel Data File (CPDF).
- b. Providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520.
- c. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Assistant Administrator for Plans, Programs, and Financial Management, General Services Administration (B), Washington, D.C. 20405.
- d. To the extent necessary, records are available to Commission and outside government agencies to monitor and document grievance proceedings, EEO complaints, and adverse actions; and to provide reference to other agencies and persons for employees seeking employment elsewhere.
- e. Some records or data elements in this system of records may also be in the Office of Personnel Management's government-wide system OPM/GOVT-1 and are subject to that system's routine uses.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

*Disclosure pursuant to 5 U.S.C. 552a(b)(12).* Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on paper in file folders and on computer magnetic media.

**RETRIEVABILITY:**

Paper records are filed by name. Computer records are retrievable by any data element or combination of data elements.

**SAFEGUARDS:**

Paper records are stored in lockable metal cabinets or in secured rooms. Password system protects access to the computerized records. Information is released only to authorized officials on a need-to-know basis.

**RETENTION AND DISPOSAL:**

Payroll-related records are sent to storage 2 years after the end of the fiscal year to which they pertain.

Personnel-related records are disposed of 2 years after termination of employment.

**SYSTEM MANAGER(S) AND ADDRESS:**

For payroll-related records: Director, Division of Financial and Management Services, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

For personnel-related records: Chief, Employment Branch, Division of Personnel Management, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

**NOTIFICATION PROCEDURE:**

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

**RECORD ACCESS PROCEDURES:**

Same as notification.

**CONTESTING RECORD PROCEDURES:**

Same as notification.

**RECORD SOURCE CATEGORIES:**

The individuals themselves, other employees, supervisors, other agencies'

management officials, non-Federal sources such as private firms, and data from the systems of records OPM/GOVT-1 and EEOC/GOVT-1.

**CPSC-17**

**SYSTEM NAME:**

Commissioned Officers Personal Data File—CPSC-17.

**SYSTEM LOCATION:**

A complete record on every commissioned officer is maintained in the Regional Office to which the commissioned officer is assigned. Records concerning the commissioned officer's activities and performance are also maintained by the CPSC Regional Office to which the individual is assigned. Regional Office addresses are listed in Appendix I.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

State employees commissioned as officers of CPSC.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains documents related to the commissioning of the individual and personal data including name, social security number, date of birth, educational, background, employment history, security clearance information, medical information, fingerprints, home address and phone number, duty station, service computation date and benefits information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 29(a)(2), Consumer Product Safety Act (15 U.S.C. 2078(a)(2)); E.O. 10450, sections 8(c), 9(a), 9(b); E.O. 10561.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) By agency officials for purposes of review in connection with appointments, reassignments, and determination of qualifications for reappointment of an individual.

(2) To provide statistical reports to Congress, agencies and the public on characteristics of the Commissioned officer program.

(3) As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal

identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personal management functions.

(4) To provide information or disclose to a Federal or state agency, in response to its request, in connection with the hiring or retention of an employee, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(5) To request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a license, grant, or other benefit.

(6) Disclosure to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

*Disclosures pursuant to 5 U.S.C. 552a(b)(12).* Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Records are maintained in file folders.

##### RETRIEVABILITY:

Records are indexed by name.

##### SAFEGUARDS:

Records are located in lockable metal file cabinets or metal file cabinets in secured rooms with access limited to those whose official duties require access.

##### RETENTION AND DISPOSAL:

The records are maintained and disposed of in accordance with Commission records management policies and procedures.

##### SYSTEM MANAGER(S) AND ADDRESS:

Regional Office Directors, Consumer Product Safety Commission. (Regional Office addresses are listed in Appendix I).

##### NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission.

5401 Westbard Avenue, Washington, D.C. 20207.

#### RECORD ACCESS PROCEDURES:

Same as notification.

#### CONTESTING RECORD PROCEDURES:

Same as notification.

#### RECORD SOURCE CATEGORIES:

Information in these records comes either from the individual to whom it pertains or from agency officials, CPSC supervisors, or state officials.

Dated: December 13, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-33904 Filed 12-16-83; 8:45 a.m.]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday, Thursday, & Friday, January 18-20, 1984.

Times: 0830-1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's LHX Aircraft Program will meet to finalize findings from classified briefings and discussions in preparation for reporting results on major LHX issues. The subgroups is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695-3039 or 697-9703.

Sally A. Warner,

Administrative Officer.

[FR Doc. 83-33591 Filed 12-16-83; 8:45 am]

BILLING CODE 3710-06-M

#### Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday, & Friday, January 12-13, 1984.

Times: 0830-1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on the Army's LHX Aircraft Program will meet to consolidate preliminary findings from classified briefings and discussions as related to major LHX issues and establish draft conclusions and recommendations. The subgroups is tasked with a comprehensive review of LHX requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695-3039 or 697-9703.

Sally A. Warner,

Administrative Officer.

[FR Doc. 83-33590 Filed 12-16-83; 8:45 am]

BILLING CODE 3710-08-M

### Department of the Army; Corps of Engineers

#### Intent to Prepare a Draft Supplement to Final Environmental Impact Statement for Wildcat and San Pablo Creeks Project in Contra Costa County, California

AGENCY: U.S. Army Corps of Engineers, Defense.

ACTION: Notice of Intent to prepare a draft supplement to the final environmental impact statement.

SUMMARY: Proposed Action.—The Wildcat and San Pablo Creeks project was authorized, under authority of Section 201 of the 1965 Flood Control Act, by the U.S. House of Representatives and Senate Committees on Public Works in 1976. As authorized, a concrete channelized floodway would be constructed from San Pablo Avenue on Wildcat Creek to the Santa Fe Railway tracks. A short section of rectangular concrete channel would be constructed under the railroad tracks. Then a channelized floodway would continue from the Southern Pacific Transportation Company railway tracks to a 300-foot covered channel which would extend past Verde School. The stream would continue through a nature study area, and a fresh-water impoundment, terminating at the salt marsh. San Pablo Creek channel

improvement would start in the vicinity of 17th Street through a diversion under Road No. 20 and continue toward San Pablo Bay through a natural floodway. Improvement would terminate at the salt marshes. The creeks and floodway would be improved to include recreation facilities, environmental quality and a managed trail system. The Contra Costa County Flood Control and Water Conservation District is the local sponsor. The supplement is being prepared to describe updated environmental resource data and to describe impacts and mitigation.

2. *Alternatives.*—There are currently seven alternatives and a no action plan under consideration. These alternatives include a reservoir, structural channel improvements, and nonstructural measures.

3. *Scoping of the DEIS.*—Close coordination will be maintained with local agencies, other Federal agencies, and interested organizations and individuals. Analyses of potential impacts will be assisted by this coordination.

4. *Scoping Meetings.*—Environmental concerns related to potential future work have been identified during previous EIS coordination. Considerable local coordination has already been carried out by the Contra Costa County Flood Control and Water Conservation District. A formal public scoping meeting will not be held, but one or more informal meetings may be held with interested and concerned agencies, organizations and individuals to obtain any additional views of the public. Significant resource identified to date include the riparian and wetland habitat, fish and wildlife resources, recreation, and cultural resources. Participation in scoping and review of environmental concerns by all interested Federal, State and local agencies, and interested organizations and individuals is invited.

5. *Estimated Date of DEIS.*—The draft supplement is scheduled to be made available to the public 1 October 1984.

**ADDRESS:** Questions about the proposed action and draft supplement can be answered by: Cay C. Goude, Environmental Planning Section, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 440-2364 or (FTS) 448-2364.

Dated: December 9, 1983.

Arthur E. Williams,  
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 83-33964 Filed 12-16-83; 8:45 am]

BILLING CODE 3710-GH-M

## Defense Logistics Agency

### Privacy Act of 1974; Amendment; System of Records

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Amendment to a System Notice.

**SUMMARY:** The Defense Logistics Agency proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The proposed amendments as well as the notice as amended is set forth below.

**DATES:** This action will be effective without further notice on January 18, 1984.

**ADDRESSES:** Send any comments to Mr. Preston B. Speed; Chief, Administrative Management Branch, HO Defense Logistics Agency, Cameron Station; Alexandria, VA 22314. Telephone: 202/274-6234.

**FOR FURTHER INFORMATION CONTACT:** Mr. Speed at the above address.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems notices for systems of records subject to the Privacy Act of 1974, as amended, Title 5 United States Code section 552a, were published in the *Federal Register* at 48 FR 26199 (FR Doc. 83-12048), June 6, 1983.

No altered system report (see 5 U.S.C. 552a(o)) is required by this change. December 14, 1983.

M. S. Healy,  
OSD Federal Register Liaison Officer,  
Department of Defense.

### Amendments

#### S434.87 DLA-C

##### SYSTEM NAME:

Debt Record for Individuals.

##### Changes:

In "Purpose(s):" Add caption and insert:

"Information is used to collect monies owed the United States Government. Information is maintained to support case files; financial statements provide an understanding of individuals financial condition with respect to request for deferment of payment.

"Routine uses of records maintained in the system including categories of users and purposes of such uses:" delete current entry and insert:

"If debtors do not enter into satisfactory payment arrangements or demonstrate a legitimate dispute within a specific period, the debt may be reported to a commercial credit bureau.

"Case files on uncollectible debts are

forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

"See also blanket routine uses set forth above".

"Disclosure to Consumer Reporting Agencies:" add caption and insert:

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

As amended, System S434.87 DLA-C reads as follows:

#### S434.87 DLA-C

##### SYSTEM NAME:

Debt Records for Individuals.

##### PURPOSE(S):

Information is used to collect monies owed the United States Government. Information is maintained to support case files; financial statements provide an understanding of individuals' financial conditions with respect to requests for deferment of payments.

##### "ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:"

"If debtors do not enter into satisfactory payment arrangements or demonstrate a legitimate dispute within a specific period, the debt may be reported to a commercial credit bureau.

Case file on uncollected debts may be forwarded to the U.S. General Accounting Office, Department of Justice, or a United States Attorney for further collection action.

See also blanket routine uses set forth above.

##### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

*Disclosures pursuant to 5 U.S.C. 552a(b)(12):* Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

[FR Doc. 83-33978 Filed 12-16-83; 8:45 am]

BILLING CODE 3620-01-M

**National Security Agency****Privacy Act of 1974; Amendment; System of Records**

**AGENCY:** National Security Agency, DOD.

**ACTION:** Amendment to a System Notice.

**SUMMARY:** The National Security Agency proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The proposed amendments as well as the notice as amended are set forth below.

**DATES:** This action will be effective without further notice on January 18, 1984.

**ADDRESSES:** Send any comments to Lt. R. N. Fielding, JAGC, USN, Office of the General Counsel, National Security Agency, Fort George C. Meade, MD 20755.

**FOR FURTHER INFORMATION CONTACT:** Lt. R. N. Fielding, JAGC, USN, Office of the General Counsel, National Security Agency, Fort George C. Meade, MD 20755. Telephone: (301) 688-6705.

**SUPPLEMENTARY INFORMATION:** The National Security Agency systems notices for systems or records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) were published in the Federal Register at 48 FR 25876 (FR Doc 83-12048) June 6, 1983.

No altered system report (see 5 U.S.C. 552a(o)) is required by this change.

M. S. Healy,

*GSD Federal Register Liaison Officer,  
Department of Defense.*

December 14, 1983.

**Amendments****GNSA08****SYSTEM NAME:**

NSA/CSS Payroll and Claims.  
In "Purpose(s):" add caption and insert:

"To maintain effective control over and accountability for all funds; to provide accounting data to support the NSA/CSS budget request and control the execution of the budget; provide financial information for NSA/CSS management purposes; provide for the input of permanent change data and the output of such data as leave without pay, reconciliation of files, periodic step increases, mass pay changes and changes in leave categories, investigate, review, discuss, recommend and implement decisions on pay claims waivers."

In "Routine uses of records in the system including categories of users and the purposes of such uses:" delete the current entry and insert:

"Used to provide financial information required by the Office of Management and Budget.

"When required, specific information from the files may be made available to other governmental entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits tax audit and collections, and other related claims or actions.

"Disclosures from this system may also be made to other federal entities as necessary to effectuate repayment of debts owed the United States."

In "Disclosure to Consumer Reporting Agencies:" add caption and insert:

"Disclosure pursuant to 5 U.S.C. 552a(b)(10): Disclosures pursuant to 5 U.S.C. 552a(b)(10) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3))."

As amended System GNSA08 reads as follows:

**GNSA08****SYSTEM NAME:**

NSA/CSS Payroll and Claims.

**PURPOSE(S):** To maintain effective control over and accountability for all funds; to provide accounting data to support the NSA/CSS budget requests and control the execution of the budget; provide financial information for NSA/CSS management purposes; provide for the input of permanent change data and the output of such data as leave without pay, reconciliation of files, periodic step increases, mass pay changes and changes in leave categories, investigate, review, discuss, recommend and implement decisions on pay claims waivers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Used to provide financial information required by the Office of Management and Budget.

When required, specific information from this file may be made available to other government entities in connection with Social Security deductions, unemployment compensation claims, job-related injury and death benefits, tax audits and collections and other related claims or actions. Disclosures from this system may also be made to other federal entities as necessary to effectuate repayment of debts owed the United States.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures pursuant to 5

U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

[FR Doc. 83-33579 Filed 12-16-83; 8:45 am]

BILLING CODE 3010-01-M

**DEPARTMENT OF EDUCATION****National Advisory Council on Women's Educational Programs; Meeting**

**AGENCY:** National Advisory Council on Women's Educational Program, Department of Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a joint meeting of the National Advisory Council on Women's Educational Programs Executive Committee and the Committee on Standing Committees. The agenda will include a discussion of budget, planning Council activities for the coming year, utilization of staff resources and committee projects for 1984. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE:** January 4, 1984, 9:00 a.m. to 12:00 p.m., and 1:30 p.m. to 5:00 p.m.

**ADDRESS:** The meeting will be held in the Counsel offices at 425 13th Street, NW., Suite 416, Washington, B.C.

**FOR FURTHER INFORMATION CONTACT:** Sharon Petersen, Special Assistant to the Executive Director, National Advisory Council on Women's Educational Programs, 425 13th, NW., Suite 416, Washington, D.C. 20004; (202) 376-1038, Q02

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95-561. The Council is mandated to: (a) Advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council

determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on December 14, 1983.

Rosemary Thomson,  
Executive Director.

[FR Doc. 83-33810 Filed 12-16-83; 8:45 am]  
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[Docket No. ERA-FC-83-023; FC Case No. 50782-9093-01, 02-11]

#### Order Granting to Detroit Edison Company an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

##### Correction

In FR Doc. 83-32549, beginning on page 54866, in the issue of Wednesday, December 7, 1983, in the third column, in the second line from the bottom, "December 5, 1983" should read "February 6, 1984".

BILLING CODE 1505-01-M

## Office of Hearings and Appeals

### Issuance of Decisions and Orders: Week of October 17 Through October 21, 1983

During the week of October 17 through October 21, 1983 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

*Mr. Y. Shanmugadhasan, 10/17/83, HFA-0177*

Mr. Y. Shanmugadhasan filed an Appeal from a partial denial by the Acting Assistant Manager for Administration of DOE's San Francisco Operations Office of a Request for Information which he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the deleted portions of the documents were properly withheld under exemption 3 of the FOIA, which protects from mandatory release matters that are exempted from

disclosure by statute. Although the DOE recognized that documents once formally declassified may not be reclassified, the DOE found that a clerical error which resulted in the improper marking of documents did not constitute official declassification. The DOE held that since no declassification occurred, the documents retained their restricted status. Accordingly, the Appeal was denied. *The Washington Post, 10/19/83, HFA-0181*

The Washington Post filed an Appeal from two separate determinations concerning a Request for Information which it had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents, which concerned safeguarding classified information, were correctly withheld from release pursuant to Exemption 5 of the FOIA, which protects from mandatory release documents reflecting the deliberative process of an agency. Specifically, the DOE found that the documents were intra-agency memoranda and policy drafts that were part of the deliberative process and therefore were properly withheld under Exemption 5. The DOE did, however, determine that the search for responsive documents conducted by the Director of DOE's Office of Safeguards and Security was inadequate. Accordingly, a further search was ordered.

#### Remedial Order

*Crown Central Petroleum Corporation, 10/17/83, DRO-0111, HRR-0059*

Crown Central Petroleum Corporation filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to the firm. The PRO found that during the period August 1, 1973, through January 31, 1978, Crown improperly calculated increased product costs for motor gasoline and diesel fuel by erroneously computing the "Y" factor of the refiner price rule. In a prior Decision and Order (Crown I), which resolved most of Crown's objections to the PRO, the DOE determined that Crown had violated the "Y" factor regulations during the period December 1, 1973, through January 31, 1976, and instructed the Office of Special Counsel (OSC) to provide further information concerning the proper "Y" factor computations for the months of September, October, and November 1973.

After considering the new computations furnished by OSC and those Crown objections not considered in *Crown I*, the DOE determined that (i) Crown violated the "Y" factor regulation effective prior to November 30, 1973; (ii) the PRO properly required that Crown refund the amount by which the increased product costs the firm actually recovered in December 1973 exceeded the amount of increased product costs that the regulations permitted Crown to recover; and (iii) that the PRO be modified to state explicitly that special refund proceedings would be initiated pursuant to 10 C.F.R. Part 205, Subpart V to distribute the funds that Crown will remit. The DOE additionally denied a Crown motion requesting reconsideration of the determinations reached in *Crown I*. Accordingly, the PRO, with certain modifications, was issued as a final Remedial Order.

#### Interlocutory Orders

*Economic Regulatory Administration/State of California, 10/20/83, HRZ-0174*

The Economic Regulatory Administration filed a Motion to Strike a Statement of Objections that the State of California submitted in connection with a Proposed Remedial Order (PRO) issued to Revere Petroleum Corporation. California's principal objection to the PRO was that since ERA had not specified how potential refunds would be distributed, DOE could adopt a refund plan which did not provide the State a right to participate in the remedial aspects of the proceeding. The DOE rejected ERA's claim that since California had not filed a formal Request to Participate the State's participation should be barred and its submission stricken. The DOE instead determined that California's Notice of Objection should be construed as a Request to Participate. The DOE also rejected ERA's suggestion that California be permitted to participate only in the remedial phase of the Revere proceeding, stating that such a step might deny the State an opportunity to protect its interests. Accordingly, the DOE concluded that California should remain on the official service list and be permitted to participate at all stages in the proceeding with respect to all matters. The DOE further stated that if Revere was found liable for overcharges, it would issue an interlocutory order dealing with remedial issues and provide for the participation of both California and the ERA in development of a remedy. Accordingly, ERA's Motion was dismissed.

*Fuel Oil Supply & Terminals, Inc., 10/17/83, HRZ-0172*

Fuel Oil Supply and Terminals, Inc. (FOSTI) filed a motion requesting that three passages in a Proposed Remedial Order issued to it be stricken from the record in an OHA enforcement proceeding. The passages referred to the alleged criminal activity of one of FOSTI's customers. In considering the motion, the DOE observed that the passages to which FOSTI objected did not allege that FOSTI had engaged in criminal activity or enlarge the scope of the enforcement proceeding. Consequently, the DOE concluded that FOSTI would not be prejudiced by the retention in the record of the passages in question. Accordingly, the Motion to Strike was denied.

#### Implementation of Special Refund Procedures

*Office of Enforcement: in the Matter of ADA Resources, Inc., 10/19/83, HQG-0026*

The DOE issued a Decision and Order establishing special refund procedures for distributing a fund obtained through a Consent Order entered into with Ada Resources, Inc. A fund of \$97,950 remained to be disbursed after refund claims made by 5 Ada purchasers were granted. Noting that the Ada Consent Order covered sales of middle distillates, bunker "C" fuel, motor gasoline, aviation fuel, natural gasoline and butane in the Houston area, the DOE determined that the remaining refunds should be distributed to several Houston-area governmental units and the State of Texas. The DOE found that

these governmental authorities would be best able to effect restitution to Houston-area consumers who were injured by alleged overcharges associated with the sales of these fuels.

#### Refund Applications

*Palo Pinto Oil and Gas/State of New Mexico/State of Pennsylvania/State of South Carolina, 10/18/83, RQ5-14, RQ5-19, RQ5-20*

The States of New Mexico, Pennsylvania, and South Carolina filed applications for second stage refunds in connection with a Consent Order fund made available by Palo Pinto Oil and Gas. The State of New Mexico proposed to use the refund monies to develop and print information on water flow controllers. Pennsylvania proposed to divide its refund between two programs, one to promote energy conservation in public buildings, and the other to aid low income families and elderly citizens in weatherizing their homes. South Carolina indicated that it would use its share of the refund monies to develop a program on energy conservation financing and renewable energy resource equipment. The DOE found that these plans would benefit the individuals likely to have sustained the impact of the alleged overcharges. Accordingly, the DOE granted refunds to three states totaling \$24,368.32.

*Standard Oil Company (Indiana)/A & M Petroleum, Inc. Et Al., 10/20/83, RF21-11484 Et Al.*

The DOE issued a Decision and Order concerning 117 Applications for Refund filed by wholesalers of Amoco Motor gasoline that also operate retail stations. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Under that presumption, for each gallon of qualified motor gasoline purchased, a retailer is entitled to receive a refund equal to 40 percent of the volumetric refund amount. Since each applicant had received a refund based on the wholesaler's 34 percent portion of the volumetric amount, the refunds granted in this proceeding were based upon the six percent difference between the retailer's and wholesaler's shares.

*Standard Oil Company (Indiana)/D&J Truck Stop Et Al., 10/20/83, RF21-11795 Et Al.*

The DOE issued a Decision and Order concerning 30 Applications for Refund from branded retailers of Amoco motor gasoline. All of these firms contended that they were injured by more than the presumptive levels adopted in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The DOE rejected the Applicants' argument that their inability to sell gasoline at the maximum lawful selling price established that they incurred injury greater than the presumptive levels. Therefore, each applicant was granted a refund based upon the presumption of injury and formulae set forth in *Office of Special Counsel*.

*Standard Oil Company (Indiana)/Dovis Oil Co., Inc. Et Al., 10/20/83, RF21-182 Et Al.*

The DOE issued a Decision and Order concerning 35 Applications for Refund filed by resellers of Amoco middle distillates. All

of these firms elected to apply for a refund based upon the presumptive of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 35 applicants should receive a refund based upon the total volume of its Amoco middle distillate purchases. The refunds granted in this proceeding total \$34,974.

*Standard Oil Company (Indiana)/Hardwood Lumber Corp. Et Al., 10/17/83, RF21-2119 Et Al.*

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by consumers of several types of Amoco refined products. Those consumers who purchased middle distillates and motor gasoline were granted refunds based on the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). Applicants who purchased non-presumption products, i.e., residual fuel oils, lubricating oils and greases, natural gas liquids and naphtha, directly from Amoco received 100 percent of the volumetric refund amount. The refunds granted in this proceeding total \$125,262.

*Standard Oil Company (Indiana)/Mallette Oil Co., Inc. Et Al., 10/20/83, RF21-187 Et Al.*

The DOE issued a Decision and Order concerning 58 Applications for Refund filed by wholesalers of Amoco motor gasoline. All of these firms elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering these applications, the DOE concluded that each of the 58 applicants should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refunds granted in this proceeding total \$295,860.

*Standard Oil Company (Indiana)/Peterson, Howell, & Heather, Inc. Et Al., 10/20/83, RF21-7802*

The DOE issued a Decision and Order concerning an Applications for Refund filed by Peterson, Howell & Heather, Inc. (PH&H), as a consumer of Amoco motor gasoline. The DOE found that PH&H, acting as a conduit for the Amoco gasoline purchases of its clients, billed each client for the entire cost of Amoco motor gasoline which the client purchased. Therefore, the DOE determined that any increased costs associated with the alleged overcharges were fully passed through to PH&H customers. The DOE concluded that PH&H was not injured as a result of any alleged overcharges made by Amoco. Accordingly, the PH&H Application for Refund was denied.

The following submissions were dismissed:

Name	Case No.
Rudolph Pettaway	RF21-12148
Pyro Energy Corp. formerly R. L. Burns	BRD-1432 BRD-1432 BRH-1432
Fritz Schnelg	FR 21-7651
Taylor Oil Company	BRO-1294

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

December 7, 1983.

George B. Breznay,

Director Office of Hearings and Appeals

[FR Doc. 83-33609 Filed 12-19-83; 8:45 am]

BILLING CODE 6450-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42037; T3H-FRL 2437-4]

#### Alkyltin Compounds; Response to the Interagency Testing Committee

##### Correction

In FR Doc. 83-30139 beginning on page 51361 in the issue of Tuesday, November 8, 1983, make the following corrections.

1. On page 51362, second column, in the table, remove the "@" symbol that appears in front of "dilaurate".

2. On page 52363, first column, second full paragraph, " $10^{-9}$ /m<sup>3</sup>/second." should read " $10^{-9}$ /mg/m<sup>3</sup>/second."; in the same column, eighth line from the bottom, " $\times 10^{-6}$  ppb" should read " $\times 10^{-7}$  ppb"; and in the seventh line from the bottom, " $6.11 \times 10^{-6}$ " should read " $6.11 \times 10^{-7}$ ".

BILLING CODE 1505-01-M

[W-10-FRC 2492-2]

#### Draft General NPDES Permit for Seafood Processors in the State of Alaska

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of the Draft General NPDES Permit No.: AK-G-52-0000 for Alaskan Seafood Processors.

**SUMMARY:** The Regional Administrator of Region 10 is today providing notice of the draft general National Pollutant Discharge Elimination System (NPDES) permit for seafood processors in Alaska and notice of the Finding of No Significant Impact. The draft general NPDES permit proposes effluent limitations, monitoring requirements and reporting requirements for discharges from Alaskan seafood processors. This

permit will cover mobile and shore-based seafood processing facilities in all waters under Alaskan and U.S. jurisdiction off the coast of Alaska, other than those in excepted areas.

The draft general permit and the Finding of No Significant Impact are based on the administrative record available for public review in two locations:

The Environment Protection Agency,  
Water Permits and Compliance  
Branch, M/S 521, 1200 Sixth Avenue,  
Seattle, Washington 98101  
The Environmental Protection Agency,  
Alaska Operations Office, Room E  
556, Federal Building, 701 C Street,  
Anchorage, Alaska 99513

The Fact Sheet sets forth the principal facts and the significant factual, legal, and policy questions considered in the development of the draft general permit.

#### Comment Period

Interested persons may submit comments on the draft general permit and administrative record to the Regional Administrator, Region 10 at the Seattle address given above no later than thirty (30) days after publication.

#### For Further Information and Copies of the Draft Permit and Fact Sheet Contact

Roger Mochnick, Region 10, at the Seattle address above or by telephone at (206) 442-7151 or FTS 399-7151.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with an NPDES permit. Although such permits have been issued to individual dischargers, EPA's regulations do authorize the issuance of "general permits" to categories of discharges when a number of point sources are:

1. Located within the same geographic area and warrant similar pollution control measures;
2. Involve the same or substantially similar types of operations;
3. Discharge the same types of wastes;
4. Require the same effluent limitations or operating conditions;
5. Require the same or similar monitoring requirements; and
6. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Clean Water Act and subjects the owner or operator of the permitted facility to

the penalties specified in Section 309 of the Act.

Owners or operators authorized by a general permit may be excepted from coverage by a general permit by applying to the Director of the NPDES program for an individual permit. This request may be made by submitting an NPDES permit application, together with supporting documentation for the request no later than 90 days after publication by EPA of the final general permit in the Federal Register, or 180 days prior to the commencement of operation of a new source or new discharger.

##### B. Seafood Processors in Alaska

The purpose of this general permit is to cover a large number of remote seafood processors in Alaska and to protect public health to the extent allowable within the NPDES program. There are approximately 225 NPDES applications for seafood processors on file, of which 158 will be covered under the general permit.

Aside from the areas excepted from this permit, remote seafood processors throughout the State operate under very similar conditions, and as such, can be covered under one general permit. Within facilities covered under this general permit the final products vary slightly; however the raw material is essentially the same throughout. The product is either canned or frozen, depending on the operation or the space available. Mobile vessels often freeze the product, whereas shore-based facilities may can or freeze the product.

This permit will cover mobile and shore-based seafood processing facilities in all waters under Alaskan and U.S. jurisdiction off the coast of Alaska, other than those in excepted areas listed below.

Seafood processors in traditional non-remote locations or processing centers, processors in areas that have documented water quality problems, or processors in areas with a high concentration of the industry which exhibit a potential to develop problems within the duration of this permit are excepted from coverage. Areas which will be excepted are:

Wrangell Narrows—Petersburg  
St. Paul Harbor—Kodiak  
Gibson Cove—Kodiak  
Orca Inlet—Cordova  
Ship Creek—Anchorage  
Akutan Harbor—Akutan  
Kenai River—Kenai Peninsula  
Kachemak Bay—Kenai Peninsula  
Kasilof River—Kenai Peninsula  
Clam Gluch—Kenai Peninsula  
Resurrection Bay—Kenai Peninsula  
Finger Bay—Adak

Dutch Harbor—Unalaska  
Captains Bay—Unalaska  
Illiuliuk Bay—Unalaska  
Illiuliuk Harbor—Unalaska  
Unalaska Bay—Unalaska

Waters adjacent to shore-based facilities located on the Kenai Peninsula.

This general permit also excepts from coverage any discharges to depths of less than 42 feet in protected bays, harbors, inlets, coves, lagoons, spawning areas, State Critical Habitats and Refuges, National Wildlife Refuges, Refuge Wilderness with seaward boundaries, National Parks and Monuments with seaward boundaries, coves and embankments bordered by wilderness classified lands or other areas that do not experience tidal influence.

This permit also excepts from coverage mobile seafood processing vessels who meet *all* of the following criteria:

- a. Process less than five tons per day of raw products.
- b. Process at least ½ mile offshore from the outer coast at a depth of at least 42 feet.
- c. Shall not discharge within 300 yards of another vessel.
- d. Shall not process in any bays, harbors, inlets, coves or other protected areas along the Alaskan coast.
- e. Comply with Alaska State Water Quality Standards.

##### C. Permit Conditions

###### 1. Requirements to Grind

In compliance with BPT/BCT for remote Alaska processors, all seafood wastes shall be ground to at least 1.27 cm (½ inch) prior to discharge.

###### 2. Discharge Depth

The permit specifies that the process wastes shall be discharged through a single outfall line located beneath the mean lower low water (MLLW) level of the receiving waters surface at a point which provides maximum dispersion of the waste. The discharge depth for shore-based processing facilities is specified at a total depth to the bottom substrate of 20-70 feet at MLLW, because this is the zone of greatest dispersion due to wave surge action and tidal currents. However, if greater dispersion is shown at a different depth or there is justification for an exception to the minimum depth requirement, the permittee can discharge to that depth, if EPA agrees with the information on dispersion or the justification for an exception submitted by the permittee in the Notice of Intent to be covered.

### 3. Treatment of Sanitary Wastes

The permit specifies that all sanitary wastes must meet secondary treatment standards (as specified below) or utilize an approved marine sanitation device which complies with pollution control standards and regulations under Section 312 of the Act.

#### SECONDARY TREATMENT REQUIREMENTS

	Milligrams per liter		
	Weekly average	Monthly average	Daily maximum
BOD <sub>5</sub>	45	30	60
Suspended solids	45	30	60

Total chlorine residual in the domestic or processing effluent shall not be greater than 2.0 mg/l at any time.

### 4. State of Alaska Water Quality Standards

In compliance with State of Alaska Water Quality Standards, there shall be no discharge of floating solids, garbage, grease, visible foam in other than trace amounts or oily water or wastes which produce a sheen on the surface of the receiving water. No wastes shall be allowed to accumulate on the beach nor float on the receiving water surface other than in trace amounts in the vicinity of either the processor or the outfall. The permit specifies daily visual observation to assure that no processing solids are obvious on the surface of the receiving waters or on the shore.

### 5. Expiration Date

The proposed duration of this general permit is five years.

### D. Reporting Requirements

1. The permittees will be required to submit to EPA and ADEC the following:

- Notice of Intent to be Covered; and
- Annual Certification of Compliance.

### 2. Notice of Intent to be Covered

a. Individuals wishing to obtain coverage under this general permit shall notify the Director of their intent within 30 days of the permit final issuance or at least 60 days prior to commencement of operations.

b. The Notice of Intent to be covered shall include:

- NPDES permit number
- Facility owner's name and address
- Facility operator's name and address
- Facility name, address and location
- Previous facility name and date of purchase if applicable
- Number of employees
- Type of treatment for seafood processing wastes and sanitary wastes

- Types of raw products processed
- Maximum poundage processed per day
- Projected number of processing days per season
- Type of finished product
- Projected dates of each operating season
- Name of receiving water(s)
- Estimated depth of discharge

c. Shore-based facilities who wish to discharge to depths other than 20 to 70 feet MLLW shall submit data showing that greater dispersion occurs at another depth. EPA will respond to these facilities as to whether or not EPA agrees with the information submitted on dispersion.

d. Submittal (to EPA) of the State of Alaska Department of Environmental Conservation annual uniform permit application for seafood processors, if it includes all of the above information, will also satisfy this requirement.

### 3. Annual Certification of Compliance

The Annual Certification of Compliance to be submitted by the end of the processing season or by January 31st of each year shall include the following information:

a. All of the information required in the Notice of Intent to be covered including projections for the next season.

b. Information on production including for each site the following information at a minimum:

- Location where discharge(s) occurred;
- Dates of operation at each location;
- Production data for the period of operation at each location, including total monthly quantities of raw product and finished product by type of product;
- A map showing each discharge location within each embayment and indicating the depth of wastewater discharge(s).

c. If the facility is a mobile vessel, information should be provided specifying proposed processing locations, receiving waters and anticipated dates in each location.

d. Every seafood processor discharging at a depth of 90 feet (MLLW) or less for greater than 30 days cumulative will be required to dive during one year out of the five year term of the permit. After five years, all seafood processors covered by this permit who discharge at 90 feet or less for greater than 30 days cumulative will have conducted a dive survey. Each year, dives will be required in specific sites. EPA will notify each seafood processor before the dive is required.

The objective of the dive survey is to determine the presence or absence of seafood wastes. If seafood wastes are present, the areal extent of seafood waste accumulations will be documented.

Results of the underwater dive survey shall be submitted regardless of whether waste accumulation as or was not identified during the dive. The State of Alaska Department of Environmental Conservation Dive Survey Report Form may be submitted to EPA, in lieu of separate documentation, if it includes all of the required information.

### E. Economic Impact (Executive Order 12291)

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection in two locations: The Environmental Protection Agency, Region 10, Water Permits and Compliance Branch, 1200 Sixth Avenue, Seattle, Washington and the Alaska Operations Office, Room E. 556, Federal Building, Anchorage, Alaska.

### F. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general NPDES permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Most of the information collection requirements of the permit have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under the provisions of the Clean Water Act. Burden hours associated with Part I.C.2 Dive Surveys and Part I.D.3.(d) Dive Survey Reports of the permit have been prepared and will be submitted to the Office of Management and Budget for review.

### G. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. Moreover, it reduces a significant administrative burden on regulated sources.

Dated: November 30, 1983.

Ernesta B. Barnes,

Regional Administrator, Region 10.

[FR Doc. 83-33593 Filed 12-16-83; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Oklahoma; Amendment to Notice of Major Disaster Declaration

[FEMA-A693-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Oklahoma [FEMA-693-DR], dated October 26, 1983, and related determinations.

DATED: December 12, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

#### Notice

The notice of a major disaster for the State of Oklahoma dated October 26, 1983, is hereby amended to include the following area among areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 26, 1983:

The Counties of Kiowa, Okfuskee and Oklahoma for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-33567 Filed 12-16-83; 8:45 am]

BILLING CODE 6713-02-M

## FEDERAL MARITIME COMMISSION

### Shipping Conditions in the U.S. Atlantic and Gulf/Ecuador Trade; Filing of Petition

December 14, 1983.

Coordinated Caribbean Transport has petitioned the Federal Maritime Commission to investigate certain alleged discriminatory actions against Petitioner in the trade between United States Atlantic and Gulf ports and Ecuador. Specifically, it is alleged that Petitioner has been restricted in its selection of ports of call in Ecuador

while other carriers have not been so restricted. This restriction, it is alleged, has: (1) Created special conditions unfavorable to shipping in the foreign commerce of the United States within the purview of section 19 of the Merchant Marine Act, 1920 (46 U.S.C. 876), and (2) resulted in the imposition of unfair and discriminatory burdens by the Government of Ecuador on Petitioner's vessels within the purview of section 26 of the Shipping Act, 1916 (46 U.S.C. 825).

Petitioner requests that the Commission institute an investigation into the matters alleged and issue rules pursuant to 46 CFR Part 506 as would be necessary and appropriate. It is requested that such rules include appropriate countervailing restrictions on Ecuadorian-flag vessels.

In order for the Commission to make a thorough evaluation of Petitioner's allegations, interested persons are requested to submit views, arguments or data on the petition no later than January 20, 1984. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies. Responses shall also be served on counsel for Petitioner: Richard W. Kurrus, Esq., Kurrus and Dyer, 1055 Thomas Jefferson St., NW., Washington, D.C. 20007.

Copies of the petition are available for examination at the Washington, D.C., office of the Commission, 1100 L Street, NW., Room 11101.

Francis C. Hurney,  
Secretary.

[FR Doc. 83-33605 Filed 12-16-83; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Availability of Funds for Home Health Services and Training

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that funds are available for grants and loans for the development and expansion of home health programs and services. Public Law (Pub. L.) 98-139, the Labor, Health and Human Services, and Education Appropriations Act of 1984, signed on October 31, 1983, appropriates \$5 million under section

339 of the Public Health Service (PHS) Act (42 U.S.C. 255) to provide home health services and for the training of paraprofessionals to provide home health services. This notice contains information of interest to prospective applicants for such funding.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or prior to May 15, 1984 and received at the appropriate HHS regional office (see Appendix) in time for processing. Hand delivered applications must be received by close of business May 15, 1984. Awards will be made in July 1984.

FOR FURTHER INFORMATION CONTACT: Appropriate Regional Health Administrator (see Appendix).

SUPPLEMENTARY INFORMATION: The Orphan Drug Act (Pub. L. 97-414), passed on January 1, 1983, revised title III of the PHS Act (the act) to establish the Home Health Services program. Section 339(a) of the Act provides that the Secretary may make grants to public and private non-profit entities to meet the initial costs of establishing and operating home health programs, and may make loans to proprietary entities for these purposes. Grants and loans may also be awarded to existing entities for expanding home health services to a new geographic service area. Under section 339(b) of the Act, the Secretary may award grants to public and private entities for programs to train paraprofessionals, including homemaker home health aides, to provide home health services.

HRSA has decided to allocate the \$5 million provided by Pub. L. 98-139 for carrying out section 339 as follows: \$4 million will be awarded as grants and loans under section 339(a) of the Act for providing of home health services in areas in which such services are inadequate or not readily accessible, including services in rural towns and villages, and \$1 million will be awarded as grants under section 339(b) of the Act for training programs for home health paraprofessionals.

In making loans or awarding grants for the development of new home health service programs or the expansion of existing home health service programs into new areas, HRSA will give preference to those applicants which intend to provide services in areas where there is a high percentage of the population composed of individuals who are elderly (persons over 65 years of age), medically indigent (persons at or below the HHS poverty income guidelines, see 48 FR 7010, February 17, 1983), or disabled (those disabled

persons receiving assistance under old age survivors disability insurance and supplemental security income programs). HRSA also intends to give special consideration to those applicants which propose to provide services in areas with inadequate means of transportation to obtain necessary health services.

HRSA intends to give special consideration in the award of grants for training paraprofessionals (including homemaker home health aides) to applicants which propose to train persons over 50 years of age and which propose to provide a program to train paraprofessionals for an entire State or a geographic area of at least one million persons.

Applicants should be aware that HRSA intends to accept applications for section 339(a) support only as follows: Applications for grants and loans to provide home health services under section 339(a) will be accepted from entities which are home health agencies, that is, entities which are recognized as providers of home health services by the Health Care Financing Administration (HCFA) and are eligible for reimbursement under the Medicare program, and from entities which intend to become home health agencies. Applications will also be accepted from entities which are at the present time directly providing or can directly provide one or more of the kinds of services listed in section 1861(m) of the Social Security Act and which propose to provide home health services to an area under a co-applicant arrangement with a home health agency.

Application may be made by completing the standard PHS Grant Application (form PHS-5161) for services grants and loans and for training grants. This application form calls for a program narrative giving a full description of the proposed project, including current and proposed services, a description of the service area and a budget justification. A competitive review of applications will be the basis for selecting successful proposals for grants and loans.

#### *Grants and Loans for Home Health Service Projects*

Applicants applying for grants and loans for home health services projects may wish to consider including the following information in the narrative: a time-phased staffing plan, information on their status as a HCFA provider, evidence of community support and compliance with State and local certificate of need laws, proposed fee structure, and other information

showing the need of the area for home health services.

A description of a plan, if any, to train paraprofessionals, including homemaker home health aides, to provide services as described in section 339(b)(2)(C) would be helpful in reviewing applications.

#### *Grants For Training Projects*

Applicants for training grants may wish to consider including in their application a training plan and curriculum, a description of the need in the area for the persons to be trained, the number of persons to be trained, and plans or arrangements, if any, for the utilization of trainees.

Regulations are now being developed to implement fully the home health services program. Applicants are advised to begin developing applications for submission by May 15, 1984 based upon the guidelines of this notice. Awards will be made in July 1984.

Consultation, technical assistance and additional information regarding applying for these funds are available from the appropriate HHS regional offices. Curriculum content information may be obtained in the document entitled *A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide*, as published by the National Home Caring Council, 235 Park Avenue South, New York, N.Y., 10003. Telephone 212 674-4990.

The Home Health program is listed as No. 13.688 in the OMB Catalog of Federal Domestic Assistance.

Dated: December 12, 1983.

**Robert Graham,**

*Assistant Surgeon General.*

#### **Appendix**

##### *Regional Health Administrators*

Edward J. Montminy, Regional Health Administrator, PHS—Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 223-6827

Karst J. Besteman, Regional Health Administrator, PHS—Region II, 26 Federal Plaza, New York, New York 10007, (212) 264-2560

William Lassek, M.D., Regional Health Administrator, PHS—Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

George A. Reich, MD., M.P.H., Regional Health Administrator, PHS—Region IV, 101 Marietta Tower, Atlanta, Georgia 30323, (404) 221-2316

E. Frank Ellis, M.D., Regional Health Administrator, PHS—Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353-1385

Sam Bell, Regional Health Administrator, PHS—Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 655-3879

Youn Bock Rhee, Regional Health Administrator, PHS—Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Dean Hungerford, Acting Regional Health Administrator, PHS—Region VIII, 19th and Stout Streets, Denver, Colorado 80294, (303) 837-4461

Sheridan L. Weinstein, M.D., Regional Health Administrator, PHS—Region IX, 50 United Nations Plaza, San Francisco, California 94102, (414) 556-5810

Dorothy H. Mann, Regional Health Administrator, PHS—Region X, 2901 Third Avenue, Mail Stop 501, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 83-33980 Filed 12-16-83; 8:45 am]

BILLING CODE 4160-17-M

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

### **Office of Environment and Energy**

[Docket No. NI-116]

#### **Deerfield Development and the Summertree Planned Unit Development; Intent To Issue a Finding of No Significant Impact**

The Department of Housing and Urban Development (HUD) gives notice that it intends to issue a Finding of No Significant Impact (FONSI) for the Deerfield Development and the Summertree Planned Unit Development located in Madison County, Mississippi. This Notice is required by the Council on Environmental Quality (CEQ) under 40 CFR Part 1500 and HUD implementing regulations under 24 CFR Part 50.

The proposed FONSI and supporting documentation for the Deerfield and Summertree Planned Unit Developments will be available for public inspection during regular business hours in HUD's Jackson Office, 100 West Capitol Street, Jackson, MS.

A notice of Intent to Prepare and EIS for these two projects was published in the *Federal Register* on May 27, 1981 and is hereby canceled.

Issued at Washington, DC, December 12, 1983.

**Francis G. Haas,**  
*Deputy Director, Office of Environment and Energy.*

*Notice of Finding of No Significant Impact* [as authorized by 40 CFR 1501.4(c)(2)(1)].

**Deerfield Planned Unit Development, Madison County, Mississippi**

The Atlanta Regional Office of the Department of Housing and Urban Development hereby publishes a Notice that it intends to issue a Finding and No Significant Impact (FONSI) for a proposed project to be known as Deerfield Planned Unit Development located in Madison County, Mississippi. The purpose of this Notice is to inform all interested persons, local, State and Federal agencies of the pending decision not to prepare an Environmental Impact Statement.

*Description*

The Deerfield Planned Unit Development encompasses approximately 1250 acres and includes plans for construction of an estimated 2200 single and multi-family dwelling units, recreational areas, schools, churches, commercial development, and all related infrastructure appropriate for such development. The project area is located approximately 15 miles Northeast of the City of Jackson, 5 miles North-northeast of the City of Madison, and 6 miles South of the City of Canton. The preliminary overall development plan was prepared in 1981 and has been approved by Madison County. The development is presently being marketed with approximately 22 units already built.

*Finding*

A draft Environmental Impact Statement was prepared and circulated for public comment on May 27, 1981. On the basis of the Draft EIS and comments received, it is determined that the proposed development will have no significant impact on the human environment and is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited in 24 CFR Part 50. HUD, therefore, proposes to issue a FONSI in accordance with 24 CFR 50.34.

*Contact*

Comments should be sent within 30 days following the publication of this Notice in the **Federal Register** to Clifton G. Brown, Regional Administrator-Regional Housing Commissioner, Attention: Environmental Clearance Officer, Richard B. Russell, Department of HUD, Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303. Supporting documentation to this Notice may be reviewed at the HUD Jackson Office, 100 West Capitol Street, Jackson, MS 39269 (601/960-4702). If additional information is needed, it can be provided by O. A. Wells, Jr. (601/960-

4700) or Archie Pope (601/960-4734). These are not toll free numbers.

**Summertree Planned Unit Development, Madison County, Mississippi**

The Atlanta Regional Office of the Department of Housing and Urban Development hereby publishes a Notice that it intends to issue a Finding of No Significant Impact (FONSI) for a proposed project to be known as Summertree Planned Unit Development located in Madison County, Mississippi. The purpose of this Notice is to inform all interested persons, local, State and Federal agencies of the pending decision not to prepare an Environmental Impact Statement.

*Description*

The Summertime Planned Unit Development encompasses approximately 850 acres and includes plans for construction of an estimated 3000 single and multi-family dwelling units, recreational areas, commercial development, office space and all related infrastructure appropriate for such development. The project area surrounds the intersection of Interstate 55 and Mississippi State Road 463. The preliminary overall development plan was prepared in 1981 and has been approved by the City of Madison and Madison County. The development is presently being marketed with approximately 75 units already built.

*Finding*

A draft Environmental Impact Statement was prepared and circulated for public comment on May 27, 1981. On the basis of the Draft EIS and comments received, it is determined that the proposed development will have no significant impact on the human environment and is in compliance with the National Environmental Policy Act and related environmental laws and authorities cited in 24 CFR Part 50. HUD, therefore, proposes to issue a FONSI in accordance with 24 CFR 50.34.

*Contact*

Comments should be sent within 30 days following the publication of this Notice in the **Federal Register** to Clifton G. Brown, Regional Administrator-Regional Housing Commissioner, Attention: Environmental Clearance Officer, Department of HUD, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303. Supporting documentation to this Notice may be reviewed at the HUD Jackson Office, 100 West Capitol Street, Jackson, MS 39269 (601/960-4702). If additional information is needed, it can be provided by O. A. Wells, Jr. (601/960-

4700) or Archie Pope (601/960-4734). These are not toll free numbers.

[FR Doc. 83-33566 Filed 12-16-83; 8:45 am]  
BILLING CODE 4210-29-M

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Umatilla Basin Project, Oregon; Intent To Prepare a Draft Environmental Statement**

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior intends to prepare an environmental statement (ES) on the potential Umatilla Basin Project in northeastern Oregon. The draft ES will be integrated with a planning report, which will present a plan of development.

In this study, authorized by Pub. L. 89-561, the Bureau of Reclamation is investigating potential water development in the Umatilla River basin to augment streamflow and for other purposes. Rehabilitation of the stream system to enhance diminishing runs of steelhead and restore returns of chinook salmon are the primary objectives of the study. Anadromous fish habitat improvements appear to be possible through flow augmentation resulting from water released from new headwater storage facilities and exchanging pumped water from the Columbia River for irrigation storage and natural flow in the basin. Streambank vegetation and instream habitat enhancements also are being considered as viable components to improve basin fishery conditions. There may be an opportunity to improve reliability of water for presently irrigated lands and to provide water-related recreation activities.

In the study, water needs have been documented, and potential solutions have been identified. Eighteen potential headwater and offstream water storage sites were evaluated early in the study. An evaluation of these sites for economic, social, and environmental effects was made, and five of the sites were retained for further study. A planning aid report, in which those findings are discussed, was reviewed by the public in early 1983. Throughout the study process, extensive input has been received from the Umatilla Basin Study Committee, an ad hoc group comprised of representatives from numerous basin water interests. A Preferred Plan has now been formulated, which includes construction of Bear Creek reservoir on North Fork Meacham Creek in

combination with downstream riparian vegetation and instream habitat improvements in Meacham Creek. The second major part of the plan is construction of a pump station and canal/pipeline facilities to convey Columbia River water into the basin in exchange for some natural riverflow presently being diverted for irrigation and for some of the irrigation storage in McKay Reservoir. McKay storage will then be used to augment streamflow in the Umatilla River for chinook salmon migration and spawning. The plan also proposes improvements to fish passage facilities, installation of protective screens on existing irrigation diversions, and postconstruction fishery monitoring program. An alternative plan of taking no action will also be analyzed. Reclamation will present details of these plans in the planning report/ES, which presently is scheduled to be completed in 1985.

Over the past 2 years, close working relationships have been fostered between Reclamation and the ad hoc committee. The ad hoc committee membership—made up of representatives from irrigation districts and water interest groups; Federal, State, county, and municipal entities; Umatilla tribal government; and interested individuals—has provided Reclamation valuable direction in developing study needs, project scope, and plan selection. Besides public review of the planning aid report, periodic reports of study findings have been sent to interested individuals and groups. Study activities to date have identified and made preliminary evaluations of the anticipated significant environmental issues related to the Preferred Plan. These issues are:

- Environmental, social, cultural, and economic effects of restoring chinook salmon runs and improving steelhead runs in the Umatilla River basin.
- Effects of construction of a dam and reservoir at the Bear Creek site on wildlife values.
- The need for operation of the Preferred Plan to be consistent with management objectives of the Cold Springs and McKay National Wildlife Refuges.

In view of the opportunities provided by the above participation, no specific scoping meeting is being scheduled for the report/ES.

To further assure that the full range of issues related to the proposal is identified and discussed in the document, comments and suggestions are invited. Anyone with suggestions relating to significant environmental

issues in the area under study should contact Robert A. Adair, Environmental Specialist, Bureau of Reclamation, Pacific Northwest Region, Box 043, 550 West Fort Street, Boise, Idaho 83724; telephone (208) 334-1209.

Dated: December 12, 1983.

Robert N. Broadbent,

Commissioner.

[FR Doc. 83-33576 Filed 12-16-83; 8:45 am]

BILLING CODE 4310-09-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

#### Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the sixtieth meeting of the Board for International Food and Agricultural Development (BIFAD) on January 5, 1984.

The purpose of the meeting is to consider such matters as the report by the Joint AID-BIFAD Task Force on (AID-University) Memoranda of Understanding; to discuss the report of the Commission on Security and Economic Assistance; and to hear a presentation on the project being carried out for AID by the University of Minnesota with the Agricultural Institute in Morocco.

The meeting will begin at 9:00 a.m. and adjourn at 12:15 p.m., and will be held in Room 1105, New State Department Building, 22nd and C Streets, NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits. An escort from the "C" Street Information Desk (Diplomatic Entrance) will conduct you to the meeting.

Mr. Leonard Yaeger, Deputy Assistant Administrator for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, Washington, D.C. 20523, or telephone him at (202) 632-4871.

Dated: December 13, 1983.

Leonard Yaeger,

A.I.D. Advisory Committee Representative,  
Board for International Food and Agricultural Development.

[FR Doc. 83-33590 Filed 12-19-83; 8:45 am]

BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30313]

### Rail Carriers; Burlington Northern Railroad Company—Trackage Rights Exemption—Over Southern Pacific Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.* the acquisition by Burlington Railroad Company of trackage rights over a line of railroad owned by the Southern Pacific Transportation Company, subject to employee protection. The line is located between SP mileposts 326.69 and 328.71, a distance of approximately 2 miles, at Sherman, TX.

**DATES:** This exemption will be effective on January 18, 1984. Petitions for reconsideration must be filed by January 9, 1984. Petitions to say this decision must be filed by December 29, 1983.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30313 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Peter M. Lee, 176 East Fifth Street, St. Paul, MN 55101.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gltomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

Decided: December 12, 1983.

By the Commission, Chairman Taylor, Vice Chairman Stetzett, Commissioners Andre and Gradison.

James H. Bayne,  
Acting Secretary.

[FR Doc. 83-33571 Filed 12-16-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-Number 165)]

**Rail Carriers; Burlington Northern Railroad Company—Abandonment—in Sebastian County, AR and Le Flore County, OK; Findings**

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon 44.03 miles of rail line between milepost 422.5 near Fort Smith, AR and milepost 453.14 near Wister, OK, and its line between milepost 429.21 near Jenson, AR and milepost 442.60 near Montreal, AR. The lines are in Sebastian County, AR and Le Flore County, OK.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,  
*Acting Secretary.*

[FR Doc. 83-33568 Filed 12-16-83; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 30355]

**Rail Carriers; Consolidated Rail Corporation—Merger—Buffalo Creek Railroad Company; Exemption**

December 12, 1983.

On December 1, 1983, the Consolidated Rail Corporation (Conrail) and its wholly-owned subsidiary, Buffalo Creek Railroad Company (Buffalo Creek), filed a notice of exemption for merger of Buffalo Creek into Conrail. The notice is filed as a class exemption pursuant to 49 CFR 1180.2(d)(3).

Buffalo Creek owns track in the vicinity of Buffalo, NY. All of its assets are leased to Conrail and operated as an integral part of the Conrail system. Buffalo Creek has no employees. The objective of the merger is to achieve administrative savings from corporate simplification. The proposed

consummation date is December 31, 1983.

The planned merger will be a transaction within a corporate family that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Thus, it is an exempt transaction pursuant to 49 CFR 1180.2(d)(3).

As a condition to the use of this exemption, any employee affected by this transaction shall be protected pursuant to *New York Dock Ry.—Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

By the Commission, Herber P. Hardy,  
Director, Office of Proceedings.

James H. Bayne,  
*Acting Secretary.*

[FR Doc. 83-33574 Filed 12-16-83; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 30338]

**Rail Carriers; Grand Trunk Western Railroad Company—Abandonment Exemption—City of Midland, MI**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts the Grand Trunk Western Railroad Company from the requirements of prior approval under 49 U.S.C. 10903 *et seq.* regarding the abandonment of 0.8 miles of track within the City of Midland, MI, subject to the standard employee protective conditions.

**DATES:** This exemption will be effective on January 18, 1984. Petitions to stay must be filed by December 29, 1983, and petitions for reconsideration must be filed by January 9, 1984.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30338 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
- (2) Petitioners' representative: John C. Danielson, 131 West Lafayette Blvd., Detroit, MI 48226.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC metropolitan area) or toll free (800) 424-5403.

Decided: December 12, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

James H. Bayne,  
*Acting Secretary.*

[FR Doc. 83-33572 Filed 12-16-83; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 93)]

**Seaboard System Railroad, Inc.—Abandonment—in Geneva County, AL, and Holmes and Jackson Counties, FL; Findings**

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 22.6-mile rail line between Geneva, AL (milepost AF-825.3) and Graceville, FL (milepost AF-647.9) in Geneva County, AL, and Holmes and Jackson Counties, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding the financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Rayno,  
*Acting Secretary.*

[FR Doc. 83-33569 Filed 12-16-83; 8:45 am]  
BILLING CODE 7035-01-M

[Finance Docket No. 30325]

**Southern Pacific Transportation Company—Abandonment Exemption—in San Joaquin County, CA**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by the Southern Pacific Transportation Company of a 0.47-mile

portion of its Woodbridge Branch from milepost 105.60 to milepost 106.069 in San Joaquin County, CA, subject to conditions for protection of employees.

**DATES:** This exemption shall be effective on January 18, 1984. Petitions for reconsideration must be filed by January 9, 1984. Petitions to stay must be filed by December 29, 1983.

**ADDRESS:** Send pleadings referring to Finance Docket No. 30325 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
- (2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:**

Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 12, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-33873 Filed 12-16-83; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Proposed Consent Decree Pursuant to Clean Water Act; Imperial Utilities Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 22, 1983 a proposed consent decree in *United States of America v. Imperial Utilities Corporation*, Civil Action No. 83-2066-C(A) was lodged with the United States District Court for the Eastern District of Missouri. The proposed consent decree provides for compliance by Imperial Utilities Corporation with its National Pollution Discharge Elimination System (NPDES) permit regarding discharges at various point sources of Rock Creek in Jefferson County, Missouri.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of

Justice, Washington, D.C. 20530, and should refer to *United States of America v. Imperial Utilities Corporation*, D.J. Ref. No. 90-5-1-1-1889.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Missouri, 414 U.S. Courthouse, 1114 Market Street, St. Louis, Missouri 63101; the Region VII Office of the Environmental Protection Agency, 324 East Eleventh Street, Kansas City, Missouri 64106; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the D.J. Ref. No. 90-5-1-1-1889.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 83-33862 Filed 12-16-83; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefit Programs

#### Brigham Surgical Group Foundation, Inc. Pension Plan, et al; Grant of Individual Exemptions

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the

notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c) (2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Brigham Surgical Group Foundation, Inc. Pension Plan (the Plan) Located in Boston, Massachusetts

[Exemption Application No. D-3905; Prohibited Transaction Exemption 83-194]

### Exemption

The restrictions of section 406(a) and 406(b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code, shall not apply to the loan of \$180,000 by the Plan to the Brigham Surgical Group Foundation, Inc., the Plan Sponsor, over a 15-year period, provided the terms of the loan are not less favorable to the Plan than an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46879.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Lumberman's of Washington, Inc.  
Restated Employee Stock Ownership  
Plan (the Plan) Located in Seattle,  
Washington**

[Exemption Application No. D-4206;  
Prohibited Transaction Exemption 83-195]

**Exemption**

The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) The acquisition on March 1, 1982 of certain notes (the Notes) of Lanoga Corporation which was the sponsor of the Plan at the time of the acquisition of the Notes; and (2) the holding of the Notes by the Plan for the period March 1, 1982 through January 1, 1983.

Effective Date: The effective date is March 1, 1982.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46883.

For Further Information Contact:  
Richard Small of the Department,  
telephone (202) 523-7222. (This is not a toll-free number.)

**Landauer Fund I (the Fund) Located in  
New York, New York**

[Exemption Application No. D-4271;  
Prohibited Transaction Exemption 83-196]

**Exemption**

**Section I. Exemption for Certain  
Transactions Involving the Fund**

(a) Effective upon the date of publication in the **Federal Register** of this grant (hereinafter, the Effective Date), the restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section II are met.

(1) Acquisitions, Sales or Holdings of Employer Real Property.

(A) Except as provided in subsection (B) of this section (1), any acquisition, sale or holding of employer real property by the Fund if no commission is paid to Landauer Advisors, Inc. (LAI), or to the employer or to any affiliate of LAI or the employer in connection with the acquisition, sale or lease of employer real property; and

(i) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or

adaptable without excessive cost) for use by different tenants, and

(ii) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(b) In the case of an employee benefit plan which has subscribed to interests in the Fund (Unitholders) that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (1) shall be available only if, immediately after the acquisition of the real property, the aggregate fair market value of employer real property held by the Fund does not exceed 10 percent of the fair market value of the Unitholder's interest in the Fund.

(c) For purposes of the exemption contained in subsection (A) of this section (1), the term "employer real property" shall include real property leased to a person who is a party-in-interest with respect to a Unitholder by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective upon the Effective Date, the restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section II are met.

(1) *Transactions with Persons Who Are Parties in Interest With Respect to a Unitholder Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Fund and a person who is a party-in-interest with respect to a Unitholder if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Unitholder, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Unitholder's assets in, or held by, the Fund, and

(B) The person is not an affiliate of LAI.

(2) *Certain Leases and Goods.*

The furnishing of goods to the Fund by a party-in-interest with respect to a Unitholder or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in

connection with real property owned by the Fund;

(B) The party-in-interest is not LAI or any affiliate of LAI; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of \$25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.*

Any services provided to the Fund by LAI or by an affiliate of LAI in connection with the management of the real property owned by the Fund, if the compensation paid to LAI or its affiliate does not exceed the cost of the services to LAI or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Unitholder, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

**Section II—General Conditions**

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of LAI or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) LAI or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of LAI or its affiliates the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of

subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section II are unconditionally available at their customary location for examination during normal business hours by: (A) any duly authorized employee or representative of the Department or the Internal Revenue Service.

(B) any fiduciary of a Unitholder who has authority to acquire or dispose of the interests in the Fund of the Unitholder or any duly authorized employee or representative of such fiduciary.

(C) any contributing employer to any Unitholder or any duly authorized employee or representative of such employer, and

(D) any participant or beneficiary of any Unitholder or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine the trade secrets of LAI or any of its affiliates, or commercial or financial information which is privileged or confidential.

#### Section III—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any officer, director, employee, relative of, or partner in any such person, and

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that

requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Nothing in this paragraph (d) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(e) Each Unitholder shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 2, 1983 at 48 FR 40028.

Comments and Hearing Requests: The applicant has submitted a written statement pertaining to various factual representations contained in the application for exemption and the Summary of Facts and Representations (the Summary) of the notice of proposed exemption. The applicant first notes that LAI's receipt of management fees, as described in paragraph number 7 of the Summary, will be computed based upon a percentage of the net asset value of the Fund per annum after the completion of the Fund's fifth year in operation, and not, as stated in the notice, based upon a specified percentage rate of the aggregate purchase price of the interests throughout the term of the Fund.

The applicant notes that paragraph number 8 of the Summary states that LAI may contract to provide management services at cost to the Fund. The applicant states that at the present time the Fund's operating documents prohibit LAI from performing any additional services for the Fund other than the supervisory management services which LAI performs under the terms of the management agreement. However, because the Fund's operating documents may in the future be amended to include certain additional management services at cost, the

applicant requested the exemptive relief pertaining to management of real property contained in Section I(b)(3) of the exemption.

The applicant further requests that the language in paragraph number 13 of the Summary describing the Fund as a closed-end fund "fully invested" should be interpreted as "fully-subscribed" as to not imply that the Fund has invested all assets committed to it. The applicant notes that, as of October 6, 1983, only one property has been purchased on behalf of the Fund at a purchase price of approximately \$5.4 million out of the \$35 million committed to the Fund.

The applicant further represents that paragraph number 14 of the Summary should reflect the fact that only the annual financial statements, and not the quarterly financial statements (other than the last quarter), will be audited and will contain a statement of changes in the Fund's financial position.

The Department notes these representations and clarifications, and has determined that none materially affects the granting of an exemption. Accordingly, the Department, after consideration of the entire record, has determined to grant the exemption as proposed.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Guy C. Clayton, D.D.S., P.C., Profit Sharing Retirement Plan (the Plan) Located in Hampton, Virginia**

[Exemption Application No. D-4304; Prohibited Transaction Exemption 83-197]

#### Exemption

The restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a 1.32 acre parcel of real property (the Property) by the Plan to Dr. Guy C. Clayton, the trustee of the Plan for \$120,000 provided that this amount is not less than the fair market value of the Property as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46888.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**Harvey's Wagon Wheel, Inc. Profit Sharing Plan (the Plan) Located in Stateline, Nevada**

[Exemption Application No. D-4343; Prohibited Transaction Exemption 83-198]

**Exemption**

The restrictions of section 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the assignment and sale for cash by the Plan to Harvey's Wagon Wheel, Inc. (the Employer) of the Plan's interest in certain loans (the Loans) executed by Hickory Brothers, Inc.; (2) the assignment and sale for cash by the Plan to the Employer of certain land and improvements (the Geer Property); and (3) as an alternative to (2), the payment by the Employer to the Plan of an amount representing the excess of the amount that would be paid under alternative (2) over the amount actually realized in a sale to an unrelated third party; provided that the terms and conditions of the assignment and sale under (1) and (2) are at least the fair market value of the Loans and the Geer Property at the time of the assignment and sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46892.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

**General Motors Hourly-Rate Employees Pension Plan, General Motors Retirement Program for Salaried Employees and General Motors Frigidaire Special Pension Plan (Collectively the Plans) Located in New York, New York**

[Application Nos. D-4409, D-4410, and D-4411; Prohibited Transaction Exemption 83-199]

**Exemption**

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the past and proposed lease of office space (the Merrill Lynch Lease) or to the renewal or expansion thereof, by the Plans to Merrill Lynch, Pierce, Fenner & Smith (Merrill Lynch), a party in interest with respect to the Plans, provided that the terms and conditions of the Merrill Lynch Lease are at least as favorable to

the Plans as those obtainable from an unrelated party.

Effective Date: The effective date is February 15, 1983.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46893.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

**M&M Manufacturing Company, Inc., Employees Profit Sharing Plan (the Plan) Located in Dallas, Texas**

[Exemption Application No. D-4425; Prohibited Transaction Exemption 83-200]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of real property, by the Plan, to M&M Building & Equipment Company, a party in interest with respect to the Plan, provided that the sales price is at least the fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46894.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**First Savings and Loan Association of El Paso Profit Sharing Trust (the Plan) Located in El Paso, Texas**

[Exemption Application No. D-4529; Prohibited Transaction Exemption 83-201]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of certain mortgage loans (the Loans) by the Plan, to First Financial Banking Center, the sponsor of the Plan, at price equal to the higher of the outstanding principal balances of the Loans plus accrued interest or the fair market value of the Loans as of the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the notice of proposed exemption published on October 14, 1983 at 48 FR 46899.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) the fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 13th day of December 1983.

**Alan D. Lebowitz,**

*Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.*

[FR Doc. 83-33557 Filed 12-19-83; 8:45 am]

BILLING CODE 4510-26-M

**Profit Sharing Plan for Employees of Hexter-Fair Title Co., Inc., et al.; Proposed Exemptions**

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of the 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these

notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

#### The Profit Sharing Plan for Employees of Hexter-Fair Title Company, Inc. (the Profit Sharing Plan) and the Hexter-Fair Title Company Pension Plan (the Pension Plan; collectively, the Plans) Located in Dallas, Texas

##### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The past contribution of a certain parcel of Property (the Property) to the Profit Sharing Plan and to the Pension Plan by the Hexter-Fair Title Company, Inc. (the Employer), the sponsor of the Plans, and the past contribution by the Employer to the Pension Plan of certain expenses related to the acquisition by the Pension Plan of certain leasehold interests (the Leasehold Interests, collectively, the Contribution) provided that (a) the value of the Property used in the Contribution was at least the fair market value of the Property on the date of Contribution and (b) the amount used by the Employer for its federal tax deduction for the Contribution was not greater than the fair market value of the Property plus the Employer's expenses related to the acquisition by the Pension Plan of the Leasehold Interests on the date of Contribution; (2) the past sale by Pension Plan to the Profit Sharing Plan of the Pension Plan's interest in the Property, provided the sales price was at least the fair market value of the Pension Plan's interest in the Property at the time of the sale; and (3) the proposed sale of the Property and the Leasehold Interests by the Profit Sharing Plan to the Employer, provided the sales price is at least the fair market value of the Property and Leasehold Interests at the time of the sale.

**Effective Dates:** The effective dates of this exemption are: (1) February 15, 1980 for the Contribution; (2) December 1,

1980 for the sale by the Pension Plan to the Profit Sharing Plan of the Pension Plan's interest in the Property; and (3) the date the grant of this exemption is published in the *Federal Register* for the proposed sale of the Property and the Leasehold Interests.

#### Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with approximately 94 participants and assets of \$2,099,086 as of March 31, 1982. The Pension Plan, a defined benefit plan, was terminated effective October 31, 1981. As of October 31, 1979, the assets of the Profit Sharing Plan and the Pension Plan were \$984,033 and \$388,095, respectively.

2. On February 15, 1980, the Employer purchased the Property, consisting of a vacant parcel of real property, from Frank Yet-Law, an unrelated third party, for a cash sum of \$242,790. The Employer immediately contributed the Property in undivided one-half interests to the Pension Plan and the Profit Sharing Plan. The Employer allocated \$121,395 of the value of the Property to the Profit Sharing Plan as a portion of the Contribution for the year ended October 31, 1979. The Employer allocated \$121,395 of the value of the Property as a portion of the Contribution for the year ended October 31, 1979 to the Pension Plan.

3. On March 1, 1980, the Pension Plan acquired the Leasehold Interests from Jack S. Morgan (Morgan) and First National Bank of Dallas (First National) located in Dallas, Texas, unrelated third parties and owners of the property underlying the Leasehold Interests. The Leasehold Interests consist of two 99 year leases by Morgan and First National to the Pension Plan on two vacant parcels of real property adjacent to the Property. The Employer paid \$20,000 to unrelated real estate brokers as commissions and \$3,350 to First National as a security deposit with respect to acquisition by the Pension Plan of the Leasehold Interests. The Employer allocated the \$23,350 paid with respect to the acquisition of the Leasehold Interests as portions of the Contribution to the Pension Plan for the years ending October 31, 1979 and October 31, 1980. The Property was leased by the Plans and the Leasehold Interests were subsequently subleased by the Pension Plan to Classified Parking System, Inc., an unrelated third party. The Property and Leasehold Interests are located directly across Federal Street in Dallas, Texas from the Employer's main office.

4. On December 1, 1980, in connection with a cessation of benefit accruals

under the Pension Plan, the interests of the Pension Plan in the Property and the Leasehold Interests were conveyed for the sum of \$144,745 to the Profit Sharing Plan. This represented the contribution value of the Pension Plan's interest in the Property on the date of the Contribution and the expenses incurred by the Employer in relation to the acquisition of the Leasehold Interests. Jack Callahan of Percy/Christon Inc. Realtors, an independent appraiser, represents that as of September 2, 1980, the fair market value of the Pension Plan's interest in the Property was the contribution value of the Pension Plan's interest in the Property of \$121,395. Such transfer may have constituted a prohibited transaction under section 406(b)(2) of the Act. The Department is proposing an exemption for the sale of the Pension Plan's interest in the Property by the Pension Plan to the Profit Sharing Plan. The Department is not, however, proposing an exemption for the sale of the Leasehold Interests by the Pension Plan to the Profit Sharing Plan because an independent appraisal was not performed to verify the fair market value of the Leasehold Interests prior to sale.

5. Prior to the Contribution by the Employer to the Plans of the Property, Allied Lakewood Bank and Trust Company (Lakewood), the trustee of the Plans, determined the transaction was in the best interest of the Plans. Lakewood is independent of the Employer. Lakewood represents that the Contribution enabled the Plans to receive an income producing property with a potential for appreciation in value. The applicant represents that the federal income tax deduction for the Contribution was not greater than the fair market value of the Property on the date of the Contribution plus the Employer's expenses related to the Pension Plan's acquisition of the Leasehold Interests and the Contribution did not exceed allowable contributions to the Plans as determined under section 415 of the Code. Lakewood also represents that prior to the sale of the Pension Plan's interest in the Property by the Pension Plan to the Profit Sharing Plan it determined that such sale was in the best interests of the Plans. Lakewood represents that the sale consolidated the ownership interests in the Property and improved the liquidity of the Pension Plan.

6. The applicant also requests an exemption for the proposed sale of the Property and Leasehold Interests by the Profit Sharing Plan to the Employer for a total cash sum of \$642,150. Of this price, \$562,300 represents the fair market value

of the Property, and \$76,500 represents the fair market value of the Leasehold Interests, as of November 1, 1981, as determined by Jerry W. Johns, MAI (Johns), an independent appraiser from Richardson, Texas. In addition, \$3,350 will be paid the Profit Sharing Plan for the security deposit on the Leasehold Interests. Johns represents that the rapid appreciation of the Property and the Leasehold Interests is in line with a trend of the last two to three years of escalating land values in downtown Dallas. Johns also represents that despite the proximity of the Property and Leasehold Interests to the Employer's main office the Property and Leasehold Interests have no special purpose for or unique value to the Employer. No expenses of any kind will be charged the Profit Sharing Plan with respect to the sale. Lakewood has examined the terms of the proposed sale and represents that it is in the best interests of the Profit Sharing Plan and its participants and beneficiaries. Lakewood represents that the value of the Property and the Leasehold Interests may have peaked and that the Profit Sharing Plan would be provided with increased liquidity.

7. The applicant represents that the criteria of section 408(a) of the Act are met by the transactions in that: (a) Lakewood represents that the Contribution by the Employer to the Plans, the sale of the Pension Plan's interest in the Property by the Pension Plan to the Profit Sharing Plan and the proposed sale by the Profit Sharing Plan to the Employer of the Property and Leasehold Interests were and will be in the best interests of the Plans; (b) the Contribution provided the Plans with an income producing property with the potential of profit through appreciation; (c) the sale between the Plans of the Pension Plan's interest in the Property consolidated the ownership of the Property and provided the Pension Plan with improved liquidity in light of the cessation of benefit accruals under the Pension Plan; (d) the value of the Pension Plan's interest in the Property was determined by an independent appraiser prior to the sale by the Pension Plan to the Profit Sharing Plan; (e) the sale of the Property and the Leasehold Interests by the Profit Sharing Plan to the Employer will be a one time transaction for cash; (f) a substantial gain will be realized by the Profit Sharing Plan by the sale by the Profit Sharing Plan to the Employer of the Property and Leasehold Interests; (g) with respect to the sale by the Profit Sharing Plan to the Employer of the Property and Leasehold Interests the

values of the Property and Leasehold Interests were determined by an independent appraiser; and (h) no expenses of any kind will be charged the Profit Sharing Plan in connection with the sale by the Profit Sharing Plan to the Employer of the Property and Leasehold Interests.

For Further Information Contact: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

**Petry Television, Inc. Profit Sharing Plan (the Plan) Located in New York, New York**

[Application No. D-4189]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the extension of credit by the Plan to Petry Television, Inc. (the Employer) in connection with the Employer's acquisition of certain common stock (the Common Stock) from the Plan, provided the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

*Summary of Facts and Representations*

1. The Employer, a New York corporation engaged in the broadcast agent business, maintains its principal place of business at 3 East 54th Street, New York, New York. The Employer's capital stock structure consists of two classes of Common Stock, Class A and B Common Stock, both of which are issued and outstanding. Class A and Class B Common Stock confer the same rights, privileges, preferences and designations to participating shareholders with the sole exception that Class A Common Stock does not grant voting rights. At present, there are 1,000 shares of Class A Common Stock that are issued and outstanding. There are 71,805 shares of Class B Common Stock that are issued and outstanding.<sup>1</sup>

<sup>1</sup> On December 31, 1982, an additional 1,200 shares of the Class B Common Stock were issued and outstanding. They were redeemed by the Employer, pursuant to a shareholder's agreement, from two employees (each of whom owned 600 shares) who had terminated their employment prior to that date.

Of these shares, 57,005 shares are owned by the Plan.

2. The Plan is a profit sharing plan with approximately 196 participants and total assets of \$6,681,486 as of June 30, 1983. Of that total, \$3,284,558 is invested in Chemical Bank Short-Term Investment Fund units and the balance, \$3,396,928, represents the aggregate value of the Class B Common Stock which has a per share valuation of \$59.59 as of April 22, 1983. The Plan acquired the Common Stock between January 1976 and December 1977 through direct purchase arrangements with certain former employees of the Employer. The sales were completed as follows:

Date	Seller	Number of shares purchased	Purchase price per share
1/28/76	M.F. Connelly	31,858	\$25.94
1/28/76	A.E. Muth	22,106	25.94
1/17/77	M.F. Connelly	22,208	31.88
1/17/77	A.E. Muth	15,433	31.88
12/01/77	M.F. Connelly	14,716	38.09
12/01/77	A.E. Muth	10,225	38.09

In one instance, September 14, 1980, the Employer contributed 10,843 shares of Common Stock to the Plan for the Plan year 1979. The contribution was valued at \$54.92 per share.

3. The trustee of the Plan (the Trustee) is Chemical Bank of New York. The Trustee has primary responsibility for making investment decisions for the Plan but in some instances, it may rely upon the recommendations of the Plan's administrative committee. The Trustee also maintains a commercial relationship with the Employer. However, the deposits and lines of credit of the Employer are negligible when compared to the total deposits and lines of credit of the Trustee bank. In addition, no principal of the Employer sits on the Board of Directors of the Trustee or its parent, Chemical New York Corporation.

4. The Employer requests an exemption to redeem all of the shares of the Common Stock that are owned by the Plan in exchange for a price equal to the fair market value of the shares at the time the transaction is consummated. Pursuant to the provisions of a redemption agreement (the Agreement) entered into between the Employer and the Trustee, the redemption price for the Common Stock of the Employer is \$66.21 per share (or \$3,774,301 for the 57,005 shares). The fair market price was determined in accordance with the established methodology for valuing the Employer's stock i.e., by taking the mean valuations given both classes of

Common Stock by two independent appraisers, Wertheim and Company, Inc. (Wertheim) and the J. Henry Schroder Corporation (Schroder), both of New York, New York and dividing that figure by the total shares of the Employer's stock that were issued and outstanding at the close of business on December 31, 1982. Wertheim and Schroder routinely value the Employer's securities but otherwise maintain no other commercial relationship with the Employer. On April 19, 1983, Wertheim stated that the value of the outstanding and issued capital stock of the Employer was \$5.1 million as of September 30, 1982. On March 28, 1983, Schroder valued such stock at \$4.7 million as of September 30, 1982. The \$66.21 quotient which was obtained by using the redemption formula is the redemption price for the Common Stock. The application states that the shares of Common Stock. The application states that the shares of Common Stock owned by individual shareholders of the Employer will have the same value as the shares being redeemed by the Plan and that figure will be the basis on which the shares will be valued henceforth. The application also states that if the proposed transaction is closed after December 15, 1983 a new valuation of the Common Stock will be obtained in order that the transaction may be consummated at fair market value.

5. As further documentation of the transaction, the Employer and Trustee will execute a promissory note (the Note) providing for a downpayment of \$1,250,000 in cash either before or at the time of closing.<sup>2</sup> The Trustee will monitor the terms of the Note. The balance of the redemption price will be paid in 28 consecutive, quarterly installments of principal over a 7 year period beginning 90 days after closing. Interest on the unpaid balance of the Note will be established at the prime commercial lending rate of the Trustee and will be paid with each payment of principal. The interest rate will be adjusted by the Trustee after the payment of every second quarterly installment to reflect the prime rate then in effect. In the event the Employer defaults on the Note, the entire unpaid balance of the purchase price and accrued interest will become due and payable at the option of the Trustee. The foregoing right of the Trustee will not be exclusive of any other right or remedy available to it upon the occurrence of an

<sup>2</sup> The application states that at the time the transaction is closed, 27.9 percent of the Plan's assets will be represented by the Note.

event of default, whether granted under the Agreement or available to the Trustee at law or in equity.

6. At closing, the Employer will redeem all of the Common Stock owned by the Trustee at the redemption price described above. The redeemed shares will be reflected in the Employer's stock records and new certificates (the Certificates) for those shares will be issued in the name of the Employer. The Certificates will consist of 27 certificates for 2,035 shares each and one certificate for 2,060 shares.

7. The certificates will serve as security for the Employer's obligations under the Note. They, together with certain stock powers executed by the Employer for the transfer of the shares, will be delivered to Mr. Paul Kaplan (Mr. Kaplan) of Wertheim who will serve as the escrow agent. By letter dated August 29, 1983, Mr. Kaplan has acknowledged his willingness to undertake escrow agent duties. Mr. Kaplan will retain the Common Stock until the Employer pays the purchase price in full. In the event of a default on the Note, Mr. Kaplan is directed to comply with the instructions of the trustee and is also absolved from liability should a dispute arise under the Agreement. Mr. Kaplan's fees will be borne by the Employer.

8. Schroder, which has previously valued the Common Stock, will serve as the independent fiduciary for the Plan with respect to the proposed transaction. As stated above, Schroder has no commercial relationship with the Employer. In addition, no principal of the Employer sits on the Board of Directors of the Schroder corporation. Further, Schroder is not the Plan trustee not does it manage the Plan's investments.

Schroder believes the redemption transaction is an appropriate investment for the Plan and in the best interests of the participants and beneficiaries. In arriving at its opinion, Schroder has reviewed prior year appraisals of the Common Stock as determined by it, Wertheim and Thomson McKinnon Securities, Inc.; discussed with the Employer's management the operations and future business prospects of the company; compared the results of the Employer's operations with certain other companies it deemed were similar to the Employer; discussed the proposed transaction with counsel to the Plan, members of the Plan's Administrative Committee and a representative of the Trustee; reviewed the terms of the Agreement and specifically considered:

(a) The purchase price, (b) the term of the Note and the interest rate it will bear, (c) the terms of the escrow arrangement and (d) the restriction on the price that could be paid to individual shareholders in the event their shares are redeemed by the Employer; reviewed the Plan and the Trust Agreement for the Plan; considered the percentage of the Plan's assets which will be represented by the Note; and reviewed miscellaneous financial studies and analyses and performed other investigations. On the basis of these analyses, Schroder believes the redemption price for the Common Stock is appropriate and fair. Schroder also feels that the transaction is appropriate for and responsive to the liquidity and diversification requirements of the Plan. In addition, Schroder believes that the provisions of the Agreement requiring the payment of interest floating with the prime rate, directing that the Common Stock being redeemed be escrowed until the Note is paid in full and restricting the price that can be paid to other shareholders of the Employer in the event of the redemption of their shares, are protective of the Plan.

As for the floating rate of interest featured in the Note, Schroder believes that such interest rate is more appropriate than a fixed rate from the standpoint of prudence since fluctuation of interest rates with the prime rate is a widely accepted pricing standard.

9. In summary, it is represented that the proposed transaction satisfies the conditions of section 408(a) of the Act because: (a) The redemption price for the Common Stock will be determined by Schroder; (b) the Plan will be able to dispose of an asset and thereby receive a quantity of cash to promote the diversification of its assets; (c) Schroder, in the role of an independent fiduciary has approved the terms of the redemption arrangement and it believes they are appropriate and suitable for the Plan; (d) the Trustee has agreed to monitor the terms of the Note and safeguard the interests of the Plan and its participants and beneficiaries; (e) Mr. Kaplan of Wertheim will hold the Certificates representing the Common Stock in escrow until the Employer pays the purchase price in full; and (f) the Certificates representing the Common Stock will secure the Employer's obligations under the Note.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

### Rhode Island Laborers' Training Trust Fund (the Plan) Located in Providence, Rhode Island

[Application No. L-4617]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the proposed lease of classroom and office space by the Plan from Plantation Partners (the Partnership), a partnership in which parties in interest with respect to the Plan own interests, provided that the terms of such lease are at least as favorable to the Plan as those which the Plan could obtain in dealing with an unrelated party.

#### Summary of Facts and Representations

1. The Plan is a multi-employer welfare plan within the meaning of section 3(1) of the Act and section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, with approximately 1,400 participants. The Plan provides training, retraining, continuing education, safety instruction and other vocational and pre-vocational training for individuals who are or desire to become engaged in work as field employees in the construction industry within the state of Rhode Island. The Plan is administered by six trustees (the Trustees), three of whom are appointed by employers contributing to the Plan and three of whom are appointed by the Rhode Island Laborers' General Council and local unions affiliated with the Laborers' International Union of North America, AFL-CIO. As of December 31, 1982, the Plan had total assets of \$1,679,478. Participants in the Plan obtain training by the Plan at the New England Laborers' Trust Fund facilities at Hopkinton, Massachusetts and Pomfret, Connecticut under an arrangement with that welfare plan. The Trustees have determined that this arrangement is disadvantageous to the Plan and its participants due to the inconvenience and expense of travel to the current training sites at Hopkinton and Pomfret. The Trustees desire a new location for the Plan's training activities, one which is geographically central to the jurisdiction of the Plan and the residences of its participants. The Trustees have located 4,310 square feet of available space which they believe to be ideally suited to the needs of the Plan. This space is the entire second

floor of the Plantations Office Building (the Building) located at 226 South Main Street in Providence, Rhode Island. The Trustees represent that they have carefully searched for and considered prospective sites for classroom and office space but have found no sites, other than the Building, which are both suitable for the intended purposes and available on satisfactory terms.

2. The Building is owned by the Partnership, a Rhode Island limited partnership. The managing general partner of the Partnership is the Capaldi Brothers Corporation (the Corporation), a Rhode Island corporation which owns a 26 percent interest in the capital and profits of the Partnership. The Corporation is a contributing employer with respect to the Plan. One of the limited partners of the Partnership is John F. Capaldi (Capaldi), who owns 13 percent of the capital and profits of the Partnership and who also owns 82 percent of all outstanding stock of the Corporation. Capaldi's wife, Barbara Capaldi, is also a limited partner in the Partnership, owning 13 percent of the capital and profits of the Partnership. The remaining 48 percent of the capital and profits of the Partnership is owned by the Rhode Island Public Employees' Legal Services Fund, which is not a party in interest with respect to the Plan. None of the Trustees has any ownership interest in or is an employee or officer of the Partnership, and none of the Trustees is related to any of the partners of the Partnership who are parties in interest with respect to the Plan.

3. The Trustees are requesting an exemption to permit the Plan to lease (the Lease) the entire second floor (the Leased Space) of the Building from the Partnership for use as office and classroom space. The interests of the Plan under the Lease will be represented for all purposes by the Trustees. The Lease will have an initial term of ten years and the Plan as lessee will have an option to renew the Lease for an additional period of five years. The Plan will have the right to terminate the Lease upon six months' written notice to the Partnership if (a) there is a substantial reduction in the level of employer contributions to the Plan for any two consecutive fiscal years of the Plan, or (b) there is a substantial decrease in the fair market rental value of the Leased Space which is not the result of any action or omission by the Plan. The Lease will provide that the Partnership will pay for water for lavatory and air conditioning purposes while the Plan will pay for all other utilities related to the Plan's use of the Leased Space. The Lease will require

the Partnership to carry fire and extended coverage insurance on the Leased Space with the Plan as the named insured, and the Plan will be obligated to provide comprehensive public liability insurance with respect to the Leased Space. The Lease will require the plan to repair and maintain the interior non-structural portions of the Leased Space and will require the Partnership to repair and maintain all other portions of the Leased Space, including the provision of electrical and light fixtures.

4. The Trustees have obtained two separate appraisals of the fair market rental value of the Leased Space by independent professional real estate appraisers. Russel C. Gower of Gower and Company in Providence, Rhode Island appraised the Leased Space on March 28, 1983 and states that the fair market value of this space as of that date was \$16 per square foot, or \$68,960 per year. The Leased Space was also appraised on March 29, 1983 by Peter A. Laudati, Jr. of Peter Laudati and Son, Inc. of Providence Rhode Island, who states that as of that date the Leased Space had a fair market rental value of \$16 per square foot, or \$68,960 per year. The rental to be paid by the Plan for the Leased Space during the first five years of the Lease will be \$64,994.76 per year payable in equal monthly installments of \$5,416.23. The rental to be paid by the Plan for the Leased Space during second five years of the Lease will be \$74,744.04 per year payable in equal monthly installments of \$6,228.67. As additional rental in each year of the Lease's term, including any renewal term, the Plan will pay the Partnership 25% of the excess of the Partnership's taxes and operating expenses for the Leased Space over those for 1983. The applicant represents that these rental amounts were determined in arms-length negotiations between the Trustees and the Partnership. Under the Lease the Plan will be allowed a grace period of fifteen days to cure any monetary default under the Lease, and any non-monetary default under the Lease shall not be actionable by the Partnership if such default is cured within fifteen days of such default. The execution of the Lease will not involve any broker's or finder's fees. If the Trustees desire to exercise the Plan's option to renew the Lease for the additional five-year term, the rental for that additional five-year term is to be determined by agreement between the Trustees and the Partnership. If the Trustees and the Partnership fail to so agree no later than 60 days prior to the end of the Lease's initial ten-year term,

the rental for the additional five-year term will be established by an independent, qualified professional real estate appraiser selected by the Trustee and the Partnership. If the Trustees and the Partnership cannot agree on the selection of an appraiser, each party will select its own appraiser, the two of whom will select a third appraiser, and the rental will be established by a majority vote of the appraisers.

5. In summary, the Trustees represent that the proposed Lease will satisfy the criteria of section 408(a) of the Act because: (1) The lease will provide the Plan with necessary classroom and office space which the Trustees have determined to be ideally suited to the needs of the Plan; (2) the interests of the Plan under the Lease will be represented by the Trustees, none of whom is related to the Partnership or to the partners in the Partnership who are parties in interest with respect to the Plan; (3) initial rental under the Lease, negotiated at arms-length between the Trustees and the Partnership, will be less than the fair market rental value of the Leased Space as determined by two independent professional real estate appraisers; (4) the Lease will require the Partnership to carry fire and extended coverage insurance on the Leased Space with the Plan as the named insured, to provide water to the Leased Space, and to repair and maintain structural portions of the Leased Space; (5) the Lease will provide that the Plan can terminate the Lease if there is a substantial reduction in employer contributions to the Plan or if there is a substantial reduction in the fair market rental value of the Leased Space; and (6) the Lease will grant to the Plan an option to renew the Lease for an additional five-year term beyond the original ten-year term, and the rental during such additional term will be no greater than the fair market rental value of the Leased Space as determined by professional appraisal.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**Bell System Trust (the Trust) Located in New York, NY**

[Application No. D-4629]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting

from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to: (1) The prior commitment (the Commitment) to loan a portion of the Trust's assets under the management of Eastdil Advisers, Inc. (Eastdil) to Landmark Thirty-Four Ltd. (Landmark), a party in interest with respect to the Trust; (2) the funding of the Commitment (the Loan); and (3) the proposed loan of additional amounts of the Trust's assets under the management of Eastdil to other parties in interest who are affiliates of Landmark in connection with the further development of certain real property (the Contiguous Property), provided that all terms and conditions of the transactions are at least as favorable to the Trust as those obtainable in transactions with unrelated parties.

Effective Date: The effective date of the proposed exemption, if granted, will be: (1) October 13, 1982 as to the Commitment; (2) December 15, 1983 as to the Loan; and (3) the date of the grant of this exemption as to any future loans.

*Summary of Facts and Representations*

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Trust is a group trust consisting of all the assets of the Bell System Pension Plan Trust and the Bell System Management Pension Plan Trust, both of which are sponsored by the American Telephone and Telegraph Company (AT&T). On December 31, 1981 the Trust covered approximately 1,226,000 participants and had net assets of approximately \$35.8 billion. To promote diversification, AT&T has utilized the professional services of more than a hundred independent trustees and investment managers, including Eastdil, to manage the Trust assets.

2. Eastdil, a subsidiary of Eastdil Realty, Inc., is a registered investment advisor under the Investment Advisors Act of 1940, as amended. Eastdil has and will act as an independent fiduciary for the Trust with respect to the subject transactions. Eastdil currently manages more than \$500 million in corporate pension assets on a separate account basis, the investments of which consist primarily of multi-tenant industrial and commercial properties. As of December 31, 1982 Eastdil was managing approximately \$435,000,000 of the Trust's assets, with an additional \$90,000,000 of the Trust's assets

committed but still unfunded. Eastdil represents that, to the best of its knowledge, neither Eastdil nor any of its officers, directors, stockholders, employees or agents is affiliated with or otherwise related to Landmark or any of its officers, directors, stockholders, partners, employees, or other affiliates or agents and none of such parties has in any manner influenced the exercise of Eastdil's judgment as a fiduciary for the Trust. Eastdil represents further that it will not receive any consideration for its own account from any party dealing with the Trust.

3. Eastdil represents that as an independent investment manager for the Trust, it has and will negotiate at arm's length and approve as appropriate and suitable for the Trust all the terms and conditions of the subject transactions. Eastdil is empowered and directed to monitor and enforce the terms and conditions governing said transactions. Eastdil further represents that the terms and conditions of the subject transactions are and will be at least as favorable to the Trust as terms and conditions generally available on investments of a similar nature.

4. On September 30, 1983 the Department granted an exemption (PTE 83-157, 48 FR 44947) effective August 9, 1982 to permit certain transactions between the Trust, as represented by Eastdil, and Landmark Group Properties Corporation, Blaine Kelly, Jr. and/or Donald Brooks (collectively, the Owners) and their various affiliates. Among the transactions permitted by said exemption is the acquisition by or for the benefit of the Trust of the Contiguous Property from the Owners and/or their affiliates.

5. On October 13, 1982 Eastdil entered into the Commitment with Landmark, an affiliate of the Owners, whereby Eastdil committed the Trust to loan a maximum of \$13,200,000 to Landmark. The Commitment provides a closing date for the Loan of no earlier than July 31, 1983 and no later than November 30, 1983, unless the parties involved agree to extend the closing date. The parties did, in fact, extend the closing date to no later than December 30, 1983. The Loan will be secured by a mortgage on a newly built office building (Tampa V) on an 18.12 acre portion of the Contiguous Property (the Land). Landmark owns both the Land and Tampa V (collectively, the Premises). The Commitment further provides the Trust with a purchase option, (the Option) whereby the Trust can acquire 100 percent of Landmark's fee ownership interest in the Premises for a price and terms as described below. The Option

Agreement and a corresponding Purchase/Sale Agreement will both be signed when the Loan is closed. The Trust will pay \$50,000 as consideration for the Option on the closing date for the Loan. The applicant represents that part or all of the proceeds of the Loan will be used to retire the construction financing arrangement made with First National Bank of Boston, a party unrelated with respect to the Trust.

6. The Commitment provides for a fixed interest rate of 12 percent per annum based on a 360 day year and calculated for the actual number of days elapsed. Eastdil represents that it is common practice with respect to forward commitments on commercial real estate mortgage loans for the interest rate to be fixed at the time of the commitment. Eastdil further represents that it determined that the 12 percent interest rate was a fair market interest rate taking into consideration all of the facts and circumstances of the transaction, including, importantly, the Option (as discussed below), which converts an otherwise long term loan into a loan of short duration prior to the anticipated acquisition of the Premises.

7. The Commitment provides for the following repayment terms: (a) Interest only, payable monthly, from the first day of the month succeeding the month in which the Loan is closed during the first two years after said closing date; (b) thereafter payment of constant monthly installments of principal and interest with principal payments predicated on a maturity date of 25 years from the date on which amortization payments commence; and (c) the actual maturity date of the Loan shall be five years after the day on which the Loan is closed, at which time the entire unpaid balance of the Loan plus all accrued but unpaid interest shall be due and payable.

8. Notwithstanding the repayment schedule, the Commitment provides the Trust with the Option, which may be exercised no earlier than the first anniversary of the date on which the Loan is closed and no later than the second anniversary of said date. The Trust may exercise the Option at any time during the term of the Option agreement if during that time Landmark is in default under the terms of the Loan.

9. The Commitment provides two separate methods for calculating the purchase price at which the Option may be exercised. The purchase price for the Premises shall be the higher of (a) the outstanding principal balance of the Loan together with all accrued and unpaid interest determined as of the purchase closing date plus the \$50,000 paid by the Trust when the Loan is

closed as consideration for the Option, or (b) an ascertainable amount equal to the net operating income of the Premises (as defined in the Commitment) capitalized at a rate of eleven percent less the \$50,000 paid by the Trust when the Loan is closed as consideration for the Option. Either method results in the cancellation of the Loan and the satisfaction of the mortgage on the Premises, which secures the Loan.

10. The applicant seeks an exemption effective October 13, 1982 to permit the Commitment and effective December 15, 1983 to permit the funding of the Loan up to a maximum of \$13,200,000 which will be secured by a mortgage on the Premises. On September 13, 1983, Mr. E. Roger Budny, M.A.I., S.R.P.A. appraised the Premises and determined that it had a market value of \$16,600,000 as of that date. In addition the applicant seeks an exemption to permit the proposed loan of additional amounts to other parties in interest who are affiliates of Landmark in connection with the further development of the Contiguous Property. Any additional loan or loans will be structured in a manner similar to the Loan. The applicant represents that such additional loan or loans will total no more than \$68,000,000 in the aggregate.

11. With regard to the making of additional loans to other parties in interest who are affiliates of Landmark in connection with the further development of the Contiguous Property, the applicant represents that in addition to the protections mentioned above, such loan or loans will: (1) Be secured by and relate to the planned acquisition of real estate on the Contiguous Property other than the Premises; (2) the property securing any such loan or loans will have an appraised value to loan ratio, at the time of the closing of such loan, equal to or greater than the appraised value to loan ratio of the Loan; (3) the Trust will not extend a loan to anyone who is a party in interest other than by reason of the provision of services (other than fiduciary services) to the Trust, or by reason of affiliation with such a service provider; (4) all loans will provide for an interest rate determined by Eastdil to be equal to a fair market interest rate; and (5) all terms and conditions of any loan covered by the proposed exemption will be entered into on behalf of the Trust solely by Eastdil acting as independent fiduciary and Eastdil will have negotiated and approved all those terms and conditions.

12. In summary, the applicant represents that the past and proposed transactions meet the statutory criteria for an administrative exemption under

section 408(a) of the Act because: (1) Eastdil has determined that the subject transactions are appropriate for the Trust and in the best interest of the participants and beneficiaries of the Trust; and (2) Eastdil has or will negotiate, approve, monitor and supervise all of the current and future transactions, that are the subject of the proposed exemption.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately

describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 13th day of December, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-33556 Filed 12-16-83; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Humanities Panel Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of Meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: January 3, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Room: 315.

Program: This meeting will review Summer Stipends applications in Philosophy I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1984.

Date: January 4, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review Summer Stipends applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1984.

Date: January 5, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review Summer Stipends applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1984.

Date: January 6, 1984.

Time: 9:00 a.m. to 5:30 p.m.

Room: 430.

Program: This meeting will review applications submitted for the Planning and Assessment Studies Programs, Office of Program and Policy Studies, for projects beginning after April 1, 1984.

Date: January 6, 1984.

Time: 9:00 a.m. to 5:30 p.m.

Room: 506.

Program: This meeting will review Summer Stipends applications in English Literature, 19th-20th Century, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1984.

Date: January 6, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Room: M09.

Program: This meeting will review applications submitted to Research Resources Publications Program: History, Political Science, and Anthropology, Division of Research Programs, for projects beginning after May 1, 1984.

Date: January 9, 1984.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications submitted to Research Resources Publications Program: Literary Studies, Art History, Philosophy, and Classics, Division of Research Programs, for projects beginning after April 1, 1984.

Date: January 5-6, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications submitted for Special Projects/ Younger Scholars Programs, Division of General Programs, for projects beginning after June 1, 1984.

Date: January 9, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications submitted for Special Projects/ Younger Scholars Programs, Division of General Programs, for projects beginning after June 1, 1984.

Date: January 11, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications submitted for Special Projects/ Younger Scholars Programs, Division of General Programs, for projects beginning after June 1, 1984.

Date: January 13, 1984.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications submitted for Special Projects/ Younger Scholars Programs, Division of General Programs, for projects beginning after June 1, 1984.

Date: January 12-13, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Room: 315.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Programs, Division of Public Programs, for projects beginning after July 1, 1984.

Date: January 17-18, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Programs, Division of Public Programs, for projects beginning after July 1, 1984.

Date: January 23-24, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of Public

Programs, for projects beginning after July 1, 1984.

Date: January 26-27, 1984.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of Public Programs, for projects beginning after July 1, 1984.

The following meeting of the Humanities Panel will be held in the Executive Room, Williamsburg Inn, Colonial Williamsburg, P.O. Box C, Williamsburg, VA 23187.

Date: January 6, 1984.

Time: 11:00 a.m. to 5:00 p.m.

Room: Executive Room.

Program: This meeting will review applications submitted to Basic Research Archaeological Panel, Division of Research Programs, for projects beginning after March 1, 1984.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate the implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 83-33581 Filed 12-19-83; 8:45 am]

BILLING CODE 7636-0 -M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Marking and Labeling Requirements; Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review, the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision and extension.

2. The title of the information collection: 10 CFR Part 95, Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Nuclear facility licensees, nuclear transportation companies and other organizations requiring access to NRC classified information.

6. An estimate of the number of responses: 20.

7. An estimate of the total number of hours needed to complete the requirement or request: 60.

8. An indication of whether section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: E.O. 12356, "National Security Information," and Information Security Oversight Office implementing directive require markings on all classified documents. These markings prevent unauthorized disclosure and damage to the national security. NRC licensees approved under 10 CFR Part 95 to possess NRC classified information and contractors approved to work on NRC classified contracts will be affected by these requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7430.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 13th day of December 1983

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-33581 Filed 12-19-83; 8:45 am]

BILLING CODE 7590-01-M

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. Title of the information collection: 10 CFR 21.21 Notification of Failure to Comply or Existence of a Defect, 10 CFR 21.51 Maintenance of Records.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRD licensees and directors or responsible officers of non licensees that supply components to licensed facilities or activities.

6. An estimate of the number of responses: 300 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 84,000 annually.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Part 21, the Commission's regulation implementing Section 206 of the Energy Reorganization Act of 1974, results in reports describing defects in basic components at licensed nuclear facilities. These reports are reviewed by the NRC staff to determine whether the reported defects or failure to comply could create a substantial safety hazard. These reports of potential safety problems have resulted in many NRC bulletins, circulars, and information notices, contributing to the improved safety of the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott (301) 492-8585.

Dated at Bethesda, Maryland, this 12th day of December 1983.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 83-33560 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

**Boston Edison Company (Pilgrim Nuclear Power Station) Request for Action Under 10 CFR 2.206**

Notice is hereby given that, by petition dated July 20, 1983, the Massachusetts Public Interest Research Group filed a petition seeking immediate action to remedy alleged serious deficiencies in the offsite emergency response plans for the Pilgrim Nuclear Power Station in Plymouth, Massachusetts. The petition requested immediate initiation of the four-month time period for correction of alleged emergency planning deficiencies and also sought a determination as to whether the alleged lack of emergency preparedness at the Pilgrim facility in conjunction with that facility's poor safety record and the high summer population in the area warranted an immediate shutdown or operation of the Pilgrim facility at reduced power. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on this request within a reasonable time.

A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the local Public Document Room for the Pilgrim Nuclear Power Station at the Pilgrim Public Library, North Street, Plymouth, Massachusetts 02360.

Dated at Bethesda, Maryland, this 6th day of September 1983.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Director, Office of Inspection and Enforcement.

[FR Doc. 83-33562 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

[Renewal of License No. SMB-920; Docket No. 40-6940]

**Cabot Corporation; Kaweck Berylco Industries Division; Boyertown, Pennsylvania; Negative Declaration Regarding**

The U.S. Nuclear Regulatory Commission (the Commission) is

considering the renewal of Source Material License SMB-920 for the continued operation of the Kaweck Berylco Industries facility at Boyertown, Pennsylvania.

The Commission's Division of Fuel Cycle and Material Safety has prepared an environmental impact appraisal for the proposed renewal of license SMB-920. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Negative Declaration is appropriate. The environmental impact appraisal (NUREG-1027) is available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. A copy may be purchased by writing to the U.S. Nuclear Regulatory Commission, Sales Manager, Division of Technical Information and Document Control, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 13th day of December 1983.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 83-33563 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-440 OL and 50-441 OL]

**Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board**

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license proceeding. As reconstituted, the Appeal Board for this operating license proceeding will consist of the following members:

Christine N. Kohl, Chairman

Dr. W. Reed Johnson

Gary J. Edles

Dated: December 12, 1983.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 83-33564 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Reactor Safeguards, Subcommittee on Qualification Program for Safety-Related Equipment; Meeting**

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment will hold a meeting on January 11, 1984, Room 1167, 1717 H Street, NW., Washington, DC. The Subcommittee will review the status of Generic Issue A-46, "Seismic Qualification of Equipment for Operating Reactors." Notice of this meeting was published November 29, 1983 (48 FR 53773).

In accordance with the procedures outlined in the Federal Register on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

**Wednesday, January 11, 1984—8:30 a.m. Until the Conclusion of Business**

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. est.

Dated: December 14, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-33567 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Reactor Safeguards, Subcommittee on Maintenance Practices and Procedures; Meeting**

The ACRS Subcommittee on Maintenance Practices and Procedures will hold a meeting on January 10, 1984, Room 1046, 1717 H Street, NW., Washington, D.C. The Subcommittee will discuss the current status, and future needs and plans of maintenance at nuclear reactors, with the NRC Staff and invited experts.

In accordance with the procedures outlined in the Federal Register, on September 28, 1983 (48 FR 44291), oral or written statements may be presented by members of the public, recording will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Cognizant Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow for necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

**Tuesday, January 10, 1984—8:30 a.m. Until the Conclusion of Business**

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., e.s.t.

Dated: December 14, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-33586 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN-50-456 and STN 50-457]

**Availability of Safety Evaluation Report for the Braidwood Station, Units 1 and 2**

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report related to the proposed operation of the Braidwood Station, Units 1 and 2, located in Will County, Illinois. Notice of receipt of Commonwealth Edison Company's application for a facility license for the Braidwood Station, Units 1 and 2 was published in the Federal Register on December 15, 1978 (43 FR 58659).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Wilmington Township Public Library, 201 South Kankakee Street, Wilmington, Illinois 60481 for inspection and copying. The report (Document No. NUREG-1002) can also be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The report may be purchased directly from NRC by writing to the Director, Division of Technical Information and Document Control U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, GPO Deposit Account holders may charge their order by calling (301) 492-9530.

Dated at Bethesda, Maryland this 12 day of December 1983.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1 Division of Licensing.

[FR Doc. 83-33585 Filed 12-16-83; 8:45 am]

BILLING CODE 7590-01-M

**OFFICE OF PERSONNEL MANAGEMENT**

**Federal Prevailing Rate Advisory Committee; Open Committee Meeting**

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, January 5, 1984

Thursday, January 12, 1984

Thursday, January 19, 1984

Thursday, January 26, 1984

These meetings will convene at 10

a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 483) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340.

1900 E Street, NW., Washington, D.C.  
20415 (202) 632-9710.

William B. Davidson, Jr.,  
Chairman, Federal Prevaling Rate Advisory  
Committee.

December 12, 1983.

[FR Doc. 83-33369 Filed 12-16-83; 8:45 am]

BILLING CODE 5325-01-M

## SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12843]

### Dow Corning Corp. (a Michigan Corporation); Application and Opportunity for Hearing

December 14, 1983.

Notice is hereby given that Dow Corning Corporation, a Michigan corporation (the "Company") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under an indenture of the Company dated April 1, 1975 (the "1975 Indenture") heretofore qualified under the Act, and the trusteeship of Citibank under an indenture between The Economic Development Corporation of the County of Midland (the "Economic Development Corporation") and Citibank and J. A. Olive, Trustees, dated as of October 15, 1983 (the "1983 Indenture"), which will not be qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the 1975 Indenture.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the Section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this Section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture or the same obligor. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the indentures is not

so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Company alleges that:

1. The Company has outstanding (as of November 28, 1983) \$35,278,000 principal amount of its 9% Sinking Fund Debentures due April 1, 2005 (the "Debentures") issued under the 1975 Indenture between the Company and Citibank (formerly named First National City Bank of New York), Trustee. The Company originally issued \$80,000,000 in aggregate principal amount of Debentures pursuant to the 1975 Indenture. The Debentures were registered under the Securities Act of 1933, as amended (File No. 2-52909) and the 1975 Indenture has been qualified under the Act (File No. 22-8284). Citibank is currently acting as Trustee under the 1975 Indenture.

2. On October 25, 1983 the Economic Development Corporation issued \$31,800,000 aggregate principal amount of its 6% adjustable Rate Economic Development Limited Obligation Revenue Refunding Bonds (Dow Corning Corporation Project), Series 1983 (the "Bonds") pursuant to the 1983 Indenture. The proceeds of the sale of the Bonds have been loaned by the Economic Development Corporation to the Company pursuant to the terms of a Loan Agreement dated as of October 15, 1983 between the Economic Development Corporation and the Company (the "Loan Agreement"). The Bonds are payable solely from revenues derived by the Economic Development Corporation from the company under the terms of said Loan Agreement together with any interest or other revenues available under the 1983 Indenture for such purpose. The rights and benefits of the Economic Development Corporation under the Loan Agreement have been assigned to the Trustees as security for payment of the Bonds. The Bonds are exempt from registration under the Securities Act of 1933 and the 1983 Indenture is not being qualified under the Act.

(3) Section 608 of the 1975 indenture provides in part as follows:

"Section 608. *Disqualification; Conflicting Interests.*

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the Trustee shall fail to comply with the provisions of Subsection (a) of this Section, the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all holders, as their names and addresses appear in the Debenture Register, notice of such failure.

(c) For the purposes of this Section, the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, *provided that there shall be excluded from the operation of this paragraph any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding, if*

(i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act, unless the Commission shall have found and declared by order pursuant to Section 305(b) or Section 307(c) of the Trust Indenture Act that differences exist between the provisions of this Indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture and such other indenture or indentures, or

(ii) *the Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing therein, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;*" (Emphasis Supplied)

4. Execution of the 1983 Indenture may involve Citibank in a conflict of interest within the meaning of Section 608 of the 1975 Indenture since the 1983 Indenture is not being qualified under the Act and is not the subject of any other proceeding of the Commission.

5. The Company's obligations with respect to the Debentures and the Bonds

are wholly unsecured and rank on a parity with each other.

6. The only material differences between the 1975 Indenture and the 1983 Indenture and between the rights of the holders of the Debentures and the holders of the Bonds relate to the fact that the Company is the issuer of the Debentures whereas its payment obligations under the Bonds are through the assignment by the Economic Development Corporation to the Trustees of its rights under the Loan Agreement and also relate to differences between the two indentures as to aggregate principal amounts, dates of issues, denominations, interest rates, interest payment dates, maturity, form of registration, redemption provisions and procedures, events of default, Trustees' reports, provisions for conflicting interest of the Trustee and other provisions of a similar nature. The provisions of the 1983 Indenture also differ from the 1975 Indenture in providing for both an individual trustee and a corporate trustee, in not providing for sinking fund redemption, in having different time periods upon which certain defaults become an "event of default," and in having different covenants, conditions and provisions, reflecting the differing nature of the transaction. Such differences as exist between the 1975 Indenture and the 1983 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under one of the said Indentures.

7. No default has at any time existed under the 1975 Indenture or under the 1983 Indenture.

8. The Company has waived (a) notice of hearing, (b) hearing on the issues raised by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is on file in the offices of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting this application may be issued by the Commission at any time on or after January 11, 1984, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than January 10, 1984 at 5:30 P.M., in writing, submit to the Commission, his views or any additional facts bearing upon this application or

the desirability of a hearing thereon. Any such communication request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549, and should state briefly the nature of the Interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission,  
George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-30613 Filed 12-19-83; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 23163 (70-6938)]

**New England Electric System;  
Proposed Issuance and Sale of  
Common Stock Pursuant to  
Employees' Share Ownership Plan and  
Request for Exception From  
Competitive Bidding**

December 12, 1983.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders dated September 14, 1977, and July 6, 1979 (HCAR Nos. 20173 and 21133), NEES was authorized to issue and sell up to 975,000 shares of its authorized common shares, \$1 par value, through December 31, 1983, pursuant to a NEES Companies Employees' Share Ownership Plan. As of October 31, 1983, approximately 828,000 shares have been issued under the plan. NEES now proposes to further extend the period for issuing common shares under this plan to December 31, 1988, and to issue and sell an additional 1 million of its authorized but unissued common shares (the "Additional Common Shares"), for an aggregate of 1,975,000 authorized common shares, pursuant to the plan, and to amend the plan in accordance with the Economic Recovery Tax Act of 1981. The purpose of the plan continues to be to provide eligible employees with ownership of NEES common shares with funds provided through tax credits allowed to NEES and affiliated companies under the Internal Revenue Code of 1954, as amended. The proceeds from the sale of the Additional Common Shares will be added to the general funds of NEES and will be used for any or all of the following purposes: (i) investment in NEES subsidiaries through

loans to such subsidiaries, purchases of additional shares of their capital stocks, or capital contributions, (ii) payment of indebtedness of NEES, or (iii) general purposes of NEES.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 10, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-30615 Filed 12-19-83; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 13658; (812-5691)]

**The Tax Free Fund, Inc., et al.; Filing of  
Application**

December 12, 1983.

Notice is hereby given that Tax Free Fund, Inc. ("Tax Free"), The Lowry Market Timing Fund, Incorporated ("Market Timing"), Sunbelt Growth Fund, Inc. ("Sunbelt"), Commerce Income Shares, Inc. ("Commerce"), Pilot Fund, Inc. ("Pilot") and Investment Quality Interest, Inc. ("IQI") (collectively, "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Criterion Distributors, Inc. ("Criterion"), 333 Clay Street, Suite 4300, Houston TX 77002, principal underwriter for the Funds (collectively with the Funds, "Applicants"), filed an application on November 2, 1983, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit the sale of Fund shares, and shares of any other registered open-end investment

company which may in the future be distributed by Criterion, to members of qualified groups at net asset value plus a flat sales load that may differ from the sales load imposed on non-group purchases. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable sections.

According to the application, Tax Free is a series company consisting of three portfolios, the Quality Bond Portfolio and two money market portfolios, the Total Management Tax Free Money Market Portfolio and the Current Interest Tax Free Portfolio. Applicants state that shares of each of the Funds are offered to the public in continuous offerings. Shares of Market Timing, Sunbelt, Commerce and Pilot are sold to the public at net asset value plus a sales load which ranges from 8.5% of the public offering price for investments of less than \$10,000 to 1.0% for investments of \$1,000,000 and over. Applicants state that shares of IQI and the Quality Bond Portfolio are sold at net asset value plus a sales load which ranges from 4.5% of the public offering price for investments less than \$10,000 to .5% for investments of \$1,000,000 and over.

Applicants propose to offer shares of the Funds to members of qualified groups, as defined below, at net asset value plus a sales load that would differ from the sales load imposed on purchases by non-group purchasers. According to the application, Sunbelt, Commerce, Pilot and Market Timing propose to impose a flat sales load of 4.5% of the offering price on purchases by members of qualified groups regardless of the size of the group investment, while IQI and the Quality Bond Portfolio propose to impose a flat sales load of 3.5% of the offering price on purchases by members of qualified groups. Applicants state that if the requested order is granted the Funds will revise their respective prospectuses to reflect the terms of the proposed offer to members of qualified groups.

Applicants propose that to be eligible for the group sales charge rates, group members would have to make their initial purchases through a single investment dealer designated by the group, although subsequent purchases could be sent by the group member directly to the Funds' transfer agent, DST, Inc. Applicants further state that the minimum investment requirements described in the Funds' prospectuses would be applicable to purchases by any single group member.

According to the application, a "qualified group" includes the employees of a corporation or a sole proprietorship, members and employees of a partnership or association, or other organized groups of persons (the members of which may include other qualified groups); provided that: (i) The group has at least 25 members, of which at least 10 members participate in the initial purchase; (ii) the group has been in existence for at least six months; (iii) the group has some purpose in addition to the purchase of shares of the Funds at reduced sales charges; (iv) the group's sole organizational nexus or connection is not that the members are credit card holders of a company, policy holders of an insurance company, customers of a bank or a broker-dealer, clients of an investment adviser or security holders of a company; (v) the group agrees to provide its designated investment dealer access to the group's membership by means of written communication or direct presentation to the membership at a meeting not less frequently than annually; (vi) the group or its investment dealer provides annual certification, in a form satisfactory to the Funds' transfer agent, to the effect that the group then has at least 25 members and that at least 10 members participated in group purchases during the immediately preceding twelve calendar months; and (vii) the group or its investment dealer provides periodic certification, in form satisfactory to the Funds' transfer agent, as to the eligibility of the purchasing members of the group.

Under Applicants proposal, a "member" of a qualified group includes: (i) Any group which meets the requirements stated above and which is a constituent member of a qualified group; (ii) any individual purchasing for his or her own account who is carried on the records of the group or on the records of any constituent member of the group as being a good standing employee, partner, member or person of like status of the group or constituent member; or (iii) any fiduciary purchasing shares for the account of a member of a qualified group or a member's beneficiary.

Applicants represent that a member of a qualified group is entitled to purchase shares of the Funds pursuant to the sales load applicable to non-group purchases where that sales load would be lower than the proposed flat rate, provided the member qualifies as a person entitled to the non-group sales load. Applicants represent that the members would be entitled to purchase at the lower rates if, at the time of purchase, the member or his or her

investment dealer furnishes information sufficient to permit verification that the purchase qualifies for the lower rates.

Applicants represent that the Funds reserve the right to revise the criteria for reduced group sales loads, and that any revisions would be described in the Funds' prospectuses. The Funds also reserve the right to suspend or discontinue group sales at any time. Applicants further represent that such revisions will be made if the rates initially adopted are found not to be the most effective rates in terms of providing incentives to both dealers and group sales prospects or are not competitive with other similar marketing plans.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 6, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,  
Secretary.

[FR Doc. 83-33614 Filed 12-16-83; 8:45 am]  
BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Maine; Region I—Advisory Council Public Meeting

The U.S. Small Business Administration Region I advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 12:00 noon on Thursday, February 9, 1984, at the Senator Inn, Outer Western Avenue, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Tom McGillicuddy, District Director, U.S. Small Business Administration, 40

Western Avenue, Augusta, Maine 04330.  
Telephone number (207) 622-8382.

December 13, 1983.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 83-33618 Filed 12-16-83; 8:45 am]

BILLING CODE 8025-01-M

#### Virginia; Region III—Advisory Council Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, Virginia, will hold a public meeting from 10:00 AM to 4:30 PM on Thursday, January 19, 1984, at the Holiday Inn, 301 West Franklin Street, Richmond, Virginia, to discuss such business as may be presented by members, and staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, the District Director, U.S. Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240 (804) 771-2741.

December 13, 1983.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 83-33617 Filed 12-16-83; 8:45 am]

BILLING CODE 9025-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Highway Administration

##### Environmental Impact Statement; Jefferson County, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

##### ACTION: Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Jefferson County, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. W. Evers, District Engineer, Federal Highway Administration, 441 High Street, Montgomery, Alabama 36104-4684. Telephone: (205) 832-7379. Mr. Ray D. Bass, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130. Telephone: (205) 261-6311.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project APD-471(7). This proposal is to build a four-lane highway from near Snowtown, west of US Highway 78 in the vicinity of the Walker-Jefferson County line to US Highway 31 in the Metropolitan area of Birmingham.

The proposed project is a segment of Corridor "X" in the Appalachian Development Highway Program. Corridor "X," a freeway-type facility, when completed will extend from near Fulton, Mississippi, to Birmingham, Alabama. The modern multi-lane highway will improve access and induce economic growth to this Appalachian area.

Alternatives under consideration: (1) Locations—two basic alignments, with one route entering the northern Birmingham Metropolitan area and one route entering the central area, (2) a no action alternative, and (3) postponing the action alternative.

Four public involvement meetings have been held to solicit input on the proposed alignments. Copies of the Draft EIS will be sent to appropriate Federal, State, and local agencies, and to private organizations and individuals who have expressed interest in the proposal. A public hearing will be held. Public notice will be given concerning the time and place of the hearing. The Draft EIS will be available for public review and comment at the hearing.

A scoping meeting to identify environmental impacts caused by the proposed project was held in Birmingham, Alabama, on October 26, 1983. Also, written comments have been solicited from Federal, State and local agencies, and individuals who may have an interest in the project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 23.003, Appalachian Development Highway System. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued: December 8, 1983.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 83-33563 Filed 12-16-83; 8:45 am]

BILLING CODE 4910-22-M

# Sunshine Act Meetings

Federal Register

Vol. 48, No. 244

Monday, December 19, 1983

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

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1

### CIVIL AERONAUTICS BOARD

[M-396 12/1/83]

**TIME AND DATE:** 10:00 a.m., December 8, 1983.

**PLACE:** Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW, Washington, D.C. 20428.

#### SUBJECT:

1. Ratification of Items Adopted by Notation.
2. Docket 41193, Revision and reissuance of the Board's rule (Pt. 223) authorizing free and reduced-rate air transportation. (OGC, BIA)
3. Delegation of authority to the Chief of the Subsidy Need Division to establish the amount of the fuel cost adjustment under section 419 subsidy rate orders approved by the Board. (OGC, BDA)
4. Spantax, S.A.—petition for review of staff action denying a waiver of the financial security requirements of Part 212. (BDA, BIA, OGC)
5. Docket 40807, Notice of Wien Air Alaska to suspend service at St. Michael and Stebbins, Alaska. (Memo 1500-M, BDA, OCCCA)
6. Docket 41801, Notice of Intent of Northwest Airlines to terminate service at Butte, Montana. (BDA, OCCCA, OGC)
7. Docket 39374, Second-year subsidy rate for Custom Aviation, Inc., d/b/a Desert Sun Airlines to serve Blythe, California. (BDA, BCAA)
8. Docket 41545, Agreement CAB 29057 R-1 through R-7—Agreement Among Members of the INTERNATIONAL AIR TRANSPORT ASSOCIATION relating to Reservations Procedures and Equipment for Passenger Sales Agents. (Memo 2060-A, BDA, OGC)
9. Dockets 36595 and 41558, Agreements among Members of the Air Traffic Conference of America (ATC) submitted in an effort to comply with the Board's CMI decision. (Memo 2117, BDA, OGC)
10. Docket 41637, Application of National Express, Inc. under Subpart Q for a certificate

authorizing domestic scheduled air transportation. (Memo 2116, BDA)

11. Docket 41069, Certificate Application of Puerto Rico International Airlines, Inc. d/b/a Prinair for unused authority under section 401(d)(5)(A). (Memo 1814-A, BDA)

12. Docket 40751, In the Matter of Intra-Hawaii Service Mail Rates. (Memo 351-F, BIA)

13. Report on United Kingdom Negotiations.

14. Discussion of Upcoming Netherlands Antilles.

15. Report on Canada.

**STATUS:** 1-12 Open, 13-15 Closed.

**PERSON TO CONTACT:** Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S-1763-83 Filed 12-15-83; 4:00 pm]

BILLING CODE 6320-01-M

2

### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 2:00 p.m., Tuesday, December 20, 1983.

**LOCATION:** Logan Building, 1111-18th Street, NW., Washington, D.C.

**STATUS:** Closed to the Public.

#### MATTERS TO BE CONSIDERED:

1. *Enforcement Matter—OS #4881*  
The staff will brief the Commission on issues relating to enforcement matter OS #4881.
2. *Compliance Status Report*  
The staff will brief the Commission on a compliance status report.

(For a recorded message containing the latest agenda information: call 301-492-5709)

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-1760-83 Filed 12-15-83; 12:12 pm]

BILLING CODE 6355-01-M

3

### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, December 21, 1983.

**LOCATION:** Logan Building, 1111 18th Street, NW., Washington, D.C.

**STATUS:** Open to the Public.

#### MATTERS TO BE CONSIDERED:

1. *Mattress Standard Amendment: Proposal*  
The staff will brief the Commission on a proceeding for amendment of the Mattress Flammability Standard.

2. *Status Report on the Commission's Priority Project on Safety for Older Consumers*

The staff will brief the Commission on the progress of the Commission's Priority Project on Safety for Older Consumers for the first quarter of Fiscal Year 1984.

(For a recorded message containing the latest agenda information: call 301-492-5709)

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207; 301-492-6800.

[S-1762-83 Filed 12-15-83; 3:14 pm]

BILLING CODE 6355-01-M

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### FEDERAL COMMUNICATIONS COMMISSION

December 15, 1983.

Deletion of Agenda Items From December 14th Meeting

The following items were deleted at the request of the Office of the Chairman from the list of agenda items scheduled for consideration at the December 14, 1983 Open Meeting, and previously listed in the Commission's Notice of December 7, 1983.

#### Agenda, Item No., and Subject

Private Radio—3—Title: Report and Order in the Matter of the amendment of Subparts M and S of the Commission's Rules to revise the standards for assignment of frequencies in the 806-821 and 851-866 MHz bands for co-channel trunked systems in Northern California. Summary: The FCC will consider the issues raised in a petition from the California Trunking Interference Association concerning co-channel separation standards in Northern California.

Enforcement—1—Title: Interpretation of the no-censorship provision of Section 315(a) of the Communications Act and Section 1464 of The Criminal Code as they apply to political candidates. Summary: The Commission will consider what a broadcaster's obligations are with respect to the no-censorship provision of Section 315 when presented with material that it reasonably believes contains obscene or indecent material.

Issued: December 14, 1983.

William J. Tricarico,  
Secretary, Federal Communications  
Commission.

[S-1759-83 Filed 12-15-83; 10:42 am]

BILLING CODE 6712-01-M

5

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Thursday, December 22, 1983.

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

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Consideration of proposed regulations to implement the International Lending Supervision Act, requiring banking institutions to establish and maintain reserves against certain international assets.

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

**CONTACT PERSON FOR MORE**

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

Dated: December 14, 1983.

James McAfee,

*Associate Secretary of the Board.*

[S-1758-83 Filed 12-14-83; 4:35 pm]

**BILLING CODE 6210-01-M**

6

**FEDERAL RESERVE SYSTEM**

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on December 8, 1983.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:30 a.m., Friday,

December 16, 1983, following a recess at the conclusion of the closed meeting.

**CHANGES IN THE MEETING:** Addition of the following open item(s) to the meeting:

Proposed Federal Reserve Board budget for 1984.

**CONTACT PERSON FOR MORE**

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

Dated: December 14, 1983.

James McAfee,

*Associate Secretary of the Board.*

[S-1757-83 Filed 12-14-83; 4:35 pm]

**BILLING CODE 6210-01-M**

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**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 10:30 a.m., Thursday, December 22, 1983, following a recess at the conclusion of the open meeting.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed purchase of computers within the Federal Reserve System.

2. Proposed changes to the Plans administered under the Federal Reserve System's employee benefits program.

3. Federal Reserve Bank and Branch director appointments.

4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

5. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE**

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

Dated: December 14, 1983.

James McAfee,

*Associate Secretary of the Board.*

[S-1758-83 Filed 12-14-83; 4:35 pm]

**BILLING CODE 6210-01-M**

8

**NATIONAL COUNCIL ON EDUCATIONAL RESEARCH**

**ACTION:** Corrected Notice of the National Council on Educational Research's December 17, 1983, meeting.

**MATTERS TO BE DISCUSSED AND EVENTS TO TAKE PLACE:**

9:30 a.m.—10:00 a.m.

Swearing in of new Council members

10:00 a.m.—2:30 p.m.

Selection of Executive Director (Closed)

2:30 p.m.—2:45 p.m.

Discussion of the composition and role of the School Technology Center committee, chaired by Mr. M. Blouke Carus

**DATE:** Saturday, December 17, 1983.

**TIME:** 9:30 a.m. to approximately 2:45 p.m.

**ADDRESS:** Ramada Renaissance, 1143 New Hampshire Avenue, NW., Conference Room A, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Lynch, Acting Executive Director, NCER, 2000 L Street, NW, Suite 617B, Washington, DC 20036, (202) 254-7490.

Patricia Hines,

*Authorizing Official, NCER Associate.*

[S-1761-83 Filed 12-15-83; 2:27 p.m.]

**BILLING CODE 4000-01-M**

# **federal register**

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Monday  
December 19, 1983

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## **Part II**

### **Department of Agriculture**

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#### **Farmers Home Administration**

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**Management and Supervision of Multiple  
Family Housing Borrowers and Grant  
Recipients and Tenant Grievance and  
Appeals Procedures; Final Rule**

## DEPARTMENT OF AGRICULTURE

## Farmers Home Administration

## 7 CFR Parts 1822, 1930, 1944 and 1965

## Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) hereby revises its regulations governing the management and supervision of multiple family housing borrowers and grant recipients. These revisions will revise and incorporate into the regulations clarifications of definition and procedure, and guidance now disseminated by memorandum and/or administrative notice. This action is taken in response to general public and FmHA staff requests for clarification of the multiple family housing regulations and to incorporate into the regulations certain needed revisions identified by the Agency. The intended effect is to incorporate the requirements for administering the multiple family housing program into the "Multiple Housing Management Handbook" which is issued to owners and managers of FmHA Multiple Family Housing projects.

**EFFECTIVE DATE:** December 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** William F. Daniel, Real Estate Loan Specialist, Multi-Family Housing Servicing and Property Management Division, Room 5321-S, Farmers Home Administration, 14th and Independence Avenue, SW, Washington, D.C. 20250, Telephone (202) 382-1619.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of

FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The supervision and servicing of FmHA programs and projects which are affected by this regulation are not subject to OMB Circular A-95 or the consultation requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs" which revoked OMB Circular A-95. Consequently, this final rule is excluded from the scope of the Executive Order.

Charles W. Shuman, Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

The catalog of Federal Domestic Assistance programs affected are 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; 10.411, Rural Housing Site Loans; and 10.427, Rural Rental Assistance Payments.

A proposed rule to revise the regulations governing the management and supervision of multiple family housing borrowers and grant recipients was published in the Federal Register for comment on April 23, 1982, (47 FR 17544). The major changes proposed were: revision of provisions governing rent overburden, energy audits, ineligible tenants, management agreements and certain other management requirements.

Thirty-nine comments were received in response to the publication. One-third addressed single issues while the remainder addressed several issues. Eleven of the comments were received from FmHA employees, one from the Office of the Secretary of Agriculture, four from legal service corporations, eight from management agents, five from borrowers and borrower associations, five from public accountants, and five from various interest groups.

Other comments from FmHA staff and members of the public not sent in response to the publication were also received and considered.

#### Discussion of Comments

In general, the comments from respondents addressed agreement or disagreement with specific items of the proposed regulation. Several items not revised in the April 23, 1982, proposed

rule received comment. Some items revised in the proposed rule did not receive comment. Comments from FmHA staff generally suggested alternative language to that published in the proposed rule.

1. Certain parts of the regulation were rewritten and reorganized for clarity based on the comments received.

2. Rent Overburden. Four comments addressed rent overburden. One supported the proposed rule. Three objected on the premise that encouragement of borrowers to apply for rental assistance or to assist tenants in applying for Section 8 assistance provides no assurance that tenants will receive rental subsidy. Two of the three opposition commenters also indicated that tenants experiencing rent overburden should be protected from termination of tenancy for non-payment of rent caused by rent overburden.

The Agency had the choice of requiring that any tenant experiencing rent overburden be subsidized for any rent payment including utilities that exceeds 25 percent of adjusted monthly income, delete the regulation discussing rent overburden, or substantially adopt the proposed regulation. The Agency chose to adopt the proposed regulation with slight modification. Emphasis that tenants experiencing rent overburden may need some form of rental subsidy, including FmHA interest credit, to avoid termination of tenancy, was included in the regulation. This option was chosen recognizing the limited available levels of funding for rental assistance and Section 8 assistance to serve all tenants experiencing rent overburden. However, the Agency chose to revise its rent change procedures to require any borrower, except a full profit borrower, who proposes rent increases causing 20 percent or more of the project tenants to experience rent overburden, to apply for rental assistance to reduce rents for rent overburdened tenants, and to accept the rental assistance if it is available. In the event rental assistance is not available, borrowers will be encouraged by FmHA to convert to Plan II Interest Credit to give tenants the most favorable rents possible.

3. Energy Audits. Six comments were received. Two commenters supported the proposed rule with one commenter particularly supporting the requirement of a project energy audit every five years instead of with each rent increase. Two commenters indicated FmHA District personnel lack training in life cycle cost analysis. One commenter opposed an energy audit for any project built according to FmHA thermal performance standards. Another thought

the energy audit requirement was being deleted entirely and objected on that basis.

The adopted regulation will require an energy audit once every five years. Initial energy audits for projects built according to the FmHA thermal performance standards will initially be required five years following construction. For projects not built to the FmHA thermal performance standards and when an energy audit has not previously been completed, an energy audit will be required as part of the next annual project budget submission. Energy audits will be required every five years thereafter in either situation. Identified energy conservation measures previously not considered cost-feasible during budget reviews will be reconsidered with each subsequent annual budget review to incorporate those measures subsequently found to be cost-feasible into the budget planning process. Guidance to FmHA personnel in Life Cycle Cost Analysis has previously been provided in other portions of FmHA regulation.

4. Ineligible tenants. Three comments were received. Two commenters supported the proposed regulation. One commenter urged the Agency to waive its occupancy requirement to permit single persons, particularly senior citizens, to occupy two-bedroom apartment units as eligible tenants. The Agency considered this suggestion, as it has many other unsolicited comments on this issue, and chose to adopt the suggestion in modified form. The regulation will now permit the borrower, who owns a project built for senior citizens prior to October 27, 1980, with few or no one-bedroom apartments to rent a two-bedroom apartment unit to a single senior citizen as an eligible tenant, provided a diligent marketing effort fails to attract tenants who meet occupancy requirements stated in the regulation. Apartment projects built for senior citizens since October 27, 1980, have been designed to meet the occupancy standards adopted on that date and are compatible with the local rental market as determined in a market survey.

5. Management agreements. Comments received concerning this item were closely related to comments received about management plans, management compensation and initial rent-up fees. Hence, these items are now discussed in the regulations under the general topic of management operations.

Twenty-eight comments were received under the general topic. Five commented on the proposed management plan requirements. Three of these disagreed by saying the Agency

should require all borrowers to have a management plan as part of good management practice. Two others agreed with the proposed rule requiring management plans only in certain situations and one of these felt that the regulations should provide waiver of the requirement for projects approved after October 27, 1980.

The Agency agrees that management plans are part of good management practice. However, the Agency has adopted the proposed rule requiring written management plans for projects approved after October 27, 1980 and any future projects. The Agency believes it would be an unwarranted burden to require management plans for owners' with projects built prior to October 27, 1980, if they are satisfactorily meeting program requirements, indicating they are following a successful plan of management. One of the commenters suggested a threshold of 24 units to require a management plan rather than the date of October 27, 1980. The Agency rejects this suggestion on the basis of avoiding a retroactive and unnecessary imposition of burden on some projects owners.

Eleven commenters discussed various aspects of compensation of management. Generally, these commenters requested more clarification of the definition of management fee, the distinction between recordkeeping and bookkeeping, and the division of duties and responsibilities between management agents and the project.

The Agency has expanded the explanation of management fee and the identification of duties and responsibilities covered by a management fee in an FmHA financed project in its revised definition.

Four commenters also desired clarification on the calculation of compensation for resident managers. This suggestion was adopted. The regulations now contain additional clarification and also provide project owners with the option to designate the resident manager's apartment as either income producing or non-income producing.

Four commenters requested further discussion on the limits of management fees. One commenter suggested that parameters of acceptable compensation be established. Three commenters suggested that the local market experience of management compensation should govern. The Agency believes that set parameters will not adequately relate to local management factors and project conditions and that sufficient staff time is not available to develop meaningful

parameters. The Agency has adopted within the regulation that the amount of compensation is to be negotiated between the borrower and the management agent, the fee must be reasonable, typical when compared with similar local services, and actually earned for services performed. The regulation further states that State and District offices shall assemble data on comparable local management fees to determine the fairness of fees negotiated between borrowers and management agents.

Seven commenters wrote about rent-up fees. Two expressed support for the proposed rule. Two approved of the proposed rule. Four provided suggestions such as clarifying the time when a rent-up fee may be permitted, describing the term reasonable, and identifying the source of funds to pay rent-up fees. The Agency has adopted the proposed rule which distinguishes between rent-up fees paid where there is an identity of interest or no identity of interest between a borrower and management agent. The adopted rule contains clarification that rent-up fees may be paid for the one time effort to achieve initial occupancy of a newly constructed project, generally from the 2 percent operation and maintenance fund. The adopted regulation also contains a reformat management agreement guide that incorporates the above described revisions.

#### Discussion of Other Comments

The following discussion focuses on comments received on items not specifically identified in the summary of the proposed rule published on April 23, 1982 (47 FR 17544).

1. Delegation of Authority. Several comments received during the comment period inferred that various responsibilities of the FmHA State Director should be delegated to the District Director. Other comments from FmHA staff in general support this recommendation. The Agency has adopted the suggestion. The regulation contains authority for State Directors to redelegate those actions requiring the State Director's approval to other qualified State and District staff members, except for those actions specifically reserved for the State Director's approval. A definition of State Director has been added and the definition of District Director has been revised.

2. Audit Reports. Five members of the Public Accountancy profession, including a representative for the National Society of Public Accountants, expressed opposition to the proposed

rule that annual audits of certain borrowers be limited to those prepared by Certified Public Accountants (CPA's) licensed prior to December 31, 1970. The commenters contend the proposed rule discriminates against the business activity of Public Accountants licensed after December 31, 1970. The Agency has closely considered the viewpoints of the commenters and has decided to adopt the rule as proposed and not go contrary to the recommendations of the General Accounting Office (GAO) policy memorandum B-148144. GAO recommended that financial audits of government funded programs be prepared by persons who had passed the uniform certified public accountant examination.

The supplementary information for the proposed rule contained an Agency request for public comment on the idea that borrowers of rental projects of 25 or more apartment units be permitted to substitute audit reports prepared by CPA's in place of FmHA forms. One comment was received and it supported the idea. The commenter expressed concern that Form FmHA 1930-7, "Statement of Budget, Income, and Expense" (Excluding Depreciation), provides insufficient breakout detail of operating expenses. The Agency has decided to retain the rule as proposed and to revise and retitle Form FmHA 1930-7 to be a "Statement of Budget and Cash Flow."

Four commenters expressed opposition to requiring submission of the audit report within 45 days following the close of a project's fiscal operation year. This opinion has also been expressed by various members of FmHA staff. The proposed rule stating 45 days has been adopted on the premise that audit reports received at a later time diminish in their purpose as a barometer of project operation and as a loan servicing aid.

3. Definition of Income. Twenty seven comments were received. Generally, the commenters were opposed to certain specific details of the definition. Eight commenters objected to the discussion on income from Public Assistance. The Agency has modified the proposed language to correspond with language currently proposed by HUD (47 FR 57963). The Agency recognizes this is an area that may require further review. Seven commenters were opposed to the proposed rule that the value of support from sources outside the household be counted as income. The Agency has modified the rule to require the value of substantial regular recurring contribution provided by others outside the household to be counted as income.

Five commenters expressed opposition to counting the income of a spouse not living in the apartment unit in situations where separation has occurred but papers have not been filed to commence divorce or legal separation proceedings. The Agency accepts the recommendation that only income of the spouse living in the apartment unit be counted.

4. Leases. Sixteen comments were received on this general topic. Major comments focused on the escalation clause and permanent residence clause. Four commenters were opposed to the provision of an escalation clause that permits rent rates to change during the period of a tenant's lease. The Agency generally rejects the commenters' recommendations, but does adopt a provision giving tenants the right to vacate the project without penalty after giving the owner 30-day notice if the tenant cannot afford the increased rent rate.

Rent increases are necessary to meet rising costs of project operation and need to be made effective in a timely manner to assure proper maintenance and operation which is in the tenant's interest. Tenants have rent increase review and appeal privileges provided by this regulation. Project operating budgets justifying rent increases also require FmHA review and approval prior to giving notice of rent increase.

Six commenters addressed a proposed permanent residency clause. All generally supported the idea of the clause but three expressed concern that the proposed clause would preclude occupancy by migrant farm laborers who maintain a permanent home in an FmHA project while in a seasonal migrant stream. The Agency has modified the wording of the clause. Any tenant not residing in their apartment unit for a period exceeding 60 days may retain use of the apartment but will be required to pay the market rent for the period of non-residency beyond 60 days.

5. Rent Changes. Certain items of this topic have been discussed above. The Agency has responded to several comments received in response to the proposed rule and other unsolicited comments received from the public, borrowers, and FmHA staff. The regulation has been modified to permit rent changes requiring only FmHA review in cases where changes in cost of taxes and utilities occur beyond the borrower's control. The regulation has also been modified by extracting certain language and relocating it in a standardized notice of approved rent increase format that can be used by borrowers.

6. Initial Operating Capital. Two comments were received concerning the withdrawal of the unused portion of initial operating capital, commonly called "the 2 percent deposit", by the borrower. The Agency has also received written and verbal comments from various members of the public and from FmHA field staff on this topic. The proposed rule contained a plan to track the initial operating capital by use of a subsidiary ledger to a project's general operating account.

Commenter viewpoints were mixed without any predominate preference to how the unused portion of initial operating capital should be administered. The Agency has administratively determined that rather than track the unused balance, the borrower may after two years but before five years, with the State Directors' authorization, make a one-time withdrawal from project operating funds, not to exceed an amount equal to the initial operating capital amount, subject to administrative and financial conditions.

#### List of Subjects

##### 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

##### 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate-income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

#### PART 1822—RURAL HOUSING LOANS AND GRANTS

##### Subpart F—Rural Cooperative Housing Loan, Policies, Procedures and Authorizations

1. Section 1822.245 is added to read as follows:

##### § 1822.245 Loan Supervision and Servicing.

Loan supervision will be provided according to Subpart C or Part 1930 of this Chapter. Loan servicing will be provided according to subpart B or Part 1965 of this Chapter.

### Subpart G—Rural Housing Site Loan Policies, Procedures and Authorizations

2. Section 1822.279 is added to read as follows:

#### § 1822.279 Loan Supervision and Servicing.

Loan supervision will be provided according to Subpart C of Part 1930 of this Chapter. Loan Servicing will be provided according to Subpart B of Part 1985 of this Chapter.

3. Subpart C and Exhibits A, A-1, B, B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10, B-10 A, C, and C-1 are revised as follows:

### PART 1930—GENERAL

#### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

##### Sec.

- 1930.101 General.
- 1930.102 Definitions.
- 1930.103 Non-discrimination assurance.
- 1930.104 [Reserved]
- 1930.105 Objective of management and supervision.
- 1930.106—1930.107 [Reserved]
- 1930.108 Extent of borrower management.
- 1930.109 Extent of FmHA supervision.
- 1930.110 Methods of supervision.
- 1930.111—1930.112 [Reserved]
- 1930.113 Borrower responsibilities.
- 1930.114—1930.116 [Reserved]
- 1930.117 Agency responsibilities.
- 1930.118 [Reserved]
- 1930.119 Supervisory visits and inspections.
- 1930.120—1930.121 [Reserved]
- 1930.122 Accounts and records.
- 1930.123 [Reserved]
- 1930.124 Borrower budgets, reports, audits, and analysis.
- 1930.125—1930.127 [Reserved]
- 1930.128 Labor housing grants.
- 1930.129 Rural housing site loans.
- 1930.130—130.133 [Reserved]
- 1930.134 FmHA office records.
- 1930.135—1930.136 [Reserved]
- 1930.137 State Supplements, guides, forms and other issuances.
- 1930.138—1930.140 [Reserved]
- 1930.141 Materials to be provided borrower/applicant.
- 1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.
- 1930.143 Delegation of responsibility and authority.
- 1930.144 Exception authority.
- 1930.145—1944.149 [Reserved]
- 1930.150 OMB Control Number.

##### Exhibits

- A—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations
- A-1—Review of Audit Reports
- B—Multiple Housing Management Handbook
- B-1—Management Plan Requirements for FmHA Multiple Family Housing Projects
- B-2—Requirements for Management Agreements

- B-3—Management Agreement for FmHA Multiple Family Housing Projects
- B-4—Questionnaire for Prospective Management Agent of a Multiple Family Housing Project
- B-5—Questionnaire for Owner who Proposes Owner-Management of a Multiple Family Housing Project
- B-6—Monthly Reports (Chart)
- B-7—Annual Reports (Chart)
- B-8—Miscellaneous Reports or Submittals (Chart)
- B-9—Employment Inquiry
- B-10—Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence
- B-10A—Type of Living Environment Needed in Relation to Nature and Degree of Disability

- C—Rent Changes
- C-1—Notice to Tenants of Proposed Rent Change
- C-2—Notice of Approved Rent Change
- D—Energy Audit
- D-1—Calculation of Financial Impact (Energy Audit)
- E—Rental Assistance Program
- E-1—Payment and Rental Assistance Tracking Form
- F—Visit Checklist For Multiple Family Housing Projects
- G—Supervisory Visit Report Form—Multiple Family Housing Projects

#### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

##### § 1930.101 General.

This Subpart prescribes the policies, authorizations, and procedures for management and supervision of all of the following Farmers Home Administration (FmHA) multi-family housing (MFH) loan and grant recipients:

- (a) Farm Labor Housing (LH).
- (b) Rural Rental Housing (RRH) including Rural Cooperative Housing (RCH) and congregate housing.
- (c) Rural Housing Site Loans (RHS).
- (d) Special provisions and exceptions.
  - (1) Unless otherwise specified and except for Exhibit C, individual type RRH and LH borrowers who were not required by program regulation to execute a loan agreement are exempted from the requirements of this Subpart as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income eligibility by properly completing Form FmHA 444-8, "Tenant Certification," for each tenant as required by the Forms Manual Insert (FMI).
  - (2) The State Director may require any borrower determined to be in default of

any program requirement, security instrument, payment, or other agreement with FmHA, or when otherwise failing to meet the program objectives, to comply with any appropriate section of this Subpart to assure that the loan objectives are met.

(3) For RHS borrowers, the following sections of this Subpart do not apply: § 1930.108, § 1930.124, and § 1930.141.

##### § 1930.102 Definitions.

(a) *Borrowers*. "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and who have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

(b) *District Director*. For the purpose of this Subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be delegated responsibilities according to § 1930.143 of this Subpart and the provisions of Subpart F of Part 2006 which is available in any FmHA office. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition also includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

(c) *FmHA*. "FmHA" means the United States of America acting through the Farmers Home Administration; it includes FmHA's predecessor agencies.

(d) *Governing Body*. "Governing Body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(e) *Management*. "Management" is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants, maintain the project, and provide sound and economical project operation.

(f) *OCC*. "OCC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(g) *OIG*. "OIG" means the Office of Inspector General of the United States Department of Agriculture.

(h) *Project*. A project is the total number of rental housing units located on the same or contiguous site(s) and operated under one management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions.

now consolidated into one operational project.

(i) *State Director.* For the purpose of this Subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this Subpart according to § 1930.143 and the provisions of Subpart F of Part 2006 which is available in any FmHA office.

(j) *Supervision.* "Supervision" includes the broad scope of FmHA guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA regulations.

#### § 1930.103 Non-discrimination assurance.

All management and supervision actions described in this Subpart will be conducted without regard to race, color, religion, sex, marital status, national origin, age, or physical or mental handicap (borrowers and tenants must possess the capacity to enter into a legal contract). The provisions of Subpart E of Part 1901 of this Chapter enforcing the Civil Rights Act of 1964 along with other similar worded statutes will be complied with.

#### § 1930.104 [Reserved]

#### § 1930.105 Objective of management and supervision.

(a) The primary objective of management and supervision is to provide effective supervision to each borrower to accomplish the objectives of the loan or grant.

(b) To provide effective supervision, FmHA will assure that the borrower's management accomplishes the following:

(1) Provide proper and efficient management policies as prescribed in Exhibit B of this Subpart.

(2) Comply with agreements.

(3) Repay loans on schedule.

(4) Maintain security property.

(5) Protect the interests of FmHA.

(6) Operate facilities according to State and local laws and regulations.

(7) Maintain accounts and records.

(8) Submit reports and audits.

(9) Process rent changes according to Exhibit C of this Subpart.

(10) Operate the facilities according to the Fair Housing and/or Equal Opportunity requirements provided by Title VI and Title VIII of the Civil Rights Acts of 1964 and 1968, respectively.

#### §§ 1930.106—1930.107 [Reserved]

#### § 1930.108 Extent of borrower management.

According to Exhibit B of this Subpart, the borrower and/or the borrower's

agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA officials. A suggested management agreement is provided in Exhibit B-3 of this Subpart.

#### § 1930.109 Extent of FmHA supervision.

All borrowers will be given guidance and advice by FmHA to help assure successful completion and operation of facilities, compliance with their agreements and obligations, and protection of the FmHA's financial interest. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of Multiple Family Housing borrowers is a primary responsibility of the District Director; however, additional supervision and guidance will be given by the State Director and/or other appropriate members of the State Office staff. Security servicing will be handled according to Subpart B of Part 1965 of this Chapter, when supervision is no longer effective in meeting the borrower's loan or grant objectives.

#### § 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; analysis of accounting, budgets, and audit reports; guidance by memorandums; and similar activities.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as applicant's attorney, architect, property manager, etc. Examples of supervision include:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish steering or organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this Subpart.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this Subpart.

(5) Pre-ent-up conferences to review the management plan, marketing plan, and the general readiness of project facilities, recordkeeping systems, renting procedures, and personal assignments to begin project operation.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a financial recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement or loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision that may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management.

(c) *Borrowers who have demonstrated ability.* Supervision will consist of at least an annual review of budgets and reports according to § 1930.124, and a biennial security inspection according to § 1930.119 of this Subpart.

(1) Successful in completing a first full fiscal year of operation.

(2) Current with loan payments.

(3) In compliance with other loan or grant requirements.

(4) Maintaining the security in a satisfactory manner.

(5) Otherwise progressing satisfactorily.

Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this Subpart.

## §§ 1930.111-1930.112 [Reserved]

## § 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of Exhibit B of this Subpart.

## §§ 1930.114-1930.116 [Reserved]

## § 1930.117 Agency responsibilities.

Effective supervision requires FmHA employees to be familiar with the various types of borrowers; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) *District Director.* District Directors are responsible for effective borrower supervision. District Directors will:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA, are responsible for managing the project, collecting rents, repaying the loan on schedule, project maintenance; and for compliance with any loan or grant agreement or resolution, State laws, and other FmHA requirements.

(3) Monitor all provisions or conditions of the FmHA approval documents to ensure that they are fully complied with throughout the life of the project.

(4) Monitor the borrowers' compliance with FmHA regulations concerning real property tax, insurance, bonding, security, budgeting, and reporting requirements.

(5) Assure that borrower financing statements are continued and not allowed to lapse.

(6) See that each borrower designates a representative to serve as its contact source.

(7) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA requirements.

(8) Provide borrowers with governing bodies with suggestions for information distribution that may be helpful in keeping the membership in touch with activities to increase and maintain membership interest.

(9) Provide informed advice and guidance to borrowers as needed.

(10) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower only through its attorney, architect, or management agent.

(iv) Assume that in the absence of adverse complaints, the borrower is proceeding successfully.

(b) *State Director.* State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this Subpart.

(2) Provide guidance and leadership to assure that the State staff and District staff thoroughly understand and carry out their responsibilities.

(3) Develop training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrower receive adequate supervision.

(4) Maintain necessary liaison with the OGC.

(5) Maintain necessary liaison with State and local authorities, agencies, and other organizations. For example, in the case of projects benefitting the elderly, it is essential that liaison be maintained with the aging network such as State and Area Agencies on Aging to assure that available support services are made available to the tenants.

(6) Maintain and update State Office records to assure effective program supervision and evaluation.

(c) *State staff.* State staff members including Rural Housing program officers and specialists, management specialists, architects, and others responsible for supervision of borrowers covered by this Subpart will:

(1) Continuously monitor supervisory activities and borrower status to assure that each borrower is receiving timely and effective supervision.

(2) Train District Directors and other District staff to effectively perform the required supervisory activities, and to provide informed guidance in sound operation and management policies. The assistance of the aging network such as State and Area Agencies on Aging should be sought in connection with training which pertains to the management of services to the elderly.

(3) Post review closing of loans and grants to determine that they have been properly closed.

(4) Visit a sufficient number of projects to assure that proper supervision is being provided.

## § 1930.118 [Reserved]

## § 1930.119 Supervisory visits and inspections.

(a) *Purpose.* District Directors and other FmHA officials will visit the project site, including the management office, as necessary to accomplish the objectives of the loan or grant.

Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaluate the management program of the project pursuant to Exhibit B of this Subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.

(iii) Compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of Title VI and Title VIII of the Civil Rights Acts of 1964 and 1968, respectively.

(3) To review borrower records and inspect information, such as:

(i) Tenant eligibility.

(ii) Tenant income.

(iii) Tenant selection criteria.

(iv) Waiting lists.

(v) Rental rates.

(vi) Other necessary items.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(5) To determine that borrower and/or borrower's management agent is fully complying with all provisions and conditions of the approval document regarding site development and use restrictions.

(b) *Frequency.* Visits will be made as follows:

(1) Supervisory visits will be made when necessary to assure compliance with FmHA policies and objectives. A District staff person will perform a post rent-up visit before the end of the first ninety days of operation; and a thorough supervisory visit at the end of the first year of operation and at least every two years thereafter at each project. Planned visits will be included in the monthly work calendar. The visit shall be conducted with the borrower and/or the borrower's designated representative. Exhibits F and G of this Subpart should be used to assist in the preparation, completion, and follow-up of visits. For small projects consisting of only a few units (usually 1 to 3), the degree of completion of Exhibits F and G may be minimized. Supervisory visits to such projects are required only once every two years and should concentrate on tenant eligibility, maintenance, insurance coverage and status of loan payments.

(2) The District Director will conduct a biennial inspection of each project with the borrower, site manager or designated representative present. This inspection may be made simultaneously with a supervisory visit scheduled in accordance with this section. The results of the inspection will be

documented in the running record and formally recorded on Form FmHA 1930-8, "Year End Report and Analysis for Fiscal Year Ending . . ." HUD Form 9822, "Report of Physical Condition and Estimate of Repair Costs," or a similar HUD Form for the same purpose may be used for this inspection.

(c) *Preparation.* The District staff member will review the most recent monthly or annual reports, the running records, correspondence and other District Office records to determine payment dates of taxes, insurance, and bond premiums. The loan payment and subsidy status will also be noted.

(d) *Recording and reporting.* The results of each visit will be recorded in the running record. A letter summarizing any supervisory visit and outlining followup action will be directed to the borrower. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to Subpart A of Part 1955 of this Chapter or Form FmHA 465-7, "Report on Real Estate Problem Case," may be used as appropriate.

(e) *Compliance reviews.* An authorized State or District staff member will complete the Civil Rights and Fair Housing review requirements according to Subpart E of Part 1901 of this Chapter. If initial rent-up has not occurred by the time of initial review, a subsequent review will be due one year following initial occupancy and then every three years thereafter.

§§ 1930.120-1930.121 [Reserved]

§§ 1930.122 Accounts and records.

Borrowers will be required by FmHA to maintain accounts and records necessary to conduct their operation successfully; to meet the requirements of Federal, State and local laws and regulations; and to meet the terms of their agreements with FmHA, including such records on occupancy by race and/or ethnic origin to measure Fair Housing compliance. Borrowers will implement accounting and recordkeeping systems acceptable to FmHA. Borrower accounts and records will be kept or made available in a location within reasonable access by the District Office staff for inspection, review, and copying by representatives of FmHA or other agencies of the U.S. Department of Agriculture authorized by that Department.

(a) *Types of records and accounts.* The borrower must keep records and accounts sufficient to provide accurate, permanent, and current information. Borrowers who are required to provide audits should have their auditors

develop a financial recordkeeping system or at least review their systems and agree that it is acceptable for auditing purposes. The recordkeeping system must be acceptable to FmHA.

(1) Prior to loan or grant approval, the borrower will generally:

(i) Determine the type and form of records and accounts to be used for the project.

(ii) Select the person(s) responsible for keeping project records and accounts.

(iii) When applicable, select an auditor and obtain the auditor's review and guidance in establishing the project's financial recordkeeping system.

(2) The requirements of paragraph (a)(1) of this section must be accomplished by the borrower and verified by FmHA prior to loan closing if they were conditions of loan approval.

(3) After the loan or grant is made, the borrower shall implement any changes made or required in the approved recordkeeping system according to paragraph(a)(1) when and where appropriate change is necessary as a servicing action.

(b) *Financial recordkeeping guides.*

The following items will be considered in establishing a financial recordkeeping system:

(1) Accounting records required by this Subpart may be prepared on a cash, modified cash, or accrual basis at the borrower's option.

(2) The requirements of Federal, State or local laws.

(3) If outside bookkeeping services are available, they may be used if the cost is reasonable. Management agents may also provide this service.

§ 1930.123 [Reserved]

§ 1930.124 Borrower budgets, reports, audits, and analysis.

Borrowers will be required by FmHA to develop a system of budgets and reports. Timely reports and budgets furnish necessary information to make sound management decisions. Prompt analysis of such reports and budgets reveals potential problems and provides an opportunity for corrective action. All reports and budgets will relate only to the FmHA financed project. Separate reports and budgets will be prepared and submitted for each project owned by the same borrower. For State or local public agency or Indian Tribal Government loan or grant recipients, audit reports will be prepared according to the provision of § 1930.124(c) of this Subpart. Forms necessary in making the required reports may be requested from FmHA. Borrowers will be required to implement a uniform reporting system.

The following reports are required for each project.

(a) *Monthly report.* (1) Form FmHA 1930-6, "Monthly Report," will be completed the first month after: (i) completion of a project or occupancy of any units when FmHA provides the construction financing, (ii) FmHA loan closing or occupancy of any of the units where interim financing is used, (iii) reamortization, (iv) transfer, (v) failure to make scheduled payment, or (vi) failure to make or maintain required transfers to reserve.

(2) The District Director will review the report and take appropriate action. Distribution of the report will be according to the FMI.

(3) Monthly Reports are required through the project's first full fiscal year of operation and each month thereafter until discontinuance is authorized in writing by the District Director when it is determined that: (i) the project is being operated and maintained in a satisfactory manner; (ii) An adequate accounting system is being maintained and complete and satisfactory annual reports are being submitted; (iii) payments to FmHA are on schedule; (iv) the reserve account is ahead or on schedule allowing for authorized expenditures; (v) the annual analysis has been completed by the District Director and the audit (or verification) has been found acceptable; and (vi) the District Director has inspected the project, reviewed project operations, and found them acceptable. A copy of the discontinuance letter will be sent to the State Director.

(b) *Annual reports.* Annual reports will be submitted within 45 days following the close of the project fiscal year and will consist of:

(1) An audit report or verification of accounts as required by paragraph (c) of this section.

(2) Form FmHA 1930-7, "Statement of Budget and Cash Flow," for the year being planned and the actual income and expenses for the previous year. The form will be completed according to the FMI.

(3) Exhibit A-5, "Housing Allowances for Utilities and Other Public Services," of Subpart E of Part 1944 of this Chapter when required for the project reflecting any adjustment.

(4) Form FmHA 1930-8 completed according to the FMI.

(5) Copies of the minutes of any annual meeting required by the Borrower's organizational documents or other related material that the District Director may request.

(6) An energy audit as required by Exhibit D of this Subpart.

(c) *Audit reports.* Annual project audit reports substantially complying with FmHA's "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," which will be provided by FmHA, are required. Alternative reports such as reviews and compilations are not acceptable to FmHA. Audit reports from State or local public agencies and Indian Tribal Governments complying with OMB Circular A-102 will be acceptable. Any questions concerning the acceptability of such audits may be referred to the National Office for review. Audit reports for private nonprofit borrowers must comply with OMB Circular A-110. Audit reports will be required as follows:

(1) For each project with 25 or more units, an audit report will be prepared by the Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) licensed on or before December 31, 1970, except as outlined in paragraph (C)(5) of this section. The CPA or LPA may not be an individual or organization that is closely associated with the borrower in any manner that creates a possible conflict of interest. For example, the CPA and LPA cannot be an employee of the borrower or an employee of any member, stockholder, partner, principal, or have any other interest in the borrower organization.

(2) For each project with 24 or less units, an audit will not be required except as outlined in paragraph (c)(3) of this section. The borrower will, however, provide for each project a verification of accounts on Form FmHA 1930-8 by a competent individual qualified by education and/or experience who is independent of the borrower. In the case of a nonprofit organization, the verification may be made by a committee of the membership not including any officer, director, or employee of the borrower.

(3) The State Director or District Director may, for good cause, require that the accounts for any project be audited by a CPA or LPA, such as when records are incomplete or inaccurate or it appears that the borrower has not adequately accounted for project income. The State Director or District Director may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(4) The State Director or District Director may authorize the initial audit to cover a period up to 18 months for new projects whose first operating year was for a period of 6 months or less.

(5) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one

successive year in a specific case providing: (i) the borrower submits a written request; (ii) the FmHA approved budget for the project includes a typical and reasonable fee for the audit by the negotiated cost of the audit will increase the monthly per unit rental rate by more than \$4.00; (iii) the required reports, including a CPA or LPA audit, were properly submitted for the prior year's operations; and (iv) the borrower provides the verification on Form FmHA 1930-8 by a competent individual who is independent of the borrower.

(d) *Annual analysis.* Each project will be scheduled for an annual analysis by the District Director not later than 60 days following the end of the project's fiscal year. The purpose of the analysis will be to determine the degree and adequacy of the borrower's compliance with the applicable FmHA loan or grant agreements; and to provide consultation or supervision in meeting program objectives. The analysis will be completed within the 60 day period except for extenuating circumstances such as the borrower's failure to provide the required information on time. In all cases, the analysis will be conducted as soon as possible after the required information is submitted by the borrower.

(1) *Preparation for the analysis.* No later than 30 days before the end of the borrower's fiscal year, the District Director will:

(i) Notify the borrower of the required reports, the due dates, and provide the borrower with necessary guides and forms for use in preparing reports.

(ii) When applicable, such as a loan to a new nonprofit organization, assure that the borrower properly plans for its annual meeting, and holds it on the correct date. The District Director should plan to attend the annual meeting unless the borrower has progressed as described in § 1930.110(c) of this Subpart.

(iii) Arrange an inspection of the project with the borrower or the borrower's representative according to § 1930.119(b) of this Subpart.

(2) *Conducting the analysis.* The analysis will be conducted by the District Director promptly after the required reports are submitted by the borrower. It is encouraged, but not required, that the borrower be present during the actual analysis. The District Director may complete the analysis, provided the information required by Part IV of Form FmHA 1930-8 can be completed from the District Director's knowledge of the operation. The District Director should review each step listed in Exhibit A of this Subpart when conducting the annual analysis and

carefully document the results in a memorandum or in the borrower's case file. Exhibit A-1 should be followed when analyzing the required audit reports to determine if the reports are in compliance with Agency regulations. Comments and recommendations should also be recorded in the appropriate section of the Form FmHA 1930-8.

(e) *Distribution of reports and annual analysis information.* The items required by this Subpart will be distributed according to the appropriate FMI's.

(f) *State Director's review of annual analysis.* Upon receipt of the items listed in paragraph (b) of this section the State Director will:

(1) Review the information submitted, obtain any required modifications, and provide comments and recommendations by memorandum to the District Director. When the authority to approve budgets as part of the annual analysis or rent change is delegated to District Directors, a copy of approved budgets and annual reports must be sent to the State Office for review. In all other cases, the State Director will approve Form FmHA 1930-7.

(2) Be prepared for a review of reports by the National Office upon request.

#### §§ 1930.125-1930.127 (Reserved)

#### § 1930.128 Labor housing grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued to assure that the grant purposes will be accomplished. Comments on the following points will be included in appropriate reports, to assure that:

(a) The rents are reasonable.  
(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No organization borrower may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

#### § 1930.129 Rural housing site loans.

RHS loans will be serviced according to program regulations and the conditions specified in the borrower's loan resolution. The following additional supervisory action by the District Director will also apply to assure that

the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price, not to exceed market value, of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to plan for the sale of all lots prior to the due date of the note.

(e) Should the RHS borrower default in its loan obligations, the account will be serviced according to § 1965.85 of Subpart B of Part 1965 of this Chapter. The District Director's report to the State Director should contain the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary.

(2) If a satisfactory proposal for selling the lots can be developed, the account will be serviced according to program regulations and the provisions of this Subpart and Subpart B of Part 1965 of this Chapter.

(3) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled according to § 1965.85(e) of Subpart B of Part 1965 of this Chapter for liquidation.

#### §§ 1930.130-1930.133 [Reserved]

#### § 1930.134 FmHA office records.

(a) State Directors will maintain records according to Subpart B of Part 2033, which is available in any FmHA State Office, to assure that the requirements of this Subpart are met. Form FmHA 1930-9, "Multiple Housing Activity Card," will be maintained for each loan and/or grant recipient.

(b) District Directors will maintain records according to appropriate provisions of Subparts A and B of Part 2033 which are available in any FmHA office. Form FmHA 1905-8, "Management System Card—Multi-

Family Housing," will be maintained for each loan and/or grant recipient.

(c) State Directors and District Directors will maintain and update records for the Multiple Housing Management and Information System Tracking and Retrieval System (MISTR) according to the requirements of Subpart G of Part 2033 which is available in any FmHA State or District Office.

#### §§ 1930.135-1930.136 [Reserved]

#### § 1930.137 State Supplements, guides, forms, and other issuances.

The State Director, with prior approval of the National Office and with the assistance of the OGC, may develop State Supplements, guides, or issuances to the extent necessary to enable borrowers to comply with the procedures and Exhibits of this Subpart and the applicable provisions of State laws. National Office post approval is required for any State Supplements, guides or other issuances in use which will remain in use as of the date this Subpart is issued. Under no circumstances will State forms be developed as replacements for the forms referred to in this Subpart.

#### §§ 1930.138-1930.140 [Reserved]

#### § 1930.141 Materials to be provided borrower/applicant.

To enable borrowers and applicants to meet the intent of this Subpart, they will be supplied with one reproducible copy of the following FmHA Exhibits and materials:

(a) Exhibits B, B-1 thru B-9, B-10 and B-10A of this Subpart when applicable.

(b) Exhibits C, and C-1 of this Subpart.

(c) Exhibits D and D-1 of this Subpart.

(d) Exhibit E of this Subpart.

(e) Exhibits B and B-1 of Subpart E of Part 1944 of this Chapter.

(f) Subpart L of Part 1944 of this Chapter.

(g) Booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees."

(h) For Farm Labor Housing borrowers and/or applicants, Exhibit B of Subpart D of Part 1944 of this Chapter in addition to the preceding items of this section.

(i) The following forms:

(1) Form FmHA 1930-7 and attached Exhibit A-5 of Subpart E of Part 1944, if applicable.

(2) Form FmHA 1930-8.

(3) Form FmHA 1930-8.

(4) Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement."

(5) Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance."

(6) Form FmHA 444-8.

#### § 1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH or LH housing or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap (must possess capacity to enter into legal contract) should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, D.C. 20250. When a complaint is made to any FmHA office, the complaint should be directed to the Office of Equal Opportunity (USDA-OEO) by the Supervisor of that office. When the complaint is forwarded to USDA-OEO by a County or District Office, the State Director will be forwarded a copy of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA District Office. The complainant should provide the following information:

(1) The name, address, and telephone number of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) When a complaint is received by an FmHA office, the supervisor of that office will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, D.C. 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should obtain instructions from USDA-OEO through the FmHA Equal Opportunity Staff

pertinent to investigation of any discrimination complaint.

(d) The USDA-OEO will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA-OEO will handle complaints in accordance with Department regulations.

(e) When it is found that the complaint is without substance, the parties concerned will be so notified.

(f) When it is found that the borrower's nondiscrimination agreement in the security instrument or elsewhere was violated, USDA-OEO will inform FmHA of such finding and FmHA will advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) Should the borrower fail to take such action and assure future compliance, the USDA-OEO may require the FmHA to take further appropriate action.

#### § 1930.143 Delegation of responsibility and authority.

The State Director may delegate in writing any authority delegated to the State Director in this Subpart unless otherwise restricted, to those State and District Office staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA. The individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director and will be prepared according to Subpart F of Part 2006 which is available in any FmHA office.

#### § 1930.144 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect (a) the interest of the Government, or (b) the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

#### §§ 1930.144—1930.149 [Reserved]

#### § 1930.150 OMB Control Number.

The recordkeeping and reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0575-0033.

#### Exhibit A of Subpart C—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations

##### I. Examine the Condition of the Records to Determine That:

A. Required records are being properly maintained in accordance with the loan resolution or agreement.

B. Decisions of officials are being entered in the minutes book, if applicable.

C. Financial transactions are recorded as they occur in a complete and orderly manner in the appropriate books.

D. Any membership or stock transfers have been approved by FmHA and recorded as required.

E. The records of accounts are maintained by qualified persons.

F. The records are reviewed by an auditing committee or qualified accountant as required.

II. Study the Financial Progress: Compare current financial condition and owner's equity with previous years to discover any trends, for example:

A. Has cash carryover increased or decreased?

B. Are the debts greater or less?

C. Is the owner's equity greater or less?

D. Are accounts receivable greater or less?

E. Are collection provisions being enforced?

F. Are reserve and other required funds or accounts properly maintained?

III. Study the Statement of Income and Expenditures for the Past Year: Compare it with the budget for the past year and the same statement for previous years.

A. Were rents, subsidies, and other monies collected sufficient to produce the required revenues for planned expenditures?

B. Were actual expenditures significantly different from those budgeted?

C. Were the expenditures sufficient to adequately maintain the project?

D. Were expenditures reasonable and typical for similar projects?

E. Were any essential items of maintenance deferred during the past year?

F. Were payments made on authorized debts in the proper amounts and on the dates agreed to?

G. If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

IV. Study the Budget for the Next Year: Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year and the prevailing costs of doing similar business in the market area.

A. Are proposed expenditures adequate for normal maintenance and operation of the project?

B. Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C. Does the budget make provision for financing maintenance or energy conservation measures deferred from the previous year?

D. Does it provide for the required financial reserves?

E. Is planned revenue adequate to cover planned expenditures?

F. Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V. Study the Audit Report: Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A-1 may be used as a guide.

VI. Review the Energy Audit: Review the energy audit and the borrower's recommendations for implementation.

VII. Determine Whether or Not the Borrower Has: A. Followed the management plan, including occupancy requirements, leasing requirements, Affirmative Fair Housing Marketing Plan, Energy Audit, and Tenant Grievance and Appeals Procedure.

B. Renewed fidelity bonds and insurance policies.

C. For borrowers with governing bodies.

1. Held regular board and membership meetings.

2. Conducted the affairs along sound business lines.

D. Made a change in any organizational documents without FmHA consent.

E. Made a change in the plans for management and operation of the project without FmHA consent.

F. Made a change in the membership or interest in ownership without FmHA consent.

VII. Summary: Summarize major observations and decisions reached as the result of the review and record on Form FmHA 1930-8, "Year End Report and Analysis For Fiscal Year Ending —,"

#### Exhibit A-1 of Subpart C—Review of Audit Reports

##### I. Purpose

To present a general guide for use by FmHA staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing and help to promote better independent audits.

##### II. General

FmHA guidelines for independent audits are detailed in the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," (hereinafter called Audit Guide and available from FmHA). This Audit Guide, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so

that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

### III. Scope

The review should include:

A. A determination of the adequacy of the audit in relation to FmHA regulations and Audit Guide.

B. Interpretation of information included in the audit.

C. Preparing a letter to the borrower on any missing or adverse audit data.

D. Informing appropriate FmHA offices of review results and recommendations.

### IV. Review Procedures To Be Followed

A. *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1. Circumstances peculiar to the borrower.
2. Degree of importance attached to each item questioned.
3. Number of exceptions.
4. Whether the exceptions relate to the auditor's work or the borrower's records and operations.
5. If specific action is to be requested of the borrower.
6. Whether or not the report as a whole is acceptable.

B. *Review and Procedure, 1. Specific.* a. Determine if the audit was performed by a Certified Public Accountant or Licensed Public Accountant licensed on or before December 31, 1970.

b. Does the audit cover the most recent 12 months since the previous audit?

c. Was the audit received within 45 days of the borrower's year end?

2. *Evaluation checklist for audit reports.* The "Evaluation Checklist for Audit Reports" which is part of this Exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact needs to be made with the borrower.

3. *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether any corrections requested in the previous year have been made and whether the auditor has complied with any previous suggestions for improvement in the audit report.

#### C. Preparing the audit review letter.

*General.* After completion of the "Evaluation Checklist for Audit Reports" which follows and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as part of this Exhibit.

a. If the audit fully complies with the Audit Guide and instructions, a letter is not necessary.

b. If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

c. Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons.

### Evaluation Checklist for Audit Reports

State	_____
Name of borrower	_____
County	_____
Address	_____
Case No.	_____
Name of auditor	_____
Project name	_____
Date of audit report	_____
Period covered	_____
1. Auditor's opinion (Section II <sup>1</sup> —Check one):	
(a) Unqualified	_____
(b) Qualified	_____
(c) No Opinion	_____
2. Financial statements (Section II C <sup>1</sup> ):	
(a) Balance Sheet	_____
(b) Income and Expense	_____
(c) Changes in Financial Position	_____
(d) Owner's Equity Reconciliation	_____
(e) Comparative Statements	_____
3. Required supplemental letter (Section II D <sup>1</sup> ) or comments on the following:	
(1) A statement that generally accepted auditing procedures were used but if not, which procedures were omitted	_____
(2) Evaluation of system of internal control	_____
(3) Adequacy of accounting records and outline any recommendations for improvement	_____
(4) Adequacy of physical control over assets	_____
(5) Financial compliance with loan agreement including maintenance of cash reserves	_____
(6) Financial reports in audit are in agreement with accounting records of organization, indicate any material or unusual adjustments	_____
(7) State whether deposit funds are in institutions insured by the Federal Government	_____
(8) List kinds and amounts of insurance and fidelity coverage	_____
(9) Indicate if borrower is exempt from Federal income tax	_____
(10) For unsatisfactory conditions disclosed by audit, state their nature and, if possible, recommend corrective action	_____
(11) List names of members, users or renters delinquent over 60 days and the amount of each delinquency	_____
(12) Indicate any other information that the auditor believes necessary for full disclosure	_____
Note: If information is provided by the auditor which answers these items, although not in supplemental letter format, it is acceptable to FmHA.	
4. Comments by auditor on previously recommended items which have or have not been implemented by the borrower (Section IV <sup>1</sup> )	_____
5. Was report received within 45 days of the end of the borrower's operating year?	_____
6. Was audit performed by a CPA or LPA? If by an LPA verify that the LPA was licensed on or before December 31, 1970	_____

<sup>1</sup> References to "Sections" indicate the appropriate section in the FmHA Audit Guide booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees."

### Example Audit Review Letter

Dear \_\_\_\_\_:

We have reviewed your audit report for the period \_\_\_\_\_ to \_\_\_\_\_, prepared by \_\_\_\_\_.

This review was made in accordance with current FmHA regulations and the Audit Guide entitled "Instructions to Independent Certified Public Accountants

and Licensed Public Accountants Performing Audit of Farmers Home Administration Borrowers and Grantees." Based on this review, your audit:

1.  Is acceptable. However, the auditor's recommendations concerning \_\_\_\_\_

should be implemented prior to next year's audit.

2.  Is acceptable but it did not include comparative-type financial statements as indicated in Section II C of the Audit Guide. Please inform the auditor to prepare such statements next year.

3.  Is acceptable but was not submitted within 45 days after the end of the audited year. Please insure that next year's audit is forwarded before \_\_\_\_\_.

4.  Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Guide, Section II D, "Required Supplemental Letter." Please have your auditor comment on the number(s) circled and forward a copy to us. These numbers correspond to the 12 items listed in Section II D of the Audit Guide.

1	2	3	4	5	6	7
8	9	10	11	12		

5.  Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Guide.

- a.  It was prepared without audit.
- b.  The following financial statements were omitted: (Audit Guide, Section II C)
- Balance Sheet
- Statement of Income and Expense
- Statement of Changes in Financial Position
- Reconciliation of Owner's Equity
- c.  The auditor's opinion. (Audit Guide, Section III)
- d.  Other
- e.  Other.
- District Director \_\_\_\_\_

This letter will be prepared in the District Office. A copy of the audit and the approval memorandum will be sent to the State Office.

### Exhibit B of Subpart C—Multiple Housing Management Handbook

#### Table of Contents

- I. Purpose
- II. Definitions
- III. Borrower Responsibilities
- IV. Rent Subsidy Opportunities
- V. Management Operations
- VI. Renting Procedure
- VII. Verification and Certification of Tenant Income and/or Employment
- VIII. Lease Agreements
- IX. Rent Collection
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- XII. Borrower Project Budgets
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- XIV. Termination of Tenancy and Eviction
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Title	Exhibit
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Requirements for Management Agreements	B-2
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## Multiple Housing Management Handbook

### I. Purpose

This management handbook prescribes the Farmers Home Administration (FmHA) regulations, policies and procedures for management of RRH and LH projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide clarification and guidance. These regulations are intended to assist borrowers in the successful operation of FmHA-financed rental projects.

### II. Definitions

**A. Adjusted Annual Income.** This is the annual income of the household as defined in paragraph II C of this Exhibit, less 5 percent and less an additional \$300 for each minor person, (excluding the tenant, co-tenant and foster children), who is a member of the household and lives in the rental unit.

**B. Adjusted Monthly Income.** This is the amount obtained by dividing the adjusted annual income by 12.

**C. Annual Income.** Planned income of the household members who live, or propose to live in the rental unit within the next 12 months.

**1. Income Included.** Gross income anticipated for the next 12 months from wages, salaries, commissions, pensions, social security, public assistance, unemployment compensation, alimony, and all other sources, including net business income, except as indicated in paragraph C 2 below, must be counted. This includes:

**a.** Social Security, child support payments, and other payments made on behalf of minors.

**b.** Public assistance. When the Public Assistance payment includes an amount specifically designated for shelter and utilities which is subject to adjustment by the Public Assistance Agency according to the actual cost of shelter and utilities, the amount of Public Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter and utilities; plus,

(ii) The maximum amount that the Public Assistance Agency could in fact allow the family for shelter and utilities. When the family's welfare assistance is ratably reduced from the standard of need by applying a

percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

**c.** All expected overtime and bonus income which can reasonably be considered dependable.

**d.** Interest earnings, dividends and other income from net family assets excluding any received by minor children of the tenant and/or the co-tenant. Only the interest portion of the payments received on deeds of trust or mortgages held will be counted as income.

**e.** The value of substantial regular recurring contributions provided by others from outside the household.

**f.** Projected business losses will be considered as "0" in determining annual income. Expenditures for capital items shall not be deducted in determining net business income.

**g.** Any amount of educational grants, student employment, scholarships, assistantships, fellowships, or Veterans Administration benefits, except for a full time student who is not the tenant or co-tenant.

**2. Exempted Income.** The following income is not counted:

**a.** Student loans.

**b.** Proceeds from the sale of equipment, mineral rights, or real estate sold under a short-term contract (usually 3 years or less).

**c.** Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

**d.** Payments received for the care of foster children or services rendered as a volunteer on a project sponsored by any of the following:

(1) Retired Senior Volunteer Program.

(2) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aid, or senior companion).

(3) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

(4) Peace Corps, Vista, or any other volunteer program sponsored by ACTION.

**e.** The value of services rendered by chore service workers who assist a tenant.

**f.** Allowances paid by the Department of Labor to CETA participants. Wages paid by the Employers of CETA workers will be included.

**g.** The income of a present tenant, co-tenant, or spouse of either who has permanently moved out of the unit for reasons other than work assignment or military order. The remaining tenant or co-tenant must agree in an amendment to his or her lease, that should the co-tenant or spouse resume living in the rental unit that his or her income will then be counted toward annual income and they may be required to vacate the unit if they no longer meet the eligibility requirements for the project.

**3. Deductions from Income.** In determining the tenant's annual income, the following deductions may be made:

**a.** A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members. An itemized schedule must be provided showing

the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

**b.** A deduction may be made in the same manner as outlined in IRS regulations for necessary work-related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving officials, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(1) Transportation to and from work.

(2) Cost of meals incurred on one-day business trips.

(3) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(4) Fines and penalties for violation of laws.

(5) Any other deduction not permitted by IRS.

**c.** A maximum aggregate deduction of \$400 per month may be made for child care, disabled dependent care, or care of an incapacitated spouse of a tenant or co-tenant. The deduction will be limited to expenditures actually paid to enable the tenant or co-tenant to be gainfully employed. The reason for any deduction must be recorded in detail and attached to Form FmHA 444-8, "Tenant Certification." Payments for these services may not be made to persons whom the tenant is entitled to claim as personal deductions for income tax purposes.

**d.** A maximum deduction not to exceed \$400 per month may be made for full-time nursing care or institutional type care for a member of the household who is senior citizen or handicapped person. Requirement for such care must be expected for six months or more. The deduction will be limited to expenditures actually paid for such services.

**D. Borrowers.** "Borrowers" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations and have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

**E. Caretaker.** The individual(s) employed by the borrower or the management agent as specified in the management plan to handle normal maintenance and upkeep of the project.

**F. Chore Service Worker.** An individual who provides intermittent assistance essential to the well being of a tenant whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the tenant's living unit.

**G. Congregate Housing.** Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities related facilities, and supporting service(s) required to achieve, maintain, or

return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing also includes:

1. Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single family dwelling is considered a unit.

2. A group living arrangement where one or more senior citizens or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single family dwellings or a multi-unit structure.

H. *Domestic Farm Laborers*. Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either: (1) Are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, and as further defined in § 1944.153(a) of Subpart D of Part 1944 of this chapter.

I. *Forms Manual Insert (FMI)*. A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

J. *Handicapped Person*. A person, or in the case of a household, either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but whose health condition is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. A handicapped person must meet the qualifications of either of the following paragraphs according to a doctor's certificate:

1. A person who has an impairment which: (a) Is expected to be of long-continued and indefinite duration, and (b) substantially impedes his or her ability to live independently.

2. A person who is developmentally disabled. A developmentally disabled person is handicapped with a severe, chronic disability which: (a) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age 22; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

K. *Household*. One or more persons who maintain or will maintain residency in one rental unit, but not including a resident assistant or chore service worker.

L. *LH* means Farm Labor Housing loans and/or grants.

M. *Low-Income Household*. A household having an adjusted annual income within the

maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter.

N. *Management Agent*. The firm or individual engaged by the borrower to manage the project in accordance with a written agreement.

O. *Management Agreement*. The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for management services.

P. *Management Fee*. The compensation for providing overall management services for a MFH project. The fee is compensation for the time, expertise and knowledge required to direct and oversee the present and future operation of the project. Project management fees may include the cost of day to day management activities of the project such as: (1) Developing and modifying operating budgets, (2) renting the units, (3) collecting the rent, (4) preparing reports to FmHA, (5) normal bookkeeping, (6) maintaining tenant records, (7) arranging for the proper maintenance of the project, and (8) making inspections, etc. A management fee does not include the compensation paid to a site manager.

Q. *Management Plan*. The primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

R. *Migrant*. A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

S. *Moderate-Income Household*. A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944.

T. *Project*. A project is the total number of rental housing units located on the same or contiguous site(s) and operated under the same management plan with one loan agreement/resolution. The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project according to § 1965.68 of Subpart B of Part 1965 of this chapter.

U. *Rental Agent*. The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower, or the management agent as specified in the management plan.

V. *Resident Assistant*. A person(s) residing in a congregate type housing unit who is essential to the well-being and care of the senior citizen(s) or handicapped person(s) residing in the unit and who is not related by blood, marriage or operation of the law to these tenants. The resident assistant is not considered to be part of the household and is not subject to the eligibility requirements of a tenant. The resident assistant receives compensation from sources other than FmHA and the tenant. A resident assistant is not a chore service worker.

W. *RCH* means Rural Cooperative Housing Loans.

X. *RHS* means Rural Housing Site Loans.

Y. *RRH* means Rural Rental Housing loans.

Z. *Senior Citizen*. A person 62 years of age or over who may be either the tenant or co-

tenant. A person(s) younger than 62 years of age may reside with a senior citizen provided the person is considered a member of the household of the senior citizen. The term "senior citizen" also includes the elderly as used in this Subpart.

AA. *Site Manager*. The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager.

BB. *Very Low-Income Household*. A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter.

### III. Borrower Responsibilities

A. *General*. All borrowers are responsible for:

1. Understanding the distinction between FmHA supervised credit and the credit provided by other Federal, State, or conventional sources.
2. Meeting the objectives for which the loan and/or grant was made and complying with the respective program requirements.
3. Understanding the unique characteristics and function of their particular type of borrower entity as provided by charter, articles of incorporation, by-laws, and/or statute.
4. Assuring that a site manager or contact person is in close proximity to their MFH project.
5. Complying with the provisions of their security instruments and any directive issued by FmHA.

B. *Borrowers Without a Loan Agreement*. Unless otherwise specified, these borrowers are exempt from the requirements of this Subpart, except for Exhibit C (Rent Changes), as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income eligibility by properly completing a Form FmHA 444-8 for each tenant as required by the FMI.

C. *Borrowers With a Loan and/or Grant Agreement*. These borrowers are responsible for meeting the requirements and conditions of their agreement/resolution and the requirements of this Subpart.

D. *Borrowers With Governing Bodies*. The elected or appointed officials comprising the governing body are responsible for:

1. Maintaining records of all current members and maintaining membership at the required level.
2. Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.

E. *Borrowers With a Membership*. Members of a membership type borrower are responsible for full support of the project and operation by:

1. Promptly paying any dues, fees, and other required charges.
2. Electing responsible officials.

3. Complying with organization rules and regulations.

4. Participating in annual and special meetings.

**F. Delegation of Responsibility and Authority.** The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements. FmHA will hold the borrower ultimately responsible for management of the project. FmHA may require a borrower to change the plan of project management and/or make appropriate redelegations of project management responsibility to achieve program objectives.

#### IV. Rent Subsidy Opportunities

The available subsidy programs should be considered at the time of developing a project proposal and during project operation as they may be available to meet the tenant's needs. These subsidy programs are as follows:

**A. FmHA Interest Credit—RRH and RCH Loans.** Regulations are contained in Exhibit B to Subpart E of Part 1944 of this chapter and include:

1. Plan I—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. Those broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:

a. Occupancy is limited to low-income nonsenior citizens, low- and moderate-income senior citizens, and low- and moderate-income handicapped persons.

b. Budgets and rental rates are based on a 3 percent loan amortization. The rent schedule consists only of "market" rental rates.

2. Plan II—This interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis.

a. Occupancy is limited to low- (including very low-) and moderate income persons except as noted in paragraph VI B 2 e of this Exhibit.

b. Budgets are prepared for two rental rates, basic and market. The minimum (basic) rental rate for tenants not receiving rental assistance is based on a 1 percent loan amortization. The maximum (market) rental rate is based on the loan amortized at the interest rate shown in the promissory note.

c. Tenants pay 25 percent of their adjusted income, less a utility allowance when utilities are paid by tenants, or the basic rental rate, whichever is the greater. In no case will the tenant pay more than the market rental rate.

d. Rural rental housing borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and rental assistance agreement according to Exhibit B of Subpart E of Part 1944 of this Chapter.

**B. Rental Assistance (RA) Program—FmHA.** This is a subsidy program available to RRH and LH borrowers to assist low-income (including very low-income) tenants in paying their rent. RA is not authorized for tenants whose adjusted income is above the low-income level. RA is not available to LH borrowers who are individual farmowners, partnerships, family corporations, or association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full Profit borrowers may utilize rental assistance by converting to a Limited Profit operation. The provisions of the RA program are covered in detail in Exhibit E of this Subpart.

**C. Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments Program.** This subsidy program is administered by HUD or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD (Exhibit H to Subpart E of Part 1944 of this Chapter) will also be subject to the requirements of the Housing Assistance Payments (HAP) Contract executed by the borrower. Projects accepting tenants utilizing Section 8 assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases tenants receiving Section 8 assistance must meet the eligibility requirements specified in paragraph VI B of this Exhibit. Requirements that conflict with FmHA requirements should be referred to the District Director for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.) Additional information on the HUD Section 8 program is contained in Exhibits C and H to Subpart F of Part 1944 of this Chapter.

#### V. Management Operations

**A. Management Plan.** A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed policies and procedures in managing the project. *Unless program regulations specifically permit an exception, a management plan is required for:* (1) All proposed multiple housing projects; (2) existing projects in which the loan, transfer, or reamortization, was approved after October 27, 1980; and (3) any other multiple housing projects where the State Director determines a management plan is needed because of loan delinquency or default, neglected maintenance, or known landlord-tenant problems. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated by the borrower at least biennially. Exhibit B-1 of this Subpart outlines the requirements of the plan. The following items as a minimum, should be addressed in the plan.

1. The relationship between owner and management agent (when applicable).

2. Personnel policy and staffing arrangements.

3. Publicizing and achieving early occupancy and affirmative marketing.

4. Tenant certification and verification of income.

5. Tenant admissions policies and leasing policies.

6. Rent collection.

7. Rent changes.

8. Maintenance.

9. Records maintenance and reports.

10. Energy conservation measures.

11. Management-tenant relations.

12. Termination of leases and evictions.

13. Management of Support Services to congregate and/or group home projects.

14. Management Background and/or Experience.

15. Management agreement (when applicable).

16. Management compensation.

**B. Management Agreement.** The management agreement is the primary document by which the management agent is guided, evaluated, and compensated. It bears a close relationship to the management plan. A management agreement is required except in cases where the borrower (owner) fills the role of manager. Requirements of a management agreement are listed in Exhibit B-2 of this Subpart. Exhibit B-3 of this Subpart is a suggested management agreement. The two types of agreements acceptable to FmHA, are described as follows:

1. The owner hires a professional management agent to oversee and operate the project. The management agent may provide a site manager for onsite management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required by the borrower and FmHA. Exhibit B-4 of this Subpart provides a guideline for preparing the statement.

2. The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing onsite management and/or services of a caretaker when justified by the size of the project. FmHA requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B-5 of this Subpart provides a guideline for preparing the statement.

**C. Responsibility.** The management plan and management agreement must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA for the project, regardless of the authority delegated by the owner to the management agent.

**D. Compensation.** 1. *Projects with management agent.* The amount of compensation is to be negotiated between the owner and the management agent. The amount of compensation must be reasonable, typical when compared with similar services available in the area, and earned. The amount of compensation or "fee" should generally be stated on a monthly per occupied unit or as a percentage of rents collected for each occupied unit. Rents collected could include any rental assistance and/or interest credit subsidy. The fee should vary from project depending upon size,

complexity, services to be provided, type of project, age of loan and other relevant factors, such as comparable fees for similar projects in the area in which the project is located. The State and District Offices shall assemble data on comparable management fees in the District and State to be used as a basis for determining the fairness of fees negotiated between borrowers and management agents.

a. The management agreement must specifically define any project services to be provided that are to be paid directly from the Owner's Operating and Maintenance Account by the management agent but not included in the agent's management fee. These costs may include the following budget line items:

(1) Cost of salary and wages of the project's site manager and/or caretaker. (These persons will be hired and/or dismissed by the management agent.) The management plan must specify the duties of the site manager.

(2) Legal fees.

(3) Auditing fees.

(4) Repair and maintenance costs.

(5) Fidelity bond premiums for site manager and other on-site staff.

b. The management agreement must also define costs that accrue to the management agent, but not directly to the project. The management fee will include costs such as:

(1) Monitoring project operations, training and supervision of on-site staff.

(2) Establishing a system to keep project books, reports, records, and accounts.

(3) Preparation and distribution of monthly reports.

(4) Preparation and distribution of annual reports of operations and maintenance.

(5) Preparation of requests for reserve withdrawal, rent adjustment, rehabilitation and energy conservation proposals, plans and specifications.

(6) Review of tenant certifications and submission of monthly RA requests. Assure protection of project receipts and make project invoice and payment disbursements.

(7) Management agent's office overhead including office space and utilities, clerical staff and training, agent's office bookkeeping, office supplies and equipment, transportation and telephone calls to projects, office data processing systems and postage.

(8) Supervision by management agent (time, knowledge, and expertise) of overall operations and capital improvements.

(9) Meeting with owners, investors, and/or lending agency.

(10) Development, preparation, and revision of management plans and/or agreements.

2. *Owner managed projects.* The owner will be authorized to manage the project only when FmHA determines in writing that the owner (either as an individual or as a part of an organization) has the necessary management capabilities. Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of

paragraph V D of this Exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

3. *Initial Rent-Up Fees.* Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed project is permitted when it is determined necessary and documented by the FmHA loan approval official and the loan applicant. Rent-up fees should be paid on a per-unit basis only after each unit has been occupied by the initial tenant. Payment of the rent-up fee and other project management start-up expenses should generally be made from the 2 percent initial operation and maintenance fund as follows:

a. In owner managed projects or when there is an identity of interest as defined in § 1924.4(h) of Subpart A of Part 1924 of this Chapter between the management agent and the borrower, such as the owner or the owner's principals or family members owning an interest in the management firm (or vice versa), initial rent-up fees may be allowed but only up to reasonable actual cash expenditures.

b. When there is not an identity of interest, a person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

E. *Site Manager and/or Caretaker Services.* The onsite services of a site manager and/or caretaker may be used when justified by the size, composition and location of a project, whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties of the site manager and to provide a basis for evaluating the site manager. FmHA may require an onsite resident manager and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or government's interests. It is desirable but not mandatory that the site manager and/or caretaker meet the tenant eligibility requirements for occupancy in the project.

1. *Calculation of rental rate for site manager or caretaker.* The rental rate for the unit occupied by the site manager or caretaker will always be reflected in the project budget. When the unit for the site manager or caretaker was authorized by the State Director during project development according to the requirements of § 1944.212(g) of Subpart E of Part 1944, the unit may or may not be designated as part of the non-revenue producing facilities. This determination will be reflected in the project's management plan. The rental rate will then be determined as follows:

a. If the unit is planned and designated as a revenue producing unit, the compensation paid to the site manager and/or caretaker will be reflected in the operation and maintenance expenses of the project and will be included in the annual income of the site manager and/or caretaker. When a living unit is provided at no cost or at a reduced cost to

the site manager and/or caretaker, the rental value of that rental unit for all projects, except those operating under interest credit Plan I, will be calculated at the FmHA approved basic rental rate for the size of unit occupied. For interest credit Plan I projects, the value of the rental unit will be calculated at the FmHA approved "market" rental rate for the size of unit occupied, plus 25 percent.

b. When the site manager and/or caretaker resides in a living unit and pays rent, the rental rate will be calculated as follows:

(1) If the site manager and/or caretaker meets the tenant eligibility requirements for the type of project being occupied, the appropriate rental rate will be the rate established for an eligible tenant in accordance with paragraph VI B of this Exhibit.

(2) If the site manager and/or caretaker does not meet the tenant eligibility requirements for the type of project being occupied because the site manager's and/or caretaker's adjusted annual income exceeds the maximum income limits, the site manager's and/or caretaker's appropriate rental rate for all projects except those operating under interest credit Plan I will be the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the appropriate rental rate will be the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

c. If the unit was planned and designed as a non-revenue producing unit, it will be treated as any other essential facility for which loan funds were authorized so long as it is used according to the approved management plan. The operating costs, reserve payment and debt service for the manager or caretaker's unit will be budgeted as part of the overall cost of operation.

2. *Owner Occupancy.* Homeownership is not an objective of the FmHA Multiple Housing loan programs. With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V E 1 of this Exhibit.

F. *Projects Without a Site Manager and/or Caretaker.* Projects without a site manager and/or caretaker must have, at a minimum, a tenant who is agreeable to serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

#### VI. Rental Procedure

Preparations for initial rent-up, occupancy and maintenance will begin 90-120 days ahead of the projected completion date of the project. This procedure will include a pre-ent-up conference between the FmHA District Director, the borrower, and the person(s) responsible for project management.

Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria.

**A. Affirmative Fair Housing Marketing Plan.** All borrowers with five or more rental units must meet the requirements of § 901.203(c) of Subpart E of Part 901 of this Chapter by preparing and submitting an Affirmative Fair Housing Marketing Plan on HUD Form 935.2. Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be subject to review by FmHA during compliance reviews for Title VI of the Civil Rights Act of 1964. *The approved plan will be made available by the borrower for public inspection upon request at the borrower's place of business, rental office, or at any other location where tenant applications are received for the project.* In developing the plan, the following items should be considered:

1. **Direction of Marketing Activity.** The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, marital status, national origin, or physical or mental handicap (must possess capacity to enter into legal contract). The plan must show that efforts will be made to reach very low-income, low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts.

2. **Marketing Program.** The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc. are best suited to reach those, very low-income, low-income and minority persons who otherwise might not apply for occupancy in the project. The aging network such as the State and Area Agencies on Aging should be contacted to assist in reaching senior citizens.

a. **Signs, Brochures, Etc.** Any radio, TV or newspaper advertisement, signs, pamphlets, or brochures used must contain appropriate equal opportunity statements. A copy of this proposed material should be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled, "And Justice For All" and/or the "Fair Housing" poster must be displayed in the rental office. If the rental office is not on site, the posters must be displayed in a common conspicuous place on the site.

b. **Community Contact.** Special interest groups such as social and religious organizations should be contacted in small communities without formal communication media aimed at minorities. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups.

c. **Rental Staff.** All staff persons responsible for renting the units will be instructed in the procedures and requirements of the Affirmative Fair Housing Marketing Plan and in those actions necessary to carry out the plan promoting equal housing opportunity.

d. **Marketing Records.** The borrower will be required to provide data according to Subpart E of Part 901 of this Chapter,

pertaining to compliance reviews, to indicate to what extent minority groups are being benefited.

**B. Tenant Eligibility.** The rental agent of the project must be knowledgeable about the FmHA tenant eligibility requirements as they relate to a particular project. FmHA loans require occupancy of the units by eligible tenants. Except for migrant farm workers tenants in LH projects, tenant/applicants must certify on their application that the housing they will occupy is/will be their permanent residence. They will further certify that they do/will not maintain a separate subsidized rental unit in a different location.

1. **Eligible Tenants.** The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized:

a. In RRH projects operating on a Plan I basis, tenants will:

- (1) Be a very low-, low-, or moderate-income senior citizen or handicapped person.
- (2) Be a very low- or low-income non-senior citizen or non-handicapped person.

b. In RRH projects operating on a non-profit or limited profit Plan II basis, tenants will be very low-, low-, or moderate-income person regardless of age or handicapped condition.

c. In RRH projects operating on a full-profit basis, tenants will:

- (1) Be a senior citizen or handicapped person of any income.
- (2) Be a very low-, low-, or moderate-income non-senior citizen or non-handicapped person.

d. In labor housing (LH) projects designed and operated either for year-round or seasonal occupancy, tenants will be domestic farm laborers.

e. Occupancy in RRH projects or those portions of RRH projects designated by FmHA as:

- (1) Family housing may be by any combination of handicapped, senior citizen, and/or non-senior citizen tenants.
- (2) Senior citizen housing must be by senior citizen and/or handicapped tenants but not restricted exclusively for use by handicapped tenants.

f. All tenants must generally be capable of caring for themselves and must meet the following criteria:

- (1) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations.
- (2) Possess the legal capacity to enter into a lease agreement, except in the case of tenants residing in a congregate housing project who have a legal guardian.

g. In congregate housing projects, eligible tenants will include senior citizen or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. They must be able to provide for their own sustenance in projects that provide less than a full meal program. The borrower will regularly assess the level of function and degree of competence of the tenant and/or co-tenant's ability in performing daily living activities. This assessment should enable the borrower to determine whether or not the tenant can maintain relatively independent occupancy given the supportive services in

the project (See Exhibit B-10 to this Subpart). The tenants must also meet the criteria found in paragraph VI B 1 e above.

h. For LH projects, and units in RRH projects specifically designed and designated for the elderly and/or handicapped as defined by FmHA, occupancy is limited solely to those meeting the eligibility requirements for the specific type of project (i.e., domestic farm laborers, senior citizens, and/or handicapped). Eligible occupants in these projects may also include other persons who are usually household members of the domestic farm laborer, senior citizen or handicapped person. Resident assistants or chore workers will not be considered to be members of the tenant household.

i. In a group home situation, a Resident Assistant may occupy separate living space of appropriate size without regard to income.

j. A student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a RRH project may be considered an eligible tenant when all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

k. A former domestic farm laborer may continue occupancy of a LH project after retirement or after becoming disabled if the farm laborer was an eligible tenant living in the project prior to the event.

1. A tenant who does not personally reside in a unit for a period exceeding 60 days, for reasons other than health or emergency, shall be required to pay market rent in Plan II projects or 125 percent of rent in Plan I projects for the period of absence exceeding 60 days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start eviction proceedings.

(2) In those cases existing before the issuance of this Subpart on December 19, 1983, where the tenant's lease does not contain the lease clause in paragraph VIII B 3 c of this Exhibit, the tenant will be advised that the lease will not be renewed.

2. **Occupancy Standards.** a. The following occupancy standards must be complied with to assure efficient use of the rental units developed with FmHA financing and apply to all RRH projects and to LH projects designed and operated for year-round occupancy:

Number of bedrooms	Occupants	
	Minimum	Maximum
0	1	2
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10

b. The above occupancy standards may serve as general guidelines for migrant farm labor housing. Projects developed in compliance with local and/or state design requirements will determine the appropriate occupancy standards for migrant LH.

c. When a unit cannot be rented because a household of the size needed to rent the unit is not available, the State Director may authorize an exception to this requirement according to Paragraph VI B 6 of this Exhibit.

d. Borrowers with RRH projects specifically built for the elderly prior to October 27, 1980, with only a few or no one-bedroom units, may permit senior citizen or handicapped tenant-applicant(s) to occupy a two-bedroom unit as eligible tenants, if after a diligent marketing effort, income and occupancy eligible persons are unavailable. This eligibility determination made by the borrower will be included in the tenant's lease and will entitle such tenant to all benefits without need for further FmHA approval.

e. A tenant who was determined eligible and allowed to occupy under regulations in effect prior to October 27, 1980, who does not meet eligibility requirements regarding income or number of occupants in the size unit as prescribed in these regulations may be permitted continued occupancy except in occupancy situations noted in paragraphs XI B and C of Exhibit E to this Subpart when rental assistance is involved.

f. In the case of unusual household situations such as a single parent with older children of opposite gender the District Director may make an exception to the above requirements on a case by case basis and determine the household eligible.

3. *Other Items the Rental Agent Should Consider in Determining Eligibility of Applicants for Admission to the Project.* a. Credit reports to reflect the applicant's past record of meeting obligations.

b. Prior landlord references to determine if the tenant was responsive in meeting rent payment obligations, care, and maintenance of the unit.

c. Verification of income and/or employment according to Paragraph VII of this Exhibit. This item is a requirement in all cases.

d. The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where rental assistance is not available, any very-low or low-income household that would be required but unable to pay the approved rent including utilities may be eligible for some form of rent subsidy described in Paragraph IV of this Subpart if it is available in the area.

4. *Surviving Members of Eligible Tenant Household.* a. Surviving members of a senior

citizen and/or handicapped tenant's household may continue occupancy of the project even though they may not meet the definition of a senior citizen or handicapped person stated in paragraph II of this Exhibit, provided:

(1) They are eligible occupants in all other respects.

(2) They occupied the unit at the time that the original tenant ceased to occupy the unit, and

(3) The District Director determines on a yearly review basis that their continued occupancy will not be detrimental to the integrity of the project in the community.

b. Surviving members of a domestic farm labor household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II of this Exhibit. When they do not meet the definition, the provision for formerly eligible tenants in paragraph VI B 5 of this Exhibit will apply.

5. *Formerly Eligible Tenants.* Unless authorized by paragraph VI B 2 e, formerly eligible tenants will be required to vacate their unit within 30 days (7 days for migrant farm labor tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer, when an eligible applicant is on the waiting list and is available for occupancy. If vacating the unit in the time period prescribed creates an undue hardship on the family, the District Director may permit continued occupancy for a reasonable period of time. The following "formerly eligible" situations apply to this paragraph:

a. Tenants who no longer meet FmHA income eligibility requirements. (This includes tenants receiving Rental Assistance or Section 8 assistance).

b. Tenants in LH projects who no longer meet the farm labor occupation requirement, except retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or becoming disabled may continue to occupy a project that they initially occupied as an eligible domestic farm laborer.

c. Tenants who no longer meet the occupancy standard requirements. These tenants must either move to a unit of appropriate size, or when none is available, vacate the project.

6. *State Director Authority to Permit an RRH or LH Borrower to Rent to Ineligible Tenants.* a. The State Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent units to ineligible persons for temporary periods to protect the financial interests of the Government. This authority will be for periods not to exceed one year. When the District Director has been redelegated the authority, according to § 1930.143 of this Subpart, a copy of the authorization to rent to ineligible persons will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA Official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to rent any vacant unit(s) to an eligible tenant household

has been made. Such evidence may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, and real estate agencies.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the District Office, along with Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The requested followup should be posted in the District Office on Form FmHA 1905-6, "Management System Card—Multifamily Housing."

(4) To protect the security interest of the Government the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when an eligible prospective tenant is available. The ineligible tenant will then be given 30 days to vacate.

(5) In cases where the tenant household does not consist of the appropriate number of occupants for the unit size, the lease will require the tenant, after receiving reasonable notice, to vacate and move into the next available unit of appropriate size in the project. The exception would be when permanent household composition has changed or will soon change to remove the ineligible status.

(6) Tenants who are ineligible, because their household income exceeds the maximum for the project, will be charged the FmHA approved market rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved market rental rate.

(7) Tenants who are ineligible for reasons other than income may benefit from rental assistance and/or interest credit if they are otherwise eligible in the same manner as an eligible tenant.

b. Examples of situations where the State Director may consider authorizing a borrower to rent units to ineligible persons when units cannot be rented to eligible persons are:

(1) Permitting occupancy by other eligible families in a project designed for, designated as, and limited to occupancy by eligible senior citizens and/or handicapped persons.

(2) A household that does not consist of the appropriate number of occupants for the unit size.

(3) A household that does not meet eligibility requirements regarding income, i.e., an above moderate-income household.

c. When the State Director or District Director determines that a borrower may rent to an ineligible tenant, the written authorization must contain the appropriate clauses which must be inserted into the ineligible tenants lease. At a minimum it should include:

(1) The reason for ineligibility; either for household size or income.

(2) The term of ineligible occupancy.

(3) Tenant's agreement to move to the next unit of appropriate size, when applicable, and the size of the unit.

(4) Any conditions under which the tenant will be required to vacate the unit.

(5) The length of notice the tenant will be given to vacate.

**C. Maintenance of Waiting List.** 1. When a prospective tenant inquires concerning the availability of a rental unit and states an intent to file an application for occupancy, the borrower or rental agent will place the prospect's name chronologically on a written waiting list. The waiting list should indicate the prospective tenant's name, address, phone number, household size and estimated income. The actual determination of eligibility will be conducted according to the application process described in paragraph VI D.

2. A separate waiting list or a master waiting list with separate categories or priorities indicated on it will be maintained for rural rental and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fits more than one category or priority.

a. Separate lists may be maintained for:

(1) Various size units;

(2) Units for senior citizens, families or any other combination as planned for the project according to the borrower's loan agreement or resolution.

(3) Persons who require the special design features of the handicapped units in the project such as persons confined to a wheelchair. Persons on this list have priority for these units.

(4) Displacees, such as victims of natural disasters and eminent domain, to whom priority consideration may be given.

(5) In congregate housing projects, priority will be given to the frail or impaired to sustain an occupancy level of 25% to 35% of the project units. After this occupancy level is obtained, priority will be given to non-frail or non-impaired applicants.

b. Separate waiting lists may not be maintained for persons qualified for rental assistance.

3. For seasonal farm labor housing, a waiting list should be chronologically compiled as in paragraph C 1 and 2 above. This list(s) should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season.

a. Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b. A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

4. A Letter of Priority Entitlement (LOPE) issued by FmHA according to § 1965.90 of Subpart B of Part 1965 of this Chapter entitles prospective tenants to move to the top of any waiting list for that appropriate unit size for which the applicant qualifies.

5. Each list by category will be available for inspection by prospective tenants on the

waiting list. When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application.

6. No applicant may be given preference for occupancy because he or she qualifies for rental assistance and the project has rental assistance available, except as required in paragraph XI A and XII B of Exhibit E to this Subpart.

7. Borrowers may establish a procedure for purging the waiting list periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under Subpart L of Part 1944 of this Chapter.

**D. Notification of Eligibility or Rejection.** 1. **Application Status for Determining Eligibility.** All persons desiring to apply for occupancy will be provided the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants with a written list of all information required for a complete application.

a. After the potential tenant has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b. When an operational project has few or no vacancies, and there are sufficient active applications from households determined eligible to fill expected vacancies, the borrower may postpone verification of eligibility for new applicants.

c. While application fees are discouraged, any fee charged to a prospective tenant must be reasonable and limited to actual costs for obtaining necessary information.

2. **Application Requirements.** At a minimum to be considered complete, applications must include the following information for each prospective tenant household:

a. Name and present address.

b. Household income information, verified and certified according to Paragraph VII of this Exhibit.

c. Age and number of household members.

d. Handicap status, if applicable.

e. Race or Ethnic group and sex designation.

(1) The borrower or management agent will request that each prospective tenant provide this information on a voluntary basis for statistical purposes only. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

"The following information is requested by the apartment owner in order to assure the Federal Government, acting through it's Farmers Home Administration, that Federal

Laws prohibiting discrimination against tenant applicants on the basis of race, national origin, and sex are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

3. **Notification to Applicant.** The applicant who has submitted a completed application will be notified in writing that he or she has been selected, rejected, or placed on a waiting list.

4. **Applicants Determined Ineligible.** Applicants determined ineligible will be notified in writing of the specific reasons for rejection.

a. The rejection letter must also outline the applicant's rights under the FmHA Tenant Grievance and Appeals Procedures in Subpart L of Part 1944 of this Chapter.

b. When the rejection is based on information from a Credit Bureau, the source of the Credit Bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c. Applicants may be rejected due to:

- (1) A history of unjustified and chronic nonpayment of rent and financial obligations.
- (2) A history of violence and harassment of neighbors.
- (3) A history of disturbing the quiet enjoyment of neighbors.
- (4) A history of violations of the terms of previous rental agreements such as the destruction of a unit or failure to maintain a unit in a sanitary condition.

d. Rejection of applicants on an arbitrary basis is prohibited. Examples of such arbitrary rejections are:

- (1) Race, color, religion, sex, age, marital status, national origin, physical or mental handicap (except in those projects or portions of projects designated for senior citizens and/or handicapped, where occupancy by non-senior citizens or non-handicapped can be prohibited).
- (2) Receiving income from public assistance.
- (3) Families with children of undetermined parentage.
- (4) Participation in tenant organizations.

e. In the case of Labor Housing projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

f. Rejected applications must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA in accordance with Subpart E of Part 1901 of this Chapter.

**E. Tenant Selection.** 1. Applicants determined eligible will be selected on a first-come first-served basis according to the chronological order of the waiting list.

2. Selections will be made from the waiting list maintained for the particular unit size

and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented. The applicant's name will then be removed from the waiting list unless the rental agent determines that hardship exists for reasons such as health problems or high cost of rent without rental assistance in which case the applicant's name will remain on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply. Applicants who give written reasons why they cannot accept the living unit at the time it is offered forfeit their right to appeal the borrower's decision to remove their name from the waiting list.

3. When there are no applicant names on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application of the master waiting list. The selected tenant will be subject to the provisions for ineligible tenants found in paragraph VI B 6 of this Exhibit.

**F. Tenant Record File.** A separate file must be maintained for each tenant. This file will include items such as application, income verification forms, lease agreement and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant, and any other necessary information. The income verification, tenant eligibility certification and recertification information must be retained for at least 3 years while the tenant is living in the unit and for 3 years after the tenant has moved out.

#### VII. Verification and Certification of Tenant Income and/or Employment

The incomes reported by the tenants (and employment in the case of LH tenants) selected for occupancy must be verified by the borrower or rental agent before the tenant is determined eligible. If in unusual circumstances a tenant is allowed to move in before income is verified, the lease should contain a clause "subject to verification of income."

**A. Verification of Income from Employment.** Verification of income from employment, authorized by the tenant/applicant, must be obtained from the employer in writing and filed in the "Tenant Record File." A suggested Employment Inquiry form is attached as Exhibit B-9.

**B. Verification of Income from Other Sources.** Any income from other than employment (e.g. social security, Veterans Administration, public assistance) must be verified in writing by the income source. Verification of income must be documented and filed in the "Tenant Record File." When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the tenant possesses which indicates the tenant's gross income. Temporary verification may also be obtained through contacts with individuals who may be knowledgeable of the tenant's income. When no other verifiable source is available, a notarized affidavit from the tenant attesting to his/her gross annual income may be accepted.

**C. Verification of Income and/or Employment for LH Tenants.** 1. Verification of income is required for those domestic farm laborers, including migrants, who will receive the benefits of rental assistance. When the tenants do not have easily verifiable income, the borrower may project monthly income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

2. Verification that all LH tenants have sufficient income from farm labor employment, that meets the definition of domestic farm labor, is required for all domestic farm laborers, including migrants. Employment verification is in addition to income verification for those tenants described in paragraph VII C 1 above. Verification must be documented and filed in the "Tenant Record File."

**D. Random Sample of Tenant Income and/or Employment Verifications.** District Directors are required to make a random sample of tenant income verifications; in the case of LH tenants, employment verifications. The random sample can be derived from information on the tenant certification forms that will be submitted to the District Office in accordance with paragraph VI F of this Exhibit. The random sample should be representative of very-low, low and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of 25 percent of their income for the costs of rent and utilities, and those paying the market rent. The District Director will conduct the random sample in the borrower's office during supervisory visits and at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications. If the random sample discloses discrepancies, the District Director will be required to investigate further or report to the State Director to obtain the assistance of the Office of Audit or the Office of Investigations.

**E. Use of HUD Certification Form for Section 8 Recipients.** HUD Form 50059, "Certification and Recertification of Tenant Eligibility," or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA 444-8 for the tenants receiving Section 8 assistance. However, the tenant's income cannot exceed FmHA limits for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA 444-8.

**F. Certification of Tenant Income.** 1. The borrower must initially submit Form FmHA 444-8 or the acceptable HUD Form for each tenant to the District Office. The initial signed tenant certification will be submitted to the FmHA District Office with the first monthly payment following the date that the tenant occupies the unit. In those cases where income verification must be delayed but occupancy has been permitted, a copy of the original tenant certification will be submitted with the next monthly payment. The original tenant certification with the borrower or management agent's certification of income verification will be submitted to the District Office within 60 days. The borrower or management agent will maintain an adequate recordkeeping system of tenant certifications to assure the completion of the income verification responsibility.

2. The borrower must obtain a recertification of each tenant's income no later than during the twelfth month after the previous certification. Tenants receiving Section 8 Assistance will be recertified according to HUD regulations. All recertifications will be promptly submitted to the FmHA District Office according to the time schedule in paragraph VII F of this Subpart.

#### VIII. Lease Agreements

A Lease Agreement is a written contract between the tenant and the landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property.

**A. Form of Lease.** Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA requirements. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

1. All leases will be in writing and must cover a period of at least 30 days but not more than 1 year, except that leases for labor housing may be weekly where occupancy is typically seasonal. In areas where there is a concentration of non-English speaking individuals, leases and the established rules and regulations for the project written in both plain English and the non-English concentration language must be available to the tenants. The tenant should have the opportunity to examine and execute either form of lease.

2. Annual leases should contain an appropriate escalation clause permitting changes in basic and/or market rents prior to the expiration of the lease. Rent changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA according to Exhibit C of this Subpart.

3. The form of lease to be used by the borrower and any modifications of the lease form must be approved by the FmHA District Director. When submitting a lease form for FmHA approval, it must be accompanied by a letter from the borrower's attorney regarding its legal sufficiency and compliance with State law and FmHA regulations.

4. A copy of a properly completed and approved Exhibit A-5, "Housing Allowances for Utilities and Other Public Services," of Subpart E of Part 1944 (when the tenant will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

**B. Required Lease Clauses.** The following clauses will be required in leases used in connection with FmHA financed housing projects.

1. All lease agreements must include a statement indicating that the project is financed by the Farmers Home Administration and is subject to the Title VI nondiscrimination provisions, and that all

complaints are to be directed to the Secretary of Agriculture or to the Office of Equal Opportunity, USDA.

2. All lease agreements must also specify that should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, he/she will be required to vacate the unit unless an exception is authorized by the State Director.

3. All leases used in FmHA financed RRH projects must include the following clauses except for senior citizens and handicapped persons in a full profit plan project:

a. "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration for the (State/Territory)."

b. "I agree to notify the lessor of any permanent change in the adjusted monthly income or change in the number of family members living in the household."

c. "I understand that if I do not personally reside in the unit for a period exceeding 60 days, for reasons other than health or emergency, my rent shall be raised to \$\_\_\_\_\_/per month (market rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 days. I also understand that should any entitlements (RA or interest credit) be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord you may take the appropriate steps to terminate my tenancy at the end of the lease period."

d. "I understand that should I receive rental benefits to which I am not entitled due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to pay any amount of benefits to which I was not entitled."

e. "I agree to promptly provide any certifications and income verifications required by the owner to permit eligibility determination and, when applicable, the revised rental rate to be charged."

4. Leases used by borrowers participating in the FmHA rental assistance program will contain the following clauses. (These clauses can be made an addendum to the lease and they shall be signed by the lessor and lessee.):

"I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be \$\_\_\_\_ (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable T.V.), a utility allowance of \$\_\_\_\_ will be deducted from my monthly payment for rent and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

I also understand and agree that monthly payment for rent under this lease may be raised or lowered, based on changes in household income, changes in the number and age of members living in my household, and on the escalation clause in the lease. Should I no longer receive rental assistance

as a result of these changes, or the rental assistance agreement executed by the owner and FmHA expires, I understand and agree that my monthly payment for rent may be adjusted to no less than \$ (Basic Rental) \_\_\_\_\_ nor more than (Market Rental) \_\_\_\_\_ during the remaining term of this lease, except that based on the escalation clause in this lease these rental payments may be changed by a Farmers Home Administration approved rent change."

Note.—Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than \$ (Basic Rental) \_\_\_\_\_ nor more than" from the last sentence of the above statement.

I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the owner and FmHA remains in effect. However, should this assistance be terminated I may arrange to terminate this lease, giving proper notice as set forth elsewhere in this lease.

5. For leases with borrowers operating under Plan II Interest Credit only:

I understand and agree that my monthly rental payment under this lease will be \$\_\_\_\_. This amount represents:  
(Check appropriate rent level and utility plan)

Rent level	Utility plan
<input type="checkbox"/> 1. Basic Rent	<input type="checkbox"/> A. utilities included.
<input type="checkbox"/> 2. 25% of adjusted monthly income.	<input type="checkbox"/> B. utilities not included.
<input type="checkbox"/> 3. Market rent	

If I pay any or all utilities directly (not including telephone or cable T.V.), a utility allowance of \$\_\_\_\_ will be deducted from my monthly payment for rental and utilities except that I will pay not less than the basic rent nor more than the market rent stated below. I understand that should I receive rental subsidy benefits (known as interest credit) to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefit to which I was not entitled. I also understand and agree that my monthly rental payment under this lease may be raised or lowered based on changes in my income, changes in the number and age of family members living in my household, and on the escalation clause in this lease. The rental payment will not, however, be less than \$ (Basic rental) \_\_\_\_\_ nor more than \$ (Market Rental) \_\_\_\_\_ during the term of this lease, except that based on the escalation clause in this lease, these rental payments may be changed by a Farmers Home Administration approved rent change.

6. Leases used by borrowers with farm labor housing loans and/or grants will use the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their families. I do hereby certify that a substantial portion of my family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and

either: (1) Are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage, provided the place of employment, such as a packing shed, is on or near the farm where the commodity is produced. It also includes labor for the production of aquatic organisms under a controlled or selected environment."

b. "I agree that if my household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will promptly vacate my dwelling after proper notification by the owner."

7. The lease agreement in congregate housing cases must include the following statement: "I understand that my ability to live independently in the project with the support services available will be evaluated on a periodic basis. I may be requested to vacate if a determination is made that I am no longer able to live in the project without additional assistance." This involves cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

C. Other Lease Provisions. All leases must contain provisions covering:

1. Names of the parties to the lease and all individuals to reside in the unit and the identification of the premises leased.

2. The amount and due date of rental payments.

3. Any penalty for late payment of rent according to paragraph IX B of this Exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant by the management and the tenants responsibility to pay utility charges promptly when due.

5. The process by which rents and eligibility for occupancy shall be determined and redetermined including:

a. The frequency of such rental and eligibility determinations.

b. The information which the tenant shall supply to permit such determinations: usually, income verification; names and ages of household members; and, in congregate facilities, information that permit management to determine the tenant's or co-tenant's level of function and degree of competence in performing daily living activities.

c. The standards by which rents, eligibility, and appropriate dwelling unit size shall be determined.

d. Tenant's agreement to move to a unit of appropriate size if the family size changes.

e. The circumstances under which a tenant may request a redetermination of rent.

f. The effect of misrepresentation by the tenant of the facts upon which rent or eligibility determinations are based.

g. The time at which rent changes or notice of ineligibility shall become effective.

6. The limitation upon the tenant of the right to the use and occupancy of the dwellings.

7. The responsibilities of the tenant in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8. Agreement of management to accept rental payment without regard to any other charges owed by tenant to management and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s).

9. The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management to provide the tenant with a written statement of the condition of the dwelling unit (when the tenant initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management may enter the premises during the tenant's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12. Responsibility of tenant to advise management of any planned absence for an extended period, usually 2 weeks or more.

13. Agreement that tenant may not let or sublet all or any part of the premises.

14. Understanding that should the project be sold to a buyer approved by FmHA, the lease will be transferred to the new owner.

15. The formalities that shall be observed by management and the tenant in giving notice one to the other as may be called for under the terms of the lease.

16. The circumstances under which management may terminate the lease, all limited to good cause, and the length of notice required for the tenant to exercise the right to terminate.

17. The procedure for handling tenant's abandoned property as provided by State law.

18. Disposition of lease if building becomes untenable because of fire or other disaster. Right of owner to repair or rehabilitate the building within a certain period or terminate the lease.

19. The agreement that any tenant grievance or appeal from management's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures, which are posted in the rental office.

20. The usual signature clause attesting that the lease has been executed by the parties.

**D. Prohibited Lease Clauses.** Lease clauses in the classifications listed below shall not be included in any lease.

1. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

2. *Distraint for Rental or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred.

6. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. *Waiver of Right To Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. *Tenant Chargeable With Costs or Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of this clause does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

**E. Modification of Lease—Notification to Tenants.** The landlord may modify the terms and conditions of the lease, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant, together with the tender of a revised lease or an addendum revising the existing lease. This notice and tender shall be delivered to the tenant either by first-class mail, properly stamped and addressed or hand delivered to the premises to an adult member of the household.

The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant has the right to terminate the tenancy without executing the revised lease. The notice must advise the tenants that they may appeal modifications to the lease in accordance with the FmHA tenant grievance and appeals procedure (Subpart L of Part 1944 of this Chapter) if the modification will result in a denial, substantial reduction, or termination of benefits being received.

The same notification will be applicable to any changes in the rules and regulations for the project.

**F. Occupancy Rules.** Occupancy rules establish the basis for the management-tenant relationship. Occupancy rules and regulations must be provided and explained by the project management to enable the tenant to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA State Director or designee, generally together with

the project management plan, management agreement, and lease form.

1. All rules for occupancy and rent structures will be in writing, posted conspicuously in the borrower's and/or manager's offices, and provided to each tenant with the lease agreement.

2. Proposed changes of any rules for occupancy must be made available to each tenant at least 30 days in advance of implementation, and tenants must be advised that they may appeal changes in accordance with the FmHA tenant grievance and appeals procedure (Subpart L of Part 1944 of this Chapter.)

3. No rule may infringe on the rights of the tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members. The project management person or organization should be available and willing to work with a tenant organization.

4. Rules may be promulgated that prohibit activities which are detrimental to management and tenants. Such activities include threats to the health or safety of other tenants or the employees of the borrower, interference with the quiet enjoyment of the premises by other tenants, or damage to the physical structure of the project.

5. The borrower may choose to provide rules that either permit or exclude pets except that no rule may be promulgated that would prohibit the tenancy of a tenant household member who requires the services of a trained and certified seeing eye or hearing ear animal to achieve the normal function of that household member.

6. Initial rules will be attached to the lease agreement. Approval by FmHA for changes and additions may be requested annually with submission of annual reports or more frequently only in the case of an emergency situation.

7. The following items illustrate areas that should be addressed in rules developed by management and provided to all tenants prior to move-in:

a. Explanation of rights and responsibilities under the lease. Where a non-English language is common to a project area, a lease written in that language should also be provided.

b. Rent payment policies and procedures should be fully explained.

c. Policy on periodic inspection of units.

d. Responding to tenant complaints.

e. Maintenance request procedure.

f. Project services and facilities available to tenants.

g. Office location, hours, and emergency telephone numbers.

h. Map showing location of community facilities including schools, health care, libraries, parks, etc.

i. Restrictions on storage and prohibition against abandoning vehicles in the project area.

j. A project newsletter, if desired.

k. Community and public transportation schedules.

**G. Security Deposits.** 1. Security deposits are encouraged and they should be used when it is reasonable and customary for the

area. When used, they will not be in an amount that exceeds the tenant's rent for one month or the market rent for the project, whichever is greater except where pets are permitted, or where a seeing eye and/or hearing ear animal is necessary for the normal function of a tenant household member. The amount of security deposit for animal maintenance shall be reasonable and not designed to prohibit or discourage tenancy. The amount of security deposits should be reflected in the borrower's management plan and not be changed without the written consent of the FmHA District Director.

2. Security deposits for persons eligible for Rental Assistance or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants cannot pay the full amount initially, they may be given terms that should ordinarily:

a. For RRH projects, not exceed a down payment of 25 percent of adjusted monthly income plus \$15 per month or that amount needed monthly to complete the security deposit within twelve months, whichever is greater.

b. For low-income farmworkers in a LH project, not exceed a \$25 down payment and \$15 per month until an equivalent of one month's project rent is reached. In the case of migrants who will occupy the units for a short period of time, exception to this policy by FmHA may be made upon written request from the borrower when it is shown that such deposits need to be raised to protect the security interest of the government and it will not create a hardship on the tenants.

3. Security deposits shall be handled in accordance with any State or local laws governing tenant security deposits. Tenant security deposits shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants.

4. Borrowers may assess fair and reasonable charges to the security deposit for damage and loss caused or allowed by the tenant. An itemized accounting for such charges must be presented to the tenant after the move-out inspection provided for in Paragraph XI E 2 of this Subpart, unless the tenant has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

H. *Special Lease Supplement.* Borrowers are encouraged to supplement lease agreements, particularly of senior citizen and handicapped tenants, to:

1. Permit the borrower, with competent medical or clerical advice, to contact a predetermined sponsor(s) or guardian(s) to effect the transfer of the tenant to other appropriate housing when the tenant is: (a) No longer able to functionally make self-determinations or (b) to adequately provide self-care within the facilities and services provided by the project. A sponsor or guardian would be a person(s) designated by

the tenant, generally a family member, friend, doctor, or member of the clergy.

2. Provide instruction to the borrower of a person(s) to contact in the event of death of the tenant.

When a lease has been supplemented, the borrower should also obtain an agreement from the designated sponsor(s) or guardian(s) to assume responsibility for the tenant in the event of need as identified in 1 and 2 above.

#### IX. Rent Collection

A pre-established day of the month should be the designated rental collection day. The time and place of onsite collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours' depository if needed.

A. *Rental Receipts.* A form of serially-numbered rental receipts should be selected for use and the collection agent held accountable for every receipt. Optional collection services may be considered when they are available.

B. *Delinquent Rents.* A system to identify and detect unpaid rents should be instituted within the project. A penalty of up to \$10.00 for late payment of rent after a 10-day grace period, or the grace period prescribed by State law, may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, maintaining a firm and fair policy on rent collection encourages tenants to meet their rental obligations.

C. *Recapture of Improperly Advanced Rental Assistance and Interest Credit.* 1. In cases where a tenant has received rental assistance and/or interest credit benefits to which he/she may not be entitled, because of the tenant's failure to properly report income or changes in the size of the household, the borrower will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Office of the agreement made by the tenant for repayment. In the event that collection from the tenant is not achieved by active collection effort including legal remedy, the borrower will report the facts to the District Director. The District Director will report the facts to the State Director who will obtain the advice of OGC on further actions.

2. If it appears that the tenant has willingly and knowingly misrepresented his/her income, the borrower will demand restitution of the improper rental subsidy. The case will also be reported to the FmHA District Director who will monitor the borrower's actions. If the tenant fails to make restitution, the District Director will report the facts to the State Director. The State Director will refer the matter to the OGC for further advice.

3. Recapture of rental assistance assigned to the wrong tenant household will be handled according to paragraph XXI of Exhibit E of this Subpart.

4. If improper interest credit or rental assistance is paid due to the negligence or ineffectiveness of the borrower or its designee, the borrower is required to make restitution to FmHA without making claim against the tenant. This restitution will not be charged to the project as any part of the budget or operating expense. In the case of a non-profit or public body borrower, when funds from non-project sources are not available, the State Director exclusively, may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution. Restitution may be made by remittance of the excessive payment amount to FmHA.

5. For unauthorized rental assistance and/or interest credits derived through inaccurate calculation, the unauthorized amount of subsidy will be determined by the District Director. The borrower will be requested to correct the error by remitting the excess subsidy. If it is not repaid, the excess subsidy amount will be deducted by FmHA from subsequent credits or payments.

#### X. Maintenance

Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A. *Routine Maintenance.* Routine or short-term type maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics. Also included are janitorial tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B. *Responsive Maintenance.* This includes all maintenance tasks performed in response to either requests for service from tenants or unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems servicing the apartments. The project manager should develop a plan to focus on: who receives the requests, how they are handled, how specific employees are assigned to the tasks and what kind of records are kept. The capacity of the project manager to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C. *Preventive Maintenance.* This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building exteriors,

elevators, and heating systems in rental projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

**D. Long term Maintenance.** These are major expense items which normally do not occur on an annual basis. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be preapproved by FmHA.

**E. Inspection Maintenance.** These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each tenant's apartment should be made at appropriate times:

1. **Move-In Inspection.** Before move-in occurs the management and the applicant accepted for tenancy should together inspect the unit to be occupied and agree upon any repairs needed. A written inspection report shall be prepared and a copy retained in the tenant's file. Any of the identified deficiencies not corrected prior to occupancy should be noted on the lease or inspection move-in report and signed by the tenant and borrower's representative.

2. **Move-Out Inspection.** An inspection should be scheduled with the tenant when the management becomes aware that the tenant is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the furniture has been moved out and before any portion of the security deposit is returned to the tenant. Any repairs or costs to be charged to the tenant will be according to the terms of the lease, local law, and regulations governing security deposits in paragraph VIII G of this Exhibit.

3. **Periodic Inspection.** An inspection of this type should be made at least annually. The borrower should make provisions in the lease for periodic inspection of the units as a part of a preventive maintenance program.

#### XI. Rent Changes

It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental rates to keep the project viable. Before any change of rental rates may occur, *prior written consent of FmHA is required.* The procedure to request and implement a rent change is specifically covered in Exhibit C of this Subpart.

#### XII. Borrower Project Budgets

##### A. Budget Development and Preparation.

1. Borrowers are required to develop an annual budget of project income and expense.

2. Separate budgets will be developed for each project when the borrower owns more than one MFH project.

3. Budgets will cover a 12 month period selected by the borrower to be the project fiscal year of operation.

4. Budgets will be prepared according to the instructions contained in Form FmHA 1930-7, "Statement of Budget and Cash Flow."

**B. Borrower's Return on Investment.** 1. Limited profit borrowers may take the return

authorized in their loan agreement resolution without FmHA approval under the following conditions:

a. Payment may be made only once a year at the end of the project fiscal year.

b. Payment must have been approved as part of the borrower's annual budget on Form FmHA 1930-7.

c. The project must have produced adequate income during that year to cover all expenditures in accordance with the approved budget.

d. The balance in the reserve account must be current less any authorized withdrawals.

e. Payment of the return may not produce a year end deficit.

2. If income is not adequate in any given fiscal year to cover payment of the return to owner, the return can be paid from:

a. Excess funds available at the end of the following fiscal year of operation provided it does not result in a rent increase. (Business losses do not qualify to be recouped in following years.) This option is authorized only for the year immediately following the year in which the return was not paid.

b. Release of reserve funds with District Director approval, provided:

(1) The Reserve Account will not be reduced below the amount required to be accumulated by that time considering adjustments for any previously authorized withdrawals; and

(2) During the next 12 months the amount in the Reserve Account will not likely fall below that required to be accumulated by the end of such 12 month period.

#### XIII. Accounting and Reporting Requirements and Financial Management Analysis

A. **General.** RRH, RCH, and LH borrowers are expected to account for all project income and expenses through a bookkeeping or accounting system appropriately reflecting the complexity of project operations. The degree of sophistication will also reflect such factors as the type of borrower; the size, location and type of project; and the type of financial management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1. Borrowers with loan agreements or resolutions are subject to the following conditions:

a. All RRH and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of this paragraph XIII.

b. All RRH and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

(1) They are encouraged, however, to adopt the provisions of this section by amending their existing loan agreement or resolution.

(2) The State Director may require adoption of these provisions when deemed necessary as a loan servicing action.

c. Any amendment to an existing loan agreement, or resolution, requires concurrence of all parties and written approval by the State Director with advice from the OGC prior to enactment of the amendment.

d. Individual farm borrowers with LH units will be considered in general compliance

with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home plan.

2. Borrowers without loan agreements or resolutions are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B. **Accounting System.** A bookkeeping and accounting system provides the financial information needed to effectively plan, control and evaluate project activity. The type of system should be determined prior to loan closing, but it may be revised with FmHA approval to meet program objectives. FmHA may also prescribe the system to be used. Form FmHA 1930-5, "Bookkeeping System—Small Borrower," can be adapted to the bookkeeping needs of small RRH projects. Bookkeeping for MFH projects may be maintained using a cash, modified cash, or accrual type accounting system.

1. **Types of accounts.** As used in this paragraph, the term account is used interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or types of accounts established, all bookkeeping and accounting systems must meet the following:

a. All project funds shall be held only in accounts insured by an agency of the Federal Government, unless otherwise specifically authorized by the borrower's loan agreement, loan resolution, and this paragraph.

b. All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this paragraph.

c. All funds received and held in any account, except the tenant security deposit shall be held in trust by the borrower for the loan obligation until used.

d. All project funds will be maintained separately and distinct from any other project or enterprise of the borrower and/or his management agent. Under no circumstances will project funds be commingled with those of another project.

e. Each project will maintain at least one demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

2. **Required accounts.** All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are required for all RRH and RCH loans approved after October 27, 1980, or those who have amended their loan agreements or resolutions to adopt these accounts:

a. **General Operating Account.** This account records all project income and

disbursements. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as follows:

(1) *Initial Operating Capital.* The borrower will have deposited the required initial operating capital into this temporary bookkeeping account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. The initial operating capital will be deposited in the General Operating Account. After two, but before five full budget years of project operation, the State Director may authorize the borrower to make a one-time withdrawal from project funds, an amount not to exceed the borrower's beginning cash contribution to the Initial Operating Capital as described in the loan agreement or resolution, provided that:

- (i) The loan was closed on or after October 27, 1980.
- (ii) The loan agreement or resolution signed by the borrower is Form FmHA 1944-33 "Loan Agreement," 1944-34 "Loan Agreement", or 1944-35 "Loan Resolution".
- (iii) The project has achieved at least a 95% occupancy level at time of the withdrawal request.
- (iv) The withdrawal will not affect the financial integrity of the project. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred.
- (v) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation.
- (vi) The State Director has reviewed and approved any required borrower reports before the Initial Operating Capital is withdrawn.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the General Operating Account. This will include rent receipts, housing subsidy payments (including HUD Section 8 and FmHA Rental Assistance payments), laundry revenue, or any other project income. The borrower may also deposit other funds at any time which are to be used for purposes authorized by this section including transfers from the Reserve Account.

(3) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account, the borrower shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. (However, non-profit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in FmHA Instruction 1944-E.) Other authorized disbursements are FmHA approved installments of debt service, real estate tax and insurance escrow, reserve, and

return on investment as provided in Section 2 c below. Any balance remaining in the General Operating Account except as authorized above, may be retained in this account or transferred to the Reserve Account.

b. *Real Estate Tax and Insurance Escrow Account.* Funds recorded in this account may be deposited in a separate interest bearing project account. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the General Operating Account to the Real Estate Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated real estate tax and insurance payments for the year. Any interest earned shall be prorated based on the amount held in the escrow account at the time the interest is earned and shall accrue and be a part of the account.

c. *Reserve Account.* Funds recorded in this account should be held in a separate interest bearing project account.

(1) Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the next month following disbursement from the Reserve Account until it is restored to the specified total minimum sum.

(2) Reserve Account funds not immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution, or invested in readily marketable obligations of the United States Treasury Department, the earnings on which shall accrue to the reserve account.

(3) Interest earnings may be used to meet the monthly installments to the Reserve Account and/or to meet a modified and higher reserve level established periodically by an FmHA approved amendment to the borrower's loan agreement or resolution. Such amendment may be made to build reserve for scheduled replacement of depreciable property items in addition to general reserve requirements.

(4) Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the General Operating Account for the authorized purposes *only when* it is agreed between the borrower and the FmHA to be in excess of the requirement. However, the FmHA District Director may direct the excess sum to be retained in the Reserve Account when determined necessary to protect the Government's security interest.

(5) With prior written consent of the District Director, funds in the Reserve Account may be used by the borrower or its designee for the following purposes:

- (i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.
- (ii) To pay costs of repairs or replacements to the housing, furnishings or equipment

caused by catastrophe or long-range depreciation which are not current expenses. Withdrawal for authorized purposes should be approved in advance during the annual budget approval process.

(iii) To make improvements to the housing project without creating new living units.

(iv) For other purposes desired by the borrower, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collectibility of the loan without jeopardizing the loan or impairing the adequacy of the security.

(v) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the Reserve Account will not be less than that required by the loan agreement or resolution to be accumulated by that time and the amount in the Reserve Account will likely not fall below that required to be accumulated during the next 12 months.

(A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

d. *Tenant Security Deposit Account (When applicable).* Upon receipt, all tenant security deposit funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in an account that is kept separate from any project funds and will be handled according to any State or local laws governing tenant security deposits. Funds in the Tenant Security Deposit Account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower in trust for the respective tenants until so used. Any amount of the Tenant Security Deposit Account which is retained by the borrower as a result of lease violations shall be transferred to the General Operating Account and treated as income of the housing.

(1) The owner will follow all state and local requirements governing the handling and disposition of tenant security deposits.

(2) In no case, will interest earned on security deposits accrue to project management or the owner. Any interest earned but not returned to the tenants will accrue to the project's general operating account for disposition as outlined in the management plan.

C. *Borrower Reporting Requirements.* Certain reports are necessary to verify compliance with FmHA requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA payments and others submitted to FmHA either monthly or annually. Exhibits B-6, B-7, and B-8 of this Exhibit (Management Handbook), are to be used as a guide for determining when reports are due and the number of copies required. (Also see Section 1930.124 of this Subpart.) The following reports will be prepared and submitted by the borrower:

1. *Monthly Reports:* a. Submit Form FmHA 1930-6, by the tenth of each month to the District Office to reflect the project operations for the preceding month. Monthly reports will generally be completed on a cash basis, but may also be completed on a modified cash or accrual basis with appropriate modifications made on the form.

b. Submit Form FmHA 1944-29, with the payment to the District Office. This form must be submitted each month to report overage and/or request rental assistance, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of each month. It is generally submitted by the tenth of each month.

c. For LH projects, Form FmHA 1944-29 will be submitted monthly for the LH tenants who receive rental assistance. Otherwise, the Form FmHA 1944-29 covering all LH tenants will be submitted to FmHA at least once annually with the annual report.

2. *Annual Reports:* Annual reports may be completed on a cash modified cash, or an accrual basis. Within 45 days following the close of the borrower's fiscal year, the borrower will submit the following reports to the FmHA District Office:

a. Form FmHA 1930-7, showing all planned project income and expenses for the next year as well as actual project income and expenses for the past year.

b. Form FmHA 1930-8, "Year End Report and Analysis For Fiscal Year Ending

c. Audit report or verification. All audit reports will be completed according to the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits for FmHA Borrowers and Grantees." For projects with 25 or more units, the audit will be prepared by a LPA licensed on or before December 31, 1970, or a CPA. Borrowers with 24 units or less will need to provide a verification by an individual who is qualified by education and/or experience and who is independent of the borrower or by a committee of the membership not including any officer, director, or employee of the borrower; however, the State Director may also require audits by a CPA or LPA for any project.

d. Copy of the minutes of the annual meeting, when applicable.

e. Energy Audit for review according to the provisions of Exhibit D of this Subpart.

f. Any other related material that may be requested by the District Director.

3. *Annual Budget:* An annual budget on Form FmHA 1930-7, should be submitted within 45 days following the close of the borrower's fiscal year so rents can be reviewed for approval. Rents in full profit projects must be limited to amounts that low- and moderate-income tenants can afford. Approval of Form FmHA 1930-7 constitutes approval of the project rents.

D. *Financial and Management Analysis.* Financial and management analysis provides information on the status of the project's operation. Regular analysis can help identify

strengths and weaknesses so that appropriate corrective actions can be taken. Some methods of analysis are:

1. *Budget Analysis:* Using monthly and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2. *Ratio Analysis:* Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratios are:

$$a. \text{Vacancy Rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$

$$b. \text{Resident Turnover Ratio} = \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$

$$c. \text{Expense Ratio} = \frac{\text{Total Expense}}{\text{Total Income}}$$

$$d. \text{Cost Per Unit} = \frac{\text{Total Expense (By category)}}{\text{Total No. of Units}}$$

$$e. \text{Working Capital Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

$$f. \text{Collection Ratio} = \frac{\text{Total Collections}}{\text{Total Rent Roll}}$$

$$g. \text{Percent of Revenue from Government Sources} = \frac{\text{FmHA Rental Assistance or HUD Section 8 Payments}}{\text{Total Market Rent}}$$

#### XIV. Termination of Tenancy and Eviction

Borrowers and project managers should actively develop ways and means to avoid forced terminations of leases and the eviction of tenants by considering the following:

##### A. Tenant's Entitlement to Continued Occupancy.

1. *General.* The Borrower or project manager may terminate or refuse to renew any tenancy only for material noncompliance with the lease or other good cause such as:

- Noneligibility for tenancy,
- Action or conduct of the tenant which disrupts the liveability of the project by adversely affecting the health or safety of any tenant, or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, or that has an adverse financial effect on the project.

c. Expiration of the leased period is not sufficient grounds for eviction of a tenant.

##### 2. Material Noncompliance.

Material noncompliance with the lease includes:

a. One or more substantial violations of the lease; or

b. Repeated nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period constitutes a substantial violation; or

c. Repeated minor violations of the lease which disrupt the liveability and harmony of the project by adversely affecting the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

3. *Other Good Cause.* Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant prior notice that the conduct will constitute a basis for termination of tenancy.

4. *Rent Overburden.* Any tenant household (except those receiving Section 8 benefits) paying more than 25 percent of their adjusted income toward rent, including utilities, is considered to be experiencing rent overburden. Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental rental subsidies including FmHA rental assistance and/or interest credit; or to assist tenants in applying for Section 8 housing assistance to minimize termination of tenancy.

B. *Notice of Termination.* Any notice to terminate tenancy must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager.

1. The notice of intent to terminate the tenancy will be handled according to the terms of the lease. Tenants will be given prior notice of eviction according to State or local law. The notice must:

- Refer to relevant provisions in the lease.
- State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In those cases where the proposed termination of the tenancy is due to the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

c. State that the tenancy is terminated on a date specified.

d. Advise the tenant that if he or she remains in the leased unit on the date specified for termination, the borrower may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense.

2. The notice shall be accompanied by: (1) Sending a letter by first class mail, properly stamped and addressed, to the tenant at his or her address at the project, with a proper return address and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult

responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first class letter provided for in this paragraph is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

3. A copy of any eviction notice will be forwarded to the FmHA District Office. The District Director will review the notice for compliance with Subpart L of Part 1944 of this Chapter and any State Supplements that have been issued covering tenant evictions with respect to the proper preparation and handling of the notice. If the notice is found to be properly prepared, no further action is needed. If the notice is found to be improperly prepared, the District Director will notify the borrower to cease the action and will then inform the borrower how the notice is improperly prepared. The District Director will not indicate any opinion on the merits of the eviction to the borrower or project manager at this time.

#### XV. Security Servicing

Security servicing, as referenced in this Exhibit, concerns the borrower's general responsibilities in relation to the loan agreement or resolution, mortgage, and other loan documents. It does not deal with security items between the borrower and the tenants. FmHA will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

**A. Fidelity Bond.** All projects will be required to obtain Fidelity Bond coverage for the borrower officials and all employees and/or management agents and their employees entrusted with the receipt, custody, and disbursement of any project funds or negotiable or readily saleable personal property. Fidelity bond coverage should be obtained as soon as there are assets within the organization and must be obtained before any loan funds or interim financing funds are made available to the borrower.

1. Fidelity bond coverage is not required when a loan is made to an individual (natural person) and that individual will be responsible for such activities.

2. In the case of a Land Trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

3. A general partnership will not be required to provide fidelity bond coverage where the partners are responsible for the receipt, custody and disbursement of its funds or any other negotiable or readily saleable personal property.

4. The amount of the bond will at least equal the potential gross project income for two months rental collection or the maximum amount of money the project is expected to have on hand at any one time, including cash on hand, money in reserve and other special accounts, etc., whichever is greater.

5. The United States acting through the Farmers Home Administration will be named

as co-obligee in the bond when not prohibited by State Law.

6. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used when permitted by State Law. In those cases where other forms are used, the form of bond must be approved by the State Director only after it is found not to be inconsistent with the intent and general requirements of Form 440-24 and is determined legally acceptable by the OGC.

7. A blanket bond may be accepted from a borrower or management agent when blanket coverage is more advantageous cost-wise for each project on a pro-rata basis, the coverage limit for each project is identified or the total coverage limit is at least equal to the sum of all projects and coverage is restricted exclusively to FmHA financed MFH projects.

8. The borrower's fidelity bond premiums may be a project expense when coverage is obtained and paid by the borrower.

9. Fidelity bond premiums for a management agent(s) will be included in the management fee.

10. A fidelity bond may have a deductible figure in an amount equivalent to 2 percent of the initial project investment but not in excess of \$2,000.

**B. Insurance.** The minimum amounts and types of insurance required of the borrower will be determined by FmHA in accordance with Subpart A of Part 1806 (FmHA Instruction 428.1) and Subpart B of Part 1806 (FmHA Instruction 428.2). All references to County Supervisor shall be construed to mean District Director when applied to the Multiple Housing Program. The borrower or its agent shall obtain:

1. Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings included as security for the loan or grant. The amount of coverage will be not less than the amount specified on Form FmHA 428-1, "Valuation of Buildings."

2. Suitable Worker's Compensation Insurance on all its employees. (Worker's Compensation Insurance for employees of a management agent shall be paid out of the agent's management fee.)

3. Adequate liability insurance.

4. Flood insurance when the project is located in a designated flood hazard area.

**C. Real Estate and Personal Property Taxes.** All borrowers will be required to pay their taxes before they become delinquent and provide FmHA with proof of payment. An exception to the above may be made if the borrower has formally contested the amount of property assessment and has escrowed the amount of taxes in question in a manner acceptable to the District Director.

#### Exhibit B-1 of Subpart C—Management Plan Requirements for FmHA Multiple Family Housing Projects

FmHA will use the Management Plan to evaluate the feasibility of project management. The Management Plan and any subsequent revisions must be signed by the borrower, and then approved and signed by the authorized FmHA official. No loan will be closed or construction started without a properly approved and signed Management Plan. A Management Plan will accurately reflect FmHA program requirements for the

project and be responsive to each of the following areas.

1. *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* A Management Agreement must be provided where a management agent is to be used. If there is no management agent, the management agreement should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

a. If the management agent is closely associated with the owner in such a manner that creates a possible conflict of interest, is such relationship fully explained and justified?

b. What are the supervisory relationships, and to whom are the persons responsible for the day-to-day operation of the project accountable?

c. Under what conditions must the management agent consult the owner before taking action?

d. What are the areas in which the management agent may make decisions without consulting the owner?

e. Who, in the owner's organization, is the key contact person for the management agent? What decision making powers does this contact person have?

f. Are the respective responsibilities and duties (job description) of the owner and the managing agent listed? Are these responsibilities and duties clearly defined so as not to overlap? Are they clearly assigned? Are all basic responsibilities and duties covered?

2. *Personnel policy and staffing arrangements.* a. Is all hiring in conformance with equal employment opportunity requirements?

b. What are the projected staffing needs for the project?

c. What are the lines of authority, responsibility, and accountability within the management entity?

d. What are the positions to be filled, the duties of each position, and the compensation?

e. What are the plans for training and familiarizing employees with their job related responsibilities and applicable FmHA program requirements.

3. *Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting Affirmative Fair Housing Marketing Plan requirements (HUD Form 935.2).*

a. How and when will the units be advertised?

b. How will affirmative marketing practices be used? What outreach and marketing efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts?

c. What plans are being made to achieve and maintain the highest level of occupancy reasonably obtainable? Indicate any additional compensation or incentives that may be allowed management agents for early initial rent up. (If this area is not covered in

the management plan, it will usually not be allowed by FmHA at a later date.)

d. What type of waiting list will be developed for the project? How and when will a waiting list be used? What type of information will be required before potentially eligible tenants will be placed on the waiting lists? How will the waiting list be updated and where will it be maintained?

e. What are the procedures to allow eligible applicants to inspect the units prior to occupancy? What forms will be used to record unit condition and who will receive copies of the inspection forms?

f. What orientation services are to be provided tenants to acquaint them with the project and care of the units? Will printed project information be given to tenant applicants?

g. Who is responsible for selecting the tenants? Is this selection subject to review? If so, under what conditions and by whom?

4. *Procedures for determining tenant eligibility and for certifying and recertifying incomes.*

a. How are applications and other records relevant to this function kept?

b. Who will be responsible for carrying out this function?

c. Is the responsible person knowledgeable regarding certification and recertification requirements? If not, what provisions are being made to provide this person with the necessary training and followup testing for comprehension of the requirements?

d. Is the responsible person aware of FmHA requirements covering family size and needs as they relate to unit size?

e. Is the responsible person aware of FmHA requirements regarding tenant eligibility, rejection, or placement on a waiting list?

5. *Tenant leasing policies.* a. What are the leasing policies and procedures?

b. Is the person who is responsible, knowledgeable of FmHA required lease clauses? FmHA prohibited lease clauses?

c. What are the Rules for Occupancy? Who will receive them and where will they also be posted?

d. What procedures will be used to assure that tenants who do not speak or read English will understand leases and established rules?

6. *Rent collection policies and procedures.*

a. What are the rent collection policies and procedures? What types and amount of late charges will apply and under what circumstances will they be applied?

b. Where are rents to be paid and who is responsible for collection and issuance of rent receipts?

c. Is there a provision for on-site collections? After hours depositing?

d. Are rent payments adequately recorded and kept in a separate account?

e. What is the amount of any required security deposits? What is the program for maintaining adequate accounting records of security deposits? How will interest earned on security deposits be handled?

7. *Procedures for requesting and implementing a rent increase.* a. What procedures will be followed in requesting FmHA approval of a rent change? (Refer to Exhibit C of this Subpart.)

b. At what time of year will such a request normally be made and what information will be presented to FmHA as justification?

c. How will the tenants be notified of a proposed change, and if approved, how will tenants be informed?

8. *Plans for carrying out an effective maintenance and repair program.* a. Where will the project's as-built plans and specifications be located? Who will be responsible to update them when project modifications are made?

b. What procedures have been developed to service appliances and the mechanical equipment? To check out all such equipment to be sure that it is properly installed and operating prior to releasing units for occupancy?

c. What are the procedures for inspecting and carrying out maintenance activities in units prior to a movement? Prior to re-renting the unit?

d. What is the schedule for interior and exterior painting and redecorating?

e. How will garbage and trash removal be handled?

f. How will major repairs be handled?

g. How will grounds upkeep and maintenance be carried out?

h. What is the schedule for cleaning entryways, halls, and other common areas?

i. How will tenants be instructed to report major and/or minor maintenance repair needs?

j. What security provision will be made for the protection of project residents such as smoke alarms, fire extinguishers, outside lighting, ice removal, etc.?

k. What is the plan for preventive maintenance in the overall project? Who will monitor and implement the plan?

9. *Plans for meeting FmHA recordkeeping and reporting requirements.* a. What type of project records will be used and how will they be maintained? Who will prepare and maintain them?

b. Who will be responsible for the preparation and submission of the monthly and annual reports required by FmHA?

c. Discuss the proposed tenant record maintenance system including retention of records. Who will handle and maintain the records?

d. Where will records subject to FmHA review be kept? Who will FmHA contact to review the records?

10. *Energy conservation measures.* a. What energy conservation practices will the tenants directly control? Which utilities will be affected?

b. What energy conservation practices will the management directly control? Which utilities will be affected?

c. Explain the proposed energy conservation practices in connection with utilities paid by the management.

d. Describe proposed actions to stimulate energy conservation by the tenants.

e. How will tenants be oriented to energy conservation measures?

f. Explain when energy conservation measures identified in the energy audit will be carried out. Who will carry them out? When?

11. *Plans for tenant-management relations.*

a. How will tenants be oriented to the project?

b. What are the plans for a tenant organization?

c. Describe how management will work with or assist tenants and/or tenant organizations.

d. Is the responsible person knowledgeable of FmHA Tenant Grievances and Appeals procedures? Where will the procedure be kept? Who will keep it and see that it is posted?

12. *Termination of leases and evictions.* a. Who is responsible for knowing State and local laws and FmHA's requirements regarding termination of leases and evictions?

b. Who is responsible for knowing State and local laws and FmHA's requirements regarding notification that must be given to a tenant when termination of the lease or eviction is proposed?

13. *Security servicing.* a. Who is responsible for knowing FmHA requirements for Fidelity Bond coverage?

b. Who is responsible for knowing FmHA's insurance requirements?

14. *Management background and/or experience.* FmHA requires adequate management of multi-family housing projects. Exhibit B-4 of this Subpart will be used by a prospective management agent to provide a resume of management background and/or experience. Exhibit B-5 of this Subpart will be used by an owner who proposes to provide direct project management.

15. *Management Agreement.* Attach a copy of the proposed form of Management Agreement that will be used if the project will not be owner-managed. See Exhibit B-2 for requirements for management agreements.

16. *Management Compensation.* a. If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid?

b. What amount of management fee will be paid monthly? Does it cover all the duties and responsibilities of the management agent?

c. How will the management fee be paid? As cash or as value of apartment or a combination of both?

17. *Validity of the Management Plan.* The plan must provide space at the end for the following:

a. Date, title and signature of borrower or borrower's authorized representative.

b. Date, title and signature of the FmHA official approving the Plan.

**Exhibit B-2 of Subpart C—Requirements for Management Agreements**

A completed and executed management agreement must be reviewed and approved by Farmers Home Administration (FmHA) whenever a management agent is to be used. A management agreement must be submitted to FmHA for review as part of a project loan docket, whenever there is a change of management agents or ownership, or when revision of an existing agreement is necessary or required.

1. A written management agreement is required for any project when the owner retains a management agent but is not required when the project is managed by the owner as described in paragraph V D 2 of

Exhibit B of this Subpart. However, a written management plan is required for all projects.

2. The management agreement shall conform to FmHA requirements. The owner may delegate to the agent any management duties which are not required to be performed by the owner. However, the owner remains totally responsible to FmHA for all aspects of management.

3. The management agreement shall be consistent with the management plan for the project. The management plan is the primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing the project. The function of the management agreement is incident to implementation of the management plan. The agreement must be defined in precise language; the agreement need not repeat all of the detailed procedures contained in the management plan.

4. The Management Agreement shall contain the management agent's organization and staffing structure, management controls, and outside ownership interests. When evidence exists that the management agent is conducting transactions with firms that may have an identity of interest, the borrower shall refer such cases to FmHA for review of the reasonableness of charges to the project and approval of such procurement arrangements. The borrower shall provide FmHA a list of competitive costs to assist in making this determination.

5. The management agreement may conform to Exhibit B-3 of this Subpart. Each management agreement shall be realistically tailored to the specific conditions of the particular project. The site, design, and size of the project fiscal constraints; market conditions; social factors; local law and business practices are among the elements which may require variations in the management agreement. Consideration must also be given to the capabilities and legitimate desires of the owner and agent.

#### Exhibit B-3 of Subpart C—Management Agreement for FmHA Multiple Family Housing Projects

This Agreement is made this — day of \_\_\_\_\_, 19—, between \_\_\_\_\_ (the "Owner") and \_\_\_\_\_ (the "Agent") under the terms and conditions set forth herein.

**I. General.—A. Appointment and Acceptance.** The Owner appoints the Agent as exclusive agent for the management of the property described in Section I B of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

**B. Project Description.** The property to be managed by the Agent under this Agreement (the "Project") is a housing development consisting of the land, buildings, and other improvements which make up Project No. \_\_\_\_\_.

The Project is further described as follows:

Name: \_\_\_\_\_

Location: (City, County, State) \_\_\_\_\_

No. of dwelling units \_\_\_\_\_

Type of units (Family, Elderly, Mixed, Congregate) \_\_\_\_\_

#### C. Definitions. As used in this Agreement:

1. "FmHA" means the Farmers Home Administration, including any successor agencies.

D. *FmHA Requirements.* In performing its duties under this Management Agreement, the Agent will comply with all relevant requirements of FmHA. FmHA requirements include preparation of forms and reports in the format of prescribed FmHA forms and exhibits.

E. *Basic Information.* As soon as possible, the Owner will furnish the Agent with a complete set of "as built" plans and specifications and copies of all guarantees and warranties relevant to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agent will become thoroughly familiar with the character, location, construction, layout, plan and operation of the Project, and especially with the physical plant.

F. *Compliance with Governmental Orders.* The Agent will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, whether imposed by federal, state, county or municipal authority, subject, however, to the limitation stated in paragraph IV I of this Exhibit with respect to repairs. Nevertheless, the Agent shall take no action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within seventy-two (72) hours from the time of their receipt.

G. *Nondiscrimination.* In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion, sex, age, marital status, national origin, or physical or mental handicap (applicant must have capacity to execute a legal contract) including Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration (FmHA).

H. *Fidelity Bond.* The Agent will furnish, at its own expense, a fidelity bond in the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which is at least equal to the potential gross project income for two months and cash on hand or under the direct control of the Agent, and is conditioned to protect the Owner and FmHA against misapplication of project funds by the agent and its employees. The United States will be named as co-obligee in the bond at the time of FmHA loan closing or at any other initial issuance of the bond if not prohibited by State law. The other terms and conditions of the bond, and the surety thereon, will be subject to FmHA requirements and the approval of the Owner.

I. *Bids, Discounts, Rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the Project, and is authorized to solicit bids,

either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

II. *Management Plan.—A. Description.* Attached is a copy of the Management Plan for the Project, which provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the Project.

B. *Relationship with Management Plan.* The Agent shall conduct his management activities in accordance with the Policies and Procedures set forth in the Management Plan. In addition, the Agent will also carry out the tasks and responsibilities set forth in paragraph IV of this Agreement.

III. *Budget.—A. Preparation.* The Agent shall prepare an original project budget for submission to the owner and FmHA for approval. For each subsequent fiscal year the Agent shall prepare a new budget.

B. *Budget Categories.* The budget shall be prepared using the format and categories of FmHA Form 1930-7, "Statement of Budget and Cash Flow."

IV. *Agent's Obligations.—A. Management Input During and After FmHA Processing.* The Agent will advise and assist the Owner with respect to management planning and input during FmHA loan processing. The Agent's specific tasks will be:

1. Participation in any conference with FmHA officials involving project management.

2. Preparation and submission of Form FmHA 1930-8, "Monthly Report," throughout the period from initial occupancy after FmHA loan closing until such time as no longer required by FmHA. If the management is authorized to sign the reports for the owner, a copy of the signed report as submitted to FmHA will be provided to the owner.

3. Participation in the on-site final inspection of the Project, required by FmHA prior to initial occupancy.

4. Continuing review of the Management Plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

B. *Liaison with Architect and General Contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to:

1. Coordinate management concerns with the design and construction of the Project.

2. To facilitate completion of any corrective work, and

3. To facilitate the Agent's responsibilities for arranging utilities and services pursuant to paragraph IV J of this Agreement. The Agent will keep the Owner advised of all significant matters of this nature.

C. *Marketing.* The Agent will market the rental units according to the Management Plan, observe all requirements of the Affirmative Fair Housing Marketing Plan, and maintain records of the marketing activity for compliance review.

D. *Rentals.* The Agent will offer for rent and will rent the dwelling units in the Project. The following provisions will apply:

1. The Agent will make preparations for initial rent-up, as described in the Management Plan.

2. The Agent will follow the tenant selection policy described in the Management Plan.

3. The Agent will show the premises to prospective tenants.

4. The Agent will take and process applications for rentals. If an application is rejected, the Agent will inform the applicant in writing of the reason for rejection. The rejected application, with the reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a Credit Bureau, the source of the report must be revealed to the applicant according to the Fair Credit Reporting Act. A current list of prospective tenants will be maintained.

5. The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The terms of all leases will comply with the relevant provisions of FmHA regulations. Dwelling leases will be in a form approved by the Owner and FmHA.

6. The Owner will furnish the Agent with rent and income report forms required by FmHA, showing rents as appropriate for dwelling units, other charges for facilities and services, income data relevant to determinations of tenant eligibility and tenant rents. In no event will the rents and other charges be exceeded.

7. The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements.

E. *Reports.* The Agent will furnish information (including occupancy reports) as may be requested by the Owner, FmHA and/or the Office of Inspector General from time with respect to the project's financial, physical, or operational condition. The Agent will also prepare and submit:

Form FmHA 444-8— "Tenant Certification"

Form FmHA 1944-29— "Project Worksheet for Interest Credit and Rental Assistance"

Form FmHA 1930-6— "Monthly Report"

Form FmHA 1930-7— "Statement of Budget and Cash Flow"

Form FmHA 1930-8— "Year End Report and Analysis For Fiscal Year Ending ———"

The Agent will assist the owner in completing all additional forms and data prescribed by FmHA affecting the operation and maintenance of the project.

F. *Collection of Rents, Security Deposits and Other Receipts.* The Agent will collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the Project. Such receipts will be deposited immediately in the project's General Operating Account with \_\_\_\_\_ (name of bank or such other financial institution designated by the owner), whose deposits are insured by an agency of the Federal Government. The Agent will collect,

deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This account will be carried in the owner's name and designated of record as "(Name of Project) Security Deposit Account."

G. *Accounting System.* The Agent must develop a systematic method to record the business transactions of the project that appropriately reflects the complexity of project operations. The Agent may be required to implement and use a bookkeeping and accounting system as prescribed by FmHA. The accounts described in paragraph V of this agreement, as a minimum, will be established.

H. *Enforcement of Leases.* The Agent will ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the relevant procedures prescribed in the Management Plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause as prescribed by FmHA regulations for such termination. The tenant must be properly notified of his/her right to appeal the proposed action according to FmHA regulations. Subject to the Owner's approval, attorney's fees and other necessary costs incurred in connection with such actions will be paid out of the General Operating Account as Project expenses.

I. *Maintenance and Repair.* The Agent will maintain and repair the project in accordance with the Management Plan and local codes, and keep it in a condition acceptable to the Owner and FmHA at all times. This will include, but is not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care, energy conservation measures and practices; and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained herein.

Incident thereto, the following provisions will apply:

1. Special attention will be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance employees will be used.

2. Subject to the Owner's prior written approval, the Agent will contract with qualified independent contractors for the maintenance and repair of air-conditioning systems and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees.

3. The Agent will systematically receive and promptly investigate all service requests from tenants, take such action as may be justified, and keep records of the same. Emergency requests will be received and

serviced on a twenty-four (24) hour basis. Serious complaints will be reported to the Owner after investigation.

4. The Agent is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair with prior written approval of the owner.

5. Notwithstanding any of the foregoing provisions, the prior written approval of the Owner will be required for any expenditure which exceeds \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project. This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the Project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

6. The Agent will advise the Owner of any cost-effective energy conservation measures adaptable to the project. The Agent will encourage their use and will assist the Owner during any installation of these measures.

J. *Utilities and Services.* Subject to the Owner's prior written approval, and according to the Management Plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service.

K. *Insurance.* The Owner will inform the Agent of insurance to be carried with respect to the Project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the General Operating Account, and premiums will be treated as operating expenses. All insurance will be placed with companies, on conditions, in amounts, and with beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports on all accidents, claims, and potential claims for damage relating to the Project, and will cooperate with the Owner's insurers in connection therewith.

L. *Taxes, Fees and Assessments.* The Agent shall pay all taxes, assessments and government fees promptly when due and payable. The Agent shall also evaluate local property taxes to insure they bear a fair relationship to the project value and appeal such taxes when appropriate.

M. *Employees.* The Management Plan prescribes the number, qualifications, and duties of the personnel to be regularly employed in the direct management of the Project, including a Site Manager, maintenance, bookkeeping, clerical and other managerial employees. All such personnel will be employees of the Agent and not the Owner, and will be hired, paid, supervised, and discharged by the Agent. Site employee salaries will be paid by the Agent directly from the Owner's General Operating

Account. This account will also reimburse the agent for Workers Compensation, Social Security taxes, and other taxes normally paid by the employer dealing with wages. Agent employees who work off-site or in the Agent's office will be paid directly by the Agent out of the Management fee paid by the Project.

#### V. Project Accounts

**A. General Operating Account.** This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described below in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for individual project accounts. This will usually be a checking account which must be maintained in a financial institution insured by the Federal Government. The Owner will have deposited the required initial operating capital into this account by the time of loan closing or when interim funds were obtained, whichever occurs first. The initial operating capital will be recorded in the General Operating Account. After two, but before five full budget years of project operation, the FmHA State Director may authorize the owner to make a onetime withdrawal from project funds, an amount not to exceed the borrower's beginning cash contribution to the Initial Operating Capital as described in the loan agreement or resolution, provided that the loan was closed on or after October 27, 1980; the loan agreement or resolution signed by the borrower is Form FmHA 1944-33 "Loan Agreement," 1944-34 "Loan Agreement", or 1944-35 "Loan Resolution"; the project has achieved at least a 95% occupancy level at time of the withdrawal request; the withdrawal will not affect the financial integrity of the project; the owner must demonstrate that all prudent maintenance is being planned and performed and payment of necessary project expenses are not being deferred; the State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next operation year; and the State Director has reviewed and approved any required borrower reports before the Initial Operating Capital is withdrawn.

**1. Deposits.** All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts, housing subsidy payments, laundry revenue, or any other project income. The borrower and Agent may also, at their discretion at any time, deposit therein other funds which are also to be used for purposes authorized by this section including transfer from the Reserve Account. Housing Assistance Payments received from the Department of Housing and Urban Development (HUD) and FmHA rental assistance payments shall be deemed to be revenue derived from the operation of the project. All funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the Agent in trust for the Government as security for the project obligations.

**2. Disbursements.** Not later than the 15th of each month, out of the General Operating Account, the Agent shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. [However, non-profit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in Subpart E of Part 1944 of this Chapter (FmHA Instruction 1944-E).] Other authorized disbursements are FmHA approved installments of debt service, real estate tax and insurance escrow, reserve, and at the end of the fiscal operating year, return or investment as provided in Section C below. Any balance remaining in the General Operating Account, except as authorized above, may be retained or transferred to the Reserve Account.

**B. Real Estate Tax and Insurance Escrow Account.** Funds recorded in this account may be deposited in a separate interest bearing account at a Federally insured financial institution. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses, there shall be transferred from the General Operating Account to the Real Estate Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated real estate tax and insurance payments for the year. Any interest earned shall be prorated based on the amount held in the escrow account at the time the interest is earned and it shall accrue and be part of the account. Funds in the Real Estate Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the Agent in trust for the Government as security for the loan obligation.

**C. Reserve Account.** Funds recorded in this account should be held in a separate interest bearing account or accounts at a Federally insured financial institution. Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the next month following disbursement from the Reserve Account until it is restored to the specified total minimum sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the Agent in trust as security for the loan obligations. Reserve Account funds not immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution, or invested in readily marketable obligations of the United States Treasury Department, the earnings on which shall accrue to the reserve account. Interest earnings may be used to meet the monthly installments to the Reserve Account and/or to meet a modified and higher reserve level

established periodically by an FmHA approved amendment to the borrower's loan agreement or resolution. Such amendment may be made to build reserve for scheduled replacement of depreciable property items in addition to general reserve requirements. Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the General Operating Account for the authorized purposes, only when it is agreed between the owner and the FmHA to be in excess of the requirement. However, the FmHA District Director may direct the excess sum to be retained in the Reserve Account when determined necessary to protect the Government's security interest. With prior consent of the Government, funds in the Reserve Account may be used by the owner or its designee for the following purposes:

1. To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

2. To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses. Withdrawal for approved purposes should be approved in advance during the annual budget approval process.

3. To make improvements to the housing project without creating new living units.

4. For other purposes desired by the owner, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collectibility of the loan, without jeopardizing the loan or impairing the adequacy of the security.

5. To pay a return on investment at the end of the owner's project operating year, provided that after such disbursement, the amount in the Reserve Account will be not less than that required by the loan agreement or resolution to be accumulated by that time and the amount in the Reserve Account will likely not fall below that required to be accumulated during the next 12 months:

(a) If owner is operating on a limited profit basis, to pay a return on the owner's initial investment as identified in the loan agreement or resolution.

(b) If owner is operating on a full profit basis, to pay a return as specified in the owner's loan agreement or resolution.

**D. Tenant Security Deposit Account (When Applicable).** Upon receipt, all tenant security deposits funds collected shall be deposited in a separate account at a Federally insured financial institution, and shall be handled according to any State or local laws governing tenant security deposits. All tenant security deposit funds collected shall be recorded in a bookkeeping account that is separate from the project bookkeeping accounts. Funds in the Tenant Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management plan. They shall be held by the Agent in trust for the respective tenants until so used. Any amount in the Tenant Security Deposit Account which is retained by the Agent as a result of lease violations, shall be transferred to the General Operating Account and

treated as income of the housing. In no case will interest earned on security deposits accrue to the Agent or the owner. Any interest earned but not returned to the tenants will accrue to the project's General Operating Account for disposition as outlined in the management plan.

#### VI. Agents Compensation, Tenure and Identification

A. *Agent's Compensation.* The Agent will be compensated for its services including overall management under this Agreement by monthly fees, to be paid from the General Operating Account and treated as a project operation and maintenance expenses. Such fees will be payable on the first day of each month for the preceding month. Each monthly fee will be in an amount computed as follows:

1. —% of the gross rents, including rental assistance and interest credit (the equivalent of market rent), collected for the preceding month.
2. —% of cash rent collections.
3. —% of basic rents collected.
4. \$ —/occupied unit.

(Select one. Delete inappropriate method of compensation. Any other method of compensation will be fully described and inserted in this section.) The costs incurred by the Agent for performing the specified services listed in this agreement shall be allocated to the owner and Agent as outlined in the Agreement, management plan, and approved project budget.

B. *Term of Agreement.* This Agreement shall be in effect for a period of not more than two years, beginning on the — day of —, 19—, subject, however to the following conditions:

1. This Agreement will not be binding upon the Principal Parties until approved by FmHA.
2. This Agreement may be terminated by the mutual consent of the Principal Parties as of the end of any calendar month, provided that at least thirty (30) days advance written notice thereof with reasons given is submitted to FmHA.
3. In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other, provided that prompt written notice with reasons given for such termination is submitted to FmHA.
4. It is expressly understood and agreed by and between the Principal Parties that the State Director shall have the right to terminate this Agreement at the end of any calendar month, with cause, or without cause in cases of owner default, on thirty (30) days advance written notice to each of the Principal Parties, except that in the event of a default by the Owner under its security instruments, the State Director may terminate this Agreement immediately upon the issuance of a notice of cancellation to each of the Principal Parties. It is further understood and agreed that no liability will attach to either of the Principal Parties in the event of such termination.
5. Upon termination of this Agreement the Agent will submit to the Owner all project

books and records and any financial statements required by the FmHA. After the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and principal amount satisfactory to the Agent, against any obligations or liabilities which the Agent may properly have incurred on behalf of the Owner hereunder.

#### C. Agent's Indemnification.

Notwithstanding any provision of this Agreement or any obligation of Agent hereunder, it is understood and agreed: (a) That Owner has assumed and will maintain its responsibility and obligation throughout the term of this Agreement for the finances and the financial stability of the project; and (b) that Agent shall have no obligation, responsibility or liability to fund authorized project costs, expenses, or accounts other than those funds generated by the project itself or provided to the project or to Agent by Owner. In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under Paragraph VI A of this Agreement, from the Operating and Maintenance Account, immediately when such compensation is due and without regard to other project obligations or expenses provided the Agent has satisfactorily discharge all duties and responsibilities under this Agreement. Moreover, Owner hereby indemnifies Agent and agrees to hold it harmless with respect to project costs, expenses, accounts, liabilities and obligations during the term of this Agreement and further agrees to guarantee to Agent the payment of its compensation under Paragraph VI A of this Agreement during the term of this Agreement to the extent that the project's Operating and Maintenance Account is insufficiently funded for this purpose. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this Agreement entitling Agent to obtain from Owner, upon demand, full payment of all compensation owed to Agent through the date of such breach and entitling Agent, at its option, to terminate this Agreement forthwith.

#### VII. Interpretative Provisions

A. This Agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the Project. No change will be valid unless made by supplemental written agreement approved by FmHA.

B. This Agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

C. This Agreement is NOT in full force and effect unless and until concurred by FmHA.

D. At all times, this Agreement will be subject and subordinate to all rights of the FmHA, and will work to the benefit of and constitute a binding obligation upon the Principal Parties and their respective successors and assigns. To the extent that this Agreement confers rights upon the Consenting Parties, it will be deemed to work

to their benefit, but without liability to either, in the same manner and work with the same effect as though the Consenting Parties were primary parties to the Agreement.

In witness whereof, the Principal Parties [by their duly authorized officers] have executed this Agreement on the date first above written.

Owner: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Agent: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Witness: \_\_\_\_\_

As lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby concurs with this Agreement.

Farmers Home Administration  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attachments:  
Management Plan  
Loan Resolution or Agreement

#### Exhibit B-4 of Subpart C—Questionnaire for Prospective Management Agent of a Multiple Family Housing Project

**Note.**—This questionnaire outline will be used by borrowers to evaluate the capacity of prospective management agents to provide management in a new or existing multiple family housing project.

Please provide a written signed statement for FmHA and the owner giving your answers in the same order, to the information requested. Please be brief and concise in your answers and indicate if a certain question is not applicable in your particular case. Your statement will be used by FmHA and the owner to evaluate your capacity to successfully manage the project.

1. Provide your name, address, name of project, location of project, and the name of the owner.
2. Provide information about projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.
3. Describe your firm including number of main office staff employed in the following capacities: supervisory, clerical, maintenance, and social services.
4. Explain where project records will be kept.
5. Describe your plan for project on-site staff including their duties and work frequency.
6. Give the distance in miles from your home office and the nearest branch office, if applicable, to the project.
7. Describe the accounting system, rent-up procedure, rent-collection policy, and preventive maintenance program you intend to use in the proposed project.
8. Describe your relationship with the owner and your knowledge of the intended

degree of owner involvement in operating the project.

9. Describe the frequency and type of direct supervision to be given the site manager.

10. Give a description of your financial condition stability and financial resources.

11. Describe your plan to implement applicable FmHA accounting requirements for the project. If you have managed this type of project before, cite those projects as an indication of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

12. Please also describe:

a. Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.

b. The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.

c. Your plans to train your personnel in the management of FmHA multifamily housing.

13. Provide evidence of fidelity bonding capacity.

14. Include where appropriate the following statement: "I hereby certify that there is no close association between the management agent and the owner of the above described project in such manner that creates a

possible conflict of interest." If such an association exists (e.g. the management agent is a member, stockholder, partner, principal, etc., of the borrower organization, familial relationship) explain the relationship in detail.

**Exhibit B-5 of Subpart C—Questionnaire for Owner Who Proposes Owner-Management of a Multiple Family Housing Project**

**Note.**—This questionnaire outline will be used by owners who propose to initially or subsequently provide owner-management, except for individual labor housing owners, in developing a resume of their capacity to provide management in a new or existing multiple family housing project.

Please provide a written signed statement for FmHA responding in the same order to the items that follow. Please be brief and concise in your answers and indicate if a certain item is not applicable in your case. Your statement will be used by FmHA to evaluate your capacity to operate the project successfully. For projects owned by a partnership, the following information should be provided for the partnership entry as well as for each general partner.

1. Provide name of owner, address, and the name and location of project. State the number of rental units in the proposal.

2. Provide information about your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3. List names and addresses of management agents who manage your previously or presently owned projects, if any.

4. Describe your understanding of the responsibilities connected with owning and managing a multifamily project under FmHA.

5. Outline your experience and capabilities in providing housing for low- and moderate-income tenants.

6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7. Describe your intentions and capacity to meet negative cash flow situations.

8. Describe your plans for the management of the proposed project. If you intend to manage the project, describe your own management capacity by answering applicable portions of the "Questionnaire for Prospective Management Agent of a Multiple Family Housing Project," Exhibit B-4 of this Subpart.

**Exhibit B-6 of Subpart C—Monthly Reports**

Report or item required	Due date	Prepared by—	Report or item applicable to—	Distribution	References and notes
Project Worksheet for Interest Credit and Rental Assistance (Form FmHA 1944-29).	Monthly payment date .....	Borrower .....	All Borrowers—Individuals and Organizations.	Copy kept by borrower; original goes to the FmHA District Office with payments.	Instructions for preparation are in the FMI for Form FmHA 1944-29.
Monthly Report (Form FmHA 1930-6).	Submit to FmHA District Office by the 10th of each month; due in State Office before the 15th.	Borrower .....	All Borrowers .....	Copy kept by borrower. Original and two copies go to FmHA District Office; District Office to forward original and a copy to State Office. Signed original returned to District Office <sup>1</sup> .	Reports will continue until written notice for discontinuance is received from FmHA District Director. Instructions for preparation are in the FMI for Form FmHA 1930-6.

<sup>1</sup> Signed copy goes to State Office when District Office staff have received delegated approval authority.

**Exhibit B-7 of Subpart C—Annual Reports**

Report or item required	Due date	Prepared by—	Report or item applicable to—	Distribution	References and notes
Verification of Account (in lieu of Audit Report) according to this Subpart.	Within 45 days following close of borrower's fiscal year.	Generally by a qualified individual, independent of the borrower.	Borrowers with 24 or less units.	Copy kept by borrower. Original and one copy to FmHA District Office; one copy to State Office by District Office.	Additional instructions for non-profit borrowers are in Paragraph XIII B2c of this Exhibit.
Statement of Budget and Cash Flow (Form FmHA 1930-7).	Within 45 days following close of borrower's fiscal year.	Borrower .....	All Borrowers .....	Copy kept by borrower. Original and two copies to FmHA District Office; original and one copy to State Office by District Office. State Office returns approved original to District Office <sup>1</sup> .	Instructions for preparation are in the FMI for Form FmHA 1930-7.
Housing Allowances for Utilities and Other Public Services (Exhibit A-5 to FmHA Instruction 1944-E).	Submitted with Form FmHA 1930-7.	Borrower .....	Plan II and Rental Assistance Borrowers where tenant pays any utilities.	Copy kept by borrower. Original and two copies to FmHA District Office with backup data; District Office returns original to Borrower after State Office approval <sup>1</sup> .	Instruction for preparation are in FmHA Instruction 1944-E.
Year end Report and Analysis for Fiscal Year Ending (Form FmHA 1930-8).	Within 45 days following close of borrower's fiscal year.	Borrower .....	All Borrowers—Individuals and Organizations.	Copy kept by borrower. Original and two copies to FmHA District Office. District Office sends original and one copy to State Office. <sup>1</sup> State Office retains copy and returns signed original to District Office.	Instructions for preparation in the FMI for Form FmHA 1930-8.

Report or item required	Due date	Prepared by—	Report or item applicable to—	Distribution	References and notes
Minutes of Annual Meeting (when applicable).	Within 45 days following close of borrower's fiscal year.	Borrower	All Organizational Borrowers with governing bodies, and all corporations.	Two copies to FmHA District Office; one to be sent by District Office to State Office.	
Energy Audit	Within 45 days following close of borrower's fiscal year.	Borrower	All Borrowers—Individual and Organization.	1 copy to District Office	FmHA Instruction 1830-C, Exhibit D.
Note: All preceding items will be submitted together.					
Audit Report	Within 45 days following close of borrower's fiscal year.	Borrower's CPA or LPA in accordance with booklet "Instructions to Independent Certified Public Accountants & Licensed Public Accountants Performing Audits of FmHA Borrowers and Grantees".	Borrowers with 25 or more units in one or more projects, or as required by FmHA State Director.	Copy kept by Borrower. Original and one copy to FmHA District Office; one copy to State Office by District Office.	Should be submitted with previous items but may be submitted separately.

\* Signed copy goes to State Office when District Office staff have received delegated approval authority.

**Exhibit B-8 of Subpart C—Miscellaneous Reports or Submittals**

Report or item required	Due date	Prepared by—	Report or item applicable to—	Distribution	Examples and notes
Request for Rental Assistance (Form FmHA 1944-25).	When rental assistance is requested.	Borrower	Multiple Family Housing Borrowers and Applicants with tenants paying rent in excess of 25 percent of their adjusted income.	Original and copy to District Office; submit to State Office for approval after District Office review.	Refer to Exhibit C to Subpart E, Part 1944 for material to be included with request.
Compliance Reviews (Review conducted within the 1st reporting year after the project is occupied). (a) Initial reviews (Form FmHA 400-8, "Compliance Review" (nondiscrimination by Recipients of Financial Assistance through FmHA)). (b) Subsequent Reviews (Form FmHA 400-8).	Nov. 1 to Oct. 31 of each year.  The October 31st following loan closing.  Minimum of every 3 years.	FmHA District Director	All Multiple Family Housing Borrowers.	Original to State Office; copy retained in District Office.	Refer to Subpart E, Part 1901, § 1901.204(e).

\* If initial rent-up has not occurred by initial review, a subsequent review will be due within one year following initial occupancy, and then every 3 years.

**Exhibit B-8 of Subpart C—Project Name and Project Address**

**Employment Inquiry**

Date: \_\_\_\_\_  
 Employee: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Zip code: \_\_\_\_\_

To Whom It May Concern: The person named above and whose authorization signature appears below, is a tenant/applicant for a dwelling unit and subsidy assistance in this housing project. One of the requirements of the Federal law that provides the assistance is that family incomes must be within the limits set by the Government agency. The information requested below is for the purpose of determining eligibility and will be kept in **STRICT CONFIDENCE**. Thank you for your cooperation and return of the form in the enclosed self-addressed envelope.

Please complete that portion below which is applicable.

Authorization to release information:  
 Very truly yours,  
 Tenant/Applicant \_\_\_\_\_  
 Project Manager \_\_\_\_\_

**Presently Employed**

1. Date employment began \_\_\_\_\_.
2. Job Function/Occupation \_\_\_\_\_.

3. Present rate of pay \$ \_\_\_\_\_ per (Check one: hour-day-week-month).
4. If present rate of pay has been in effect less than 12 months, give previous rate of pay \$ \_\_\_\_\_.
5. Average regular (a) hrs. worked per day —, (b) days worked per wk. —.
6. Average overtime (a) hrs. worked per day —, (b) rate per overtime hr. —.
7. Other estimated income (tips-meals), if any \$ \_\_\_\_\_ per (day-week).

**Previously Employed**

1. (Period) From \_\_\_\_\_ To \_\_\_\_\_.
2. Rate of pay at termination \$ \_\_\_\_\_ per \_\_\_\_\_.

Remarks: \_\_\_\_\_

Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Telephone No. \_\_\_\_\_  
 Title: \_\_\_\_\_

(To Be Reproduced Locally)

**Exhibit B-10 of Subpart C—Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence**

In providing housing for senior citizens and handicapped persons, especially when that housing is provided in the form of congregate housing or housing involving group living

arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well meaning management might be in trying to provide housing for those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a similar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as for those who are able to sustain relative independence when given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more dependent on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling

tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project

management to assess the tenant's ability to remain independent with assistance from the services provided in the project.

Exhibit B-10A "Type of Living Environment Needed in Relation to Nature and Degree of Disability," is a guide which can be used by management to assess a person's capacity for personal care and independent or semi-independent living.

#### Exhibit B-10A of Subpart C—Type of Living Environment Needed in Relation to Nature and Degree of Disability

Component	Semi-independent		Independent Standard
	Subminimum	Minimum	
Mobility:			
In the home	Movement restricted, painful and slow. Requires assistance to remain in home such as grab rail, ramps, location of electrical outlets. Some help needed for cleaning and meal preparation.	Movement restricted, painful and slow. Housekeeping becoming difficult; need some assistance for heavy work.	Easy movement; able to feed, clothe, bathe, stoop, reach, clean, climb with little or no difficulty.
In the Neighborhood	Limited as to what can be done; mass transit rarely used; poor driver; slow at foot intersections.	Slowing down—cannot take mobility for granted; fair driver, cautious in mass transit.	Get about easily—can drive private car, use cabs, buses, mass transit.
Out of Town	Must plan travel with care to avoid fatigue, bustle; short trips better.	Some fatigue on long trips; better with companion.	Able to travel widely. Long trips, out-of-state, country, seasonal trips easy.
Physical Health	Moderate malfunctioning of several major organ systems; increasing susceptibility to infectious disease, injury, accidents, and pollutants. Occasional discomfort and loss of vitality. Slowing of movement, slumping of posture. Stiffness or inflexibility of joints, noticeable decline in functioning systems.	Appearance of difficulty in one or more major organ system, i.e.: (1) Circulatory, (2) excretory, (3) skeletal, (4) muscular (5) nervous, (6) respiratory, etc. Decreased ability to ward off disease and/or becoming susceptible to accidents and injury.	Major organ systems performing well. Free from infections, diseases and nonsusceptibility to frequent accidents. Physically healthy, mobile, capable of self-maintenance and/or self care.
Mental Health:			
Sensory Skills	Major difficulty with one or more senses.	Some difficulty with one or more senses that may be compensated somewhat by other senses or aids.	Sensory activity is high—smell, hearing, taste, touch, sight.
Motor Skills	Significant loss of coordination.	Decreased coordination.	Physically vigorous; capable of quick movements.
Cognitive Skills	Frequent memory lapses; generally unable to formulate new ideas.	Memory beginning to fade; capable of some new learning, less capable of abstract thinking.	High level of cognitive functioning, able to adapt to environmental changes; good power of retention, capable of new learning.
Affective Skills	Extended moments of depression and/or anxiety. Declining self-concept.	Less positive self-concept, some depression and anxiety.	Positive self-concept, generally depression and anxiety free.
Social Interaction	Ability to sustain and control social interaction with others difficult; family rarely seen; rarely goes to social gatherings like religious, social groups; eating habits sub-standard.	No longer initiates visits, friendships, or conversation with other, maintains occasional contact with family and friend.	Able to initiate, control, and sustain social interaction with family, friends, new encounters. Maintains existing social contact with religious social groups, neighbors, work, etc.
Income:			
Subsistence	Minimum standards of dress can be maintained with low quality clothing. Bare minimum nutritional standard are affordable, but not consistently. Standard housing without gov't subsidy rarely affordable.	Minimum standards of dress can be maintained with sub-standard wardrobe. Bare minimum nutritional standards are affordable or made available. Minimally standard housing can be afforded only in the poorest areas.	Standards of dress can be maintained with a standard wardrobe. Standard nutritional levels and a range of food choice is affordable. Standard housing is attainable.
Discretionary	Money is rarely available for discretionary purposes.	Money is occasionally available for discretionary limited purposes without sacrificing basic necessities.	Some money is frequently available for limited discretionary purposes.

Source: Adapted from Sam Harris Associates, Ltd., 1976.

#### Exhibit C of Subpart C—Rent Changes

##### I. Objectives

This Exhibit prescribes the method of processing changes in the monthly rental rates for tenants in Farmers Home

Administration (FmHA), Rural Rental Housing (RRH), and Labor Housing (LH) projects. This Exhibit covers all RRH and LH loans, including those approved before the date of this Subpart.

##### II. Definitions

A. *Approval Official.* State Director or designated State and District Office staff with delegated authority according to § 1930.143 of this Subpart.

B. *Utility.* Sewer, water, trash collection, electricity, natural gas, and any other fuel used specifically for cooking, heating, and/or cooling.

##### III. Initial Understanding With Borrower

A. All RRH and LH applicants will be informed at the application stage of the agency's rent change procedure. All borrowers will be advised that all proposed rent changes must comply with this Exhibit. This Exhibit will also apply to rent changes resulting from Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving Section 8 assistance.

B. Rental rates in projects financed in whole or in part by an RRH or LH loan may not be raised without FmHA written consent according to requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH and LH loans. Changes requiring only prior FmHA review are those which are beyond the borrowers' control to cover changes in taxes or utilities, and rent changes which do not result in an increase in the tenants' total shelter cost. Borrowers are encouraged to have the effective date of needed rent changes coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis. Rental change requests normally should be made at least 60 days prior to the end of the borrower's fiscal year. It is anticipated that rent changes would not be necessary more than once a year.

C. All borrowers are encouraged to participate in the FmHA Rental Assistance Program. However, unless the Administrator notifies State and District Offices otherwise, all borrowers with projects meeting the eligibility requirements of Paragraph II B of Exhibit E of this Subpart, except full profit borrowers, will be required according to Section 530 of Title V of the Housing Act of 1949, as amended, to apply for and accept Rental Assistance when it appears that a rent change will cause more than 20 percent of the low-income tenants to pay in excess of 25 percent of adjusted monthly income for costs of rent and utilities. If FmHA does not have RA available for this purpose, the borrower is encouraged to use other sources of governmental rental subsidies. The availability or unavailability of governmental rent subsidies will not preclude FmHA from processing a rent change request.

D. Even though rental assistance is not available, borrowers are encouraged to convert to Interest Credit Plan II to give tenants the most favorable rents possible.

##### IV. Borrower's Responsibility in Processing Rent Changes Which Increase Housing Costs to Tenants and Require FmHA Prior Approval

A. When a RRH borrower, or LH borrower, determines that a rental change is needed for reasons other than those specified in

paragraph VI, the borrower must meet with the District Director to review the following information before the "Notice of Proposed Rent Change" is posted and delivered to the tenants.

1. Facts demonstrating the need and justification for a rent change.
2. A new operating budget for borrower fiscal year showing:
  - a. Currently approved budget at old rents.
  - b. Actual income and expenses to date.
  - c. Proposed budget at proposed new basic rents.
  - d. Proposed budget at proposed new market rents (when applicable).
3. An application for Rental Assistance on Form FmHA 1944-25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed rent change will cause 20 percent of the low-income tenants to pay in excess of 25 percent of adjusted monthly income for the costs of rent and utilities. If the low-income tenants are receiving some other form of rent subsidy, such as HUD's existing Section 8, an exception may be made to this requirement.
4. A new energy audit or a listing of deferred improvements identified in a previous energy audit that was performed within the past five-years period according to the requirements of Exhibit D of this Subpart or regulations then extant.
5. Any other information the borrower believes necessary to justify the proposed rent change.

B. Current tenant certifications on Form FmHA 444-8 "Tenant Certification," or other form approved by FmHA must be on file in the District Office.

C. After the borrower and District Director have jointly reviewed the rent change application, the borrower will notify all affected tenants of any proposed rent change using the format of Exhibit C-1 of this Exhibit. The "Notice to Tenants of Proposed Rent Change" will advise tenants that during a 20-day comment period identified in the posted Notice, they have an opportunity to inspect, copy, and make written comments or objections to all materials which will be made available to them justifying the proposed rental increase. Tenants will be advised that they may also review any subsequent material submitted by the borrower to FmHA to support the rent change. If subsequent material is submitted, the borrower will be required to post a new notice. The Notice will advise the tenants that all written comments or objections should be submitted directly to the FmHA District Director by the end of the 20 day comment period. Tenants must be notified by the following methods:

1. The owner or management agent must mail copies of the Notice to all affected tenants and the District Director at least 60 days prior to the anticipated effective date of the rent change. By the end of the 20 day comment period, which is included within the 60 day period, the borrower may submit to the District Director any other information to be considered.
2. The management must also post prominently in common areas around the project (laundry rooms, parking areas, recreation rooms, etc.) copies of the Notice.

In addition to plain English, all notices will be published in the other primary languages of the tenants.

D. Notification to the tenant of proposed rent change will not be required when a change in the utility allowance only is proposed on Exhibit A-5 of Subpart E of Part 1944 of this Chapter, and the utilities are paid directly by the tenants. This does not preclude posting of the FmHA Letter of Approval as provided for in paragraph V B 1 of this Exhibit.

#### V. Determination by FmHA

A. *Actions by District Director.* The District Director will not consider a rent change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this Exhibit. When the application and all attachments for the proposed rent change have been received (including the tenant comments when notification is required), the District Director will:

1. Review all the material submitted.
2. Provide a copy of the borrower's latest Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance."
3. Determine if Rental Assistance is available for an eligible project on behalf of the low-income tenants.
4. When the change is requested for energy savings improvements identified in an Energy Audit, the District Director shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The District Director's determination will be made according to paragraph VI of Exhibit D of this Subpart.
5. When State Office approval is required, the District Office will submit to the State Director:
  - a. Appropriate recommendations on the request.
  - b. An indication of the number of tenants who will need rental assistance as a result of the rent changes.
  - c. All the material received from the borrower, including tenant comments or objections, at the end of the 20 day comment period.
  - d. A short narrative describing the general tone of tenant comments and concerns.
6. When a member of the District Office staff is the approval official, the documentation required by V A 5 above, will be attached to the rent change request.
7. When the borrower has requested rental assistance, complete Form FmHA 1944-25 and forward it to the State Director.

B. *Actions by the Approval Official.* When the application, attachments and comments are received, the approval official will review the material to determine if the rent change is justified. The borrower will be notified by the approval official of the determination within 45 days from the date the "Notice to Tenants of Proposed Rent Change" is posted.

1. *Approval Actions.* a. When a rent change is approved, the approval official will notify the borrower by using Exhibit C-2, "Notice of Approved Rent Change." The letter will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise.

b. When the borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944, and the purpose of the rent change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. *Disapproval Actions.* When the approval official determines an application for a proposed rent change is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the rent change is not approved. The borrower will be advised of the right to file an appeal regarding the rent change disapproval according to § 1900.50 of Subpart B of Part 1900 of this Chapter. Rent changes may not be approved when any of the following circumstances exist:

- a. The borrower is able but unwilling to comply with applicable tenant eligibility requirements; the audit and reporting requirements of this Subpart; or, the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, promissory note, or mortgage.
- b. The budget for the project reflects sufficient income at the present rent structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.
- c. The borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944 and the proposed rent change is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is to allow excessive profits and the proposed rent change will result in rental rates in excess of what eligible tenants can afford.
- d. The State Director is able to provide rental assistance to the project and the borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205(r) of Subpart E of Part 1944; but the borrower has not applied for rental assistance within the most recent period of 180 days prior to the rent change request; and 20 percent or more of the low-income tenants of the project are eligible to receive rental assistance.

#### VI. Rent Changes Requiring FmHA Prior Review Only

A. Rent changes caused by increases in operating costs for taxes and utilities, which are beyond the borrower's control, may be implemented with only prior FmHA review. The changes may not be greater than the amount necessary to cover the specific tax or utility increases.

1. Prior to notifying tenants, the borrower must meet with the District Director to review:

- a. A new operating budget for borrower fiscal year showing:
  - (1) Currently approved budget.
  - (2) Actual income and expenses to date.

- (3) Budget at new basic rents.  
 (4) Budget at new market rents (when applicable).

b. A copy of the notification to the borrower from the taxing body or vendor showing that taxes or utilities are being increased. The amount of the change or the basis on which the increased cost can be computed, must be shown in the notice.

c. Detailed calculations showing how the increased operating cost was determined.

d. An updated Exhibit A-5 to Subpart E of Part 1944, "Housing Allowances For Utilities and Other Public Services," when the tenants pay their own utilities and the rent change involves increased utility costs.

e. A new energy audit or a listing of deferred improvements identified in a previous energy audit that was performed within the past five-year period according to the requirements of Exhibit D of this Subpart or regulations then extant.

2. The District Director shall review the budget and supporting documentation and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to notifying each tenant of the new rents as required by State law. The borrower will:

a. Include in the notice an explanation of the increased costs which necessitated the rent change.

b. Mail a copy of the notice to the tenant at least 30 days prior to the effective date of the rent change.

c. Offer the tenants an opportunity to meet with management, discuss the rent change and review all material necessitating the change.

d. Inform the tenants of their right to request a review of the rent change approval decision within 45 days of the date of the notice by writing to the next higher FmHA approval official. Until the request is resolved, the tenants are required to pay the changed amount of rent as indicated in the Notice of Approval.

B. Rent changes decreasing or not increasing tenant's total shelter cost (rent plus utilities), may be implemented with only prior FmHA review provided:

1. Prior to notifying tenants, the borrower must meet with the District Director to review:

a. A new borrower fiscal year operating budget showing:

- (1) Currently approved budget.
- (2) Actual income and expenses to date.
- (3) Budget at new basic rents.
- (4) Budget at new market rents (when applicable).

b. Any material contributing to the change and justification for the change.

c. An updated Exhibit A-5 to Subpart E of Part 1944 when the change involves the tenant's utility allowance.

2. The District Director shall review the budget and supporting documentation, and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

3. In addition to any State requirements, the borrower notifies each tenant of the new

rents and/or utility allowance as required by State law, and:

a. Include in the Notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants.

b. Mail a copy of the Notice to the tenant at least 30 days prior to the effective date of the rent change.

c. Offer the tenants an opportunity to meet with management to discuss the change and review any material contributing to the change.

d. Inform the tenants of their right to request a review of the rent change approval decision according to paragraph VI A 3 d of this Exhibit.

C. When the budget and supporting documentation for any rent changes authorized by this paragraph are not acceptable to the District Director, and the District Director and the borrower cannot jointly agree on a budget based on acceptable rents, the borrower will be notified in writing to reduce or rescind the proposed rent change. The borrower will be given appeal rights as specified in Subpart B of Part 1900 of this Chapter.

#### VII. Unauthorized Rent Increases

When a borrower implements a rent change that does not meet the requirements of this Exhibit, the borrower will be notified in writing that: (1) The rent change has not been authorized, and (2) the rents must be rolled back to the last FmHA authorized level. Tenants affected by the unauthorized rent change will be given a rebate or credit for the unauthorized amount retroactive to the date of the unauthorized change. Those borrowers that fail to comply with the provisions of this paragraph will be handled according to § 1965.85(d) of Subpart B of Part 1965 of this Chapter.

#### VIII. Automatic Annual Adjustment Factors for Section 8 Units

If the approval official disapproves a rental rate change requested as a result of HUD's automatic annual adjustment factors for units receiving Section 8 assistance, or approves a rent change for a lesser amount than the change permitted by HUD, the approval official must require the borrower to deposit any excess funds into the Reserve Account. If this results in an accumulation of funds in the Reserve Account beyond the sum shown in the Loan Agreement or Loan Resolution, the interest reduction on a Section 8/515 project should be adjusted or canceled by memorandum to the Finance Office. The borrower will still be required to operate on a limited profit basis.

#### IX. Special Problem Cases

Problem cases which cannot be handled under this Subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

#### Exhibit C-1 of Subpart C—Notice To Tenants of Proposed Rent Change

Date Posted \_\_\_\_\_

You as a tenant are hereby notified that, subject to Farmers Home Administration approval, rents will be changed effective

(at least 60 days from posting). \_\_\_\_\_ has filed with the Farmers Home Administration (FmHA), United States Department of Agriculture, a request for approval of a change in the monthly rental rates of the \_\_\_\_\_ project for the following reasons:

- 1.
- 2.
- 3.
- 4.

Planned rent changes are as follows:

Project name	Unit	Present rent		Proposed rent		Amount changed
		Basic	Market	Basic	Market	

(Use where applicable: Since you receive rent subsidy, your rent will not be changed so long as your income and household composition remain unchanged.)

All materials justifying the proposed rent change have been reviewed by FmHA and will be made available to you and other tenants to inspect and copy at \_\_\_\_\_ during the hours of \_\_\_\_\_.

You may submit comments or objections in writing to the FmHA District Director during the 20 day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the FmHA approval official. Your comments or objections must be filed prior to \_\_\_\_\_ with the FmHA District Director, \_\_\_\_\_, at the District Office located at \_\_\_\_\_.

These comments will be reviewed by the FmHA District Director and forwarded to the FmHA approval official who will decide if the rent change should be approved.

Each tenant will be notified in writing of the FmHA decision to approve, reduce or deny the change. The approved rents will then be effective upon the effective date given above. If the approved rent change cannot be made effective by such date, an additional notice will be posted and the tenants will be notified in writing that new rents will be effective at the next rent due date following the additional notice and the FmHA approval.

By Borrower or Borrower's Representative

4. Exhibits C-2, D and D-1 are added to read as follows:

#### Exhibit C-2 of Subpart C—Notice of Approved Rent Change

Dear \_\_\_\_\_: You are hereby notified that the Farmers Home Administration (FmHA) has approved a rent change for the \_\_\_\_\_ project(s). The rental changes may become effective 30 days after proper tenant notification.

(Insert Reasons for Approval)

The approved rent changes are as follows:

Project name	Unit	Present rent		Requested rent		Approved rent	
		Basic	Market	Basic	Market	Basic	Market

(Use the following required and/or optional paragraphs where applicable)

\*You must notify the tenants of FmHA's approval of the rent changes by posting this letter in the same manner as the "Notice to Tenants of Proposed Rent Change." This notification must be posted in a conspicuous place and cannot be substituted for the usual 30-day written notice to each individual tenant.

\*This rent change approval does not authorize you to violate the terms of any lease you currently have with your tenants.

\*\*For those tenants receiving rental assistance (RA), their costs for rent and utilities will continue to be based on 25 percent of their adjusted monthly income. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

\*\*Since RA units are not available, the approved rent change is subject to your acceptance of the units should they become available. Your application for RA units on behalf of eligible tenants has been received.

\*This rent change is conditioned on the requirement that you carry out energy conservation measures as determined necessary by the project energy audit. You will be allowed — days for completion of the work. FmHA assistance may be available to finance any needed improvements.

\*You and the tenants may file an appeal regarding the rent change as approved within 45 days of the date of this notice. An appeal by you must be in writing to the appropriate hearing officer as specified in Subpart B of Part 1900 of this Chapter. The tenant's appeal must be in writing to the next higher FmHA Approval Official. In any case, until the appeal is resolved the tenants are required to pay the changed amount of rent as indicated in the Notice of Approval.

\*Any tenant who does not wish to pay the FmHA approved rent changes may give the owner 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

FmHA Approval Official

\*Required.

\*\*Optional, as applicable.

#### Exhibit D of Subpart C— Energy Audit

##### I. Objectives

The basic objective of this Exhibit is to define the Farmers Home Administration (FmHA) requirement in Multiple Family projects for an energy audit and what is included in an energy audit.

##### II. Purpose

An energy audit and implementation of the

recommended improvements contained therein should: increase the comfort and enjoyment of the project by the tenants; improve the value of the borrower's property; reduce project operating costs; reduce tenant and/or borrower utility costs; reduce subsidy costs; and conserve energy.

### III. Borrower Responsibility

A. *Initial Audit.* An energy audit is required for each project. The cost of the audit is an operating expense. The cost should be consistent with the size of the project and comparable to the cost of other audits in the area. The cost may be paid from annual revenue or from the reserve account depending on the amount. Those projects built under the FmHA thermal performance standards effective July 1, 1978, will not require an initial audit until five (5) years following completion of construction.

B. *Subsequent Audit.* A subsequent energy audit is required five years following the initial audit and every five years thereafter, to identify if further improvements are feasible.

C. *Submission of Audit.* The borrower shall submit a copy of the initial or subsequent energy audit with the annual project report due 45 days following the end of the borrower's fiscal year. The borrower's plan for implementing the recommended improvements shall be included with the report. If any of the improvements are deferred due to cost ineffectiveness, the borrower shall, each year thereafter, include with the annual project report, an updated cost feasibility analysis of the deferred improvements, along with the borrower's recommendation for implementing the improvements.

### IV. Types of Audits Acceptable to FmHA

A. For any type of energy audit to be considered acceptable, it should contain the following information for each energy saving measure recommended:

1. A description of the energy saving measure(s).
2. Its estimated useful life.
3. Its estimated annual energy cost savings in the first year.
4. The cost of the energy saving measure.
5. An estimate of any incremental annual operation and maintenance costs.

B. *The borrower/management agent energy audit* is based upon information collected by the borrower or management agent concerning the housing project and forwarded to a utility company or a home heating supplier that participates with a State Energy Conservation program for analysis.

C. *The "Program Audit"* is an in-depth, on-site inspection of a building, which is performed by a trained energy auditor. This type of audit is also governed by the regulations of the Department of Energy (DOE) found in 10 CFR 456 (RCS). The auditor inspects the building to determine the installation applicability of energy

conservation improvements.

1. These improvements should be included in the inspection as a minimum:

- a. Caulking and weatherstripping;
- b. Replacement central high efficiency air conditioners;
- c. Ceiling, wall, and floor insulation;
- d. Duct or pipe insulation;
- e. Water heater insulation;
- f. Storm or thermal windows and doors;
- g. Heat-reflective and heat-absorbing window and door material;
- h. Load management devices;
- i. Clock thermostats; and
- j. Furnace efficiency modifications

2. Consideration of these improvements is encouraged, but not required:

- a. Solar domestic hot water systems;
- b. Active solar space heating system;
- c. Combined active solar space heater and solar domestic hot water systems; and
- d. Passive solar space heating and cooling systems.

3. During the "Program Audit" inspection, the auditor also examines the building to determine the possible application of energy conserving practice which can lead to immediate energy savings. These practices include but are not limited to the following:

- a. Furnace efficiency maintenance and adjustments;
- b. Water flow reduction on showers and faucets;
- c. Sealing leaks in pipes and ducts;
- d. Raising thermostat settings in summer and lowering of them in winter;
- e. Nighttime temperature setback;
- f. Reducing energy use when apartment is unoccupied;
- g. Plugging leaks in attics, basements, and fireplaces; and
- h. Efficient use of shading

4. Upon completion of the program audit, the auditor calculates the estimated energy savings and installation costs for applicable measures and presents the results in writing to the borrower.

D. Any other energy audit which substantially complies with paragraphs IV A, B or C of this Exhibit. This may be applicable in some States where State energy plans are not yet in place. In such cases the State Director may accept such other Audits. Some private energy suppliers, Regional Utility Commissions (RUC), Public Utility Districts (PUD), Rural Electrification Administration (REA) offices, State extension offices, property management firms, and the DOE have developed energy audit checklists and forms. These sources of information may be utilized.

### V. Funding

Improvements may be funded from annual project income, project reserve, a subsequent loan, borrower's funds, or any other FmHA authorized funding, or appropriate which will keep the improvement cost effective. Plans for funding the improvements should be included in the borrower's recommendation for implementation.

#### VI. District Director Responsibility

A. The District Director shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit.

1. *Cost effectiveness.* Cost effectiveness shall be determined by comparing the value-in-use of the facility with and without the proposed energy saving improvement. Exhibit A of Subpart B of Part 1922, which is available in any FmHA office, "Guide for Appraisal of Energy Saving Measures" describes the "value-in-use" approach that may be used to appraise cost effectiveness.

2. *Financial Impact.* Financial impact shall be determined by comparing the estimated net energy and operation and maintenance costs savings in the first year to the annual cost of amortizing a loan to install the proposed energy saving improvement. A positive financial impact occurs when the first year annual savings equals or exceeds the annual cost of amortizing any loan(s) for the proposed energy saving improvement. Exhibit D-1 of this Subpart may be used to organize the calculation of the financial impact.

3. When the identified and/or deferred improvements determined by an energy audit obtained within the immediate past five year period are found to be cost effective and have a positive financial impact, the District Director shall recommend or require that any rent increase approval requested by the borrower be conditioned upon installation of such energy saving improvement(s).

4. The District Director may recommend a rent increase for energy saving improvements which are not "cost effective" whenever the borrower contributes sufficient funds to reduce the cost of the improvement so that, on the basis of the FmHA investment only, the improvement is cost effective. A positive first year financial impact is not required. Any contribution made by the borrower to reduce the cost of the improvement to the cost effective limits will not be an eligible contribution for computing return on investments. The project reserve may not be utilized for such contribution.

B. When the improvements are not cost effective or do not have a positive financial impact, and the borrower does not elect to reduce the cost of the energy saving measures as described in Paragraph VI A 4 of this Exhibit, the District Director shall recommend deferral of implementation of the improvements. Any deferred improvements must be analyzed during each subsequent year's annual analysis.

C. A story of the decision regarding the energy audit will be included in the annual reports forwarded to the State Director.

#### VII. State Director Responsibility

The State Director shall review the District Director's recommendations and the decision regarding implementation of the proposed improvements as a part of the annual report review.

#### VIII. Development

All development will be performed in accordance with the requirements of Subpart

E of Part 1944 of this Chapter and Subpart A of Part 1924 of this Chapter, except that § 1924.6(b)(3)(i) of Subpart A of Part 1924 will not apply to improvements made by the owner-builder method.

#### IX. Rent Change

Any rent change necessitated by the improvements must be processed as set forth in Exhibit C of this Subpart.

#### Exhibit D-1 of Subpart C—Calculation of Financial Impact (Energy Audit)

- A. First Year Annual Savings (from audit) \_\_\_\_\_ \$
- B. Annual Cost of Amortized Loan (from calculation in Part D below) \_\_\_\_\_
- C. Difference (A-B) (if zero or greater, energy savings measure has a positive financial impact) \_\_\_\_\_
- D. Calculation of Annual Cost of Amortized Loan for Energy Saving Measure:
- Appraisal of Energy Saving Measure (for calculation of Appraised value, see Exhibit A, Subpart B of Part 1922 "Guide for Appraisal of Energy Saving Measure") \_\_\_\_\_
  - Amortization Factor (for calculation of Amortization factor, use interest rate of Rural Rental Housing and Rural Cooperative Housing from FmHA Instruction 440.1, Exhibit B; the Useful Life or weighted average of Full Life for more than one energy saving measure from the energy audit; and the Amortization factor from FmHA Instruction 440.1, available in any FmHA District Office) \_\_\_\_\_ ✓
  - Annual Cost (Appraisal x Amortization factor enter answer in Part B above) \_\_\_\_\_

#### Exhibit E of Subpart C—[Amended]

5. Exhibit E, paragraph II.A.3.a. is amended by changing the reference in the first sentence from "paragraph V B 1 h of Exhibit B" to "paragraph VI B 2 e of Exhibit B."

6. Exhibit E, paragraph II F is amended by changing the word "increase" in the last sentence to the word "change."

7. Exhibit E, paragraph VIII B is amended by changing the reference from "paragraph VI E of Exhibit B" to "paragraph VII F of Exhibit B."

8. Exhibit E, paragraph VIII C is amended by changing the reference from "paragraph VI of Exhibit B" to "paragraph VII of Exhibit B."

9. Exhibit E, paragraph VIII E is amended by changing the reference in the last sentence from "paragraph VII of Exhibit B" to "paragraph VIII of Exhibit B."

10. Exhibit E, paragraph IX C is amended by changing the word "increased" in the last sentence to the word "changed."

11. Exhibit E, paragraph XI B 1 b is amended by changing the reference in the second sentence from "paragraph V D of Exhibit B" to "paragraph VI E of Exhibit B."

12. Exhibit E, paragraph XI B 2 is amended by adding in the last sentence between the words "list" and "according" the words "if the rental

agent determines that a hardship to the applicant will exist;" and by changing in the last sentence the reference "paragraph V D Exhibit B" to "paragraph VI E 2 of Exhibit B."

13. Exhibit E, paragraph XII is amended by changing the reference in the last sentence from "paragraph VIII C of Exhibit B" to "paragraph IX C of Exhibit B."

14. Exhibits F and G are added to read as follows:

#### Exhibit F of Subpart C—Visit Checklist for Multiple Family Housing Projects

Date Prepared: \_\_\_\_\_

A. Tenant and Application Records: (refer to FmHA Instruction 1930-C).

##### 1. Tenant Records:

- Are separate files kept for each tenant? \_\_\_\_\_
- Are files kept on project site? \_\_\_\_\_
- Are files retained for 2 years after tenant moves out? \_\_\_\_\_
- Are files being maintained properly? (Spotcheck files) \_\_\_\_\_
- Are there current tenant certifications? \_\_\_\_\_
- Are there current verifications of income? \_\_\_\_\_
- Are there leases signed by the tenant and borrower? \_\_\_\_\_
- Are RA clauses in leases or on attached addendum? \_\_\_\_\_
- Are rents shown on the leases? \_\_\_\_\_
- Is there a move-in checklist of property condition? \_\_\_\_\_
- Is there a system for tracking tenant monthly rent payments, RA or overage? \_\_\_\_\_

Comments: \_\_\_\_\_

##### 2. Waiting Lists:

- Is there a master list of all applications on hand? \_\_\_\_\_
- Does the waiting list show date and time of application? \_\_\_\_\_
- Is there a separate list kept for each size apartment? \_\_\_\_\_
- When there is a vacancy, is the 1st person on the list given the 1st opportunity to move in? \_\_\_\_\_
- Is there documentation of applicant contacts? \_\_\_\_\_
- If an applicant is removed from the list, is it documented? \_\_\_\_\_
- What is the policy for holding an apartment vacant if applicant cannot move in immediately? \_\_\_\_\_
- Are there any applicants with a Letter of Priority? \_\_\_\_\_

Comments: \_\_\_\_\_

##### 3. Rental Assistance (RA) Assignment:

- Was Form FmHA 1944-29 updated before RA was assigned? \_\_\_\_\_
- Are all tenants qualified for RA on the updated Form FmHA 1944-29? \_\_\_\_\_
- Is percentage of income paid for shelter based on rent plus utilities? \_\_\_\_\_
- Is the assignment of RA based on priorities in Exhibit E to FmHA Instruction 1930-C? \_\_\_\_\_
- Do tenants occupy correct size units? \_\_\_\_\_
- Are additional RA units needed? \_\_\_\_\_
- Are tenants experiencing rent overburden? \_\_\_\_\_

Comments: \_\_\_\_\_

**4. Tenant Selection:**

- Are apartments advertised? \_\_\_\_\_
- Are applications received at project? Where else? \_\_\_\_\_
- Does the application form meet FmHA requirements? \_\_\_\_\_
- Are rejected tenants given their appeal rights (FmHA Instruction 1944-L)? \_\_\_\_\_
- Are rejected applications on hand since last compliance review? \_\_\_\_\_
- Is everyone allowed to apply? \_\_\_\_\_
- Is the ethnic and racial composition of the project appropriate in light of the community? \_\_\_\_\_

Comments: \_\_\_\_\_

**5. Tenant Grievance and Appeals Procedure:**

- Are tenants being informed of their rights? \_\_\_\_\_
- Is a copy of the procedure readily available to tenants? \_\_\_\_\_
- Is there a standing hearing panel for the project? \_\_\_\_\_
- Are records maintained of settlements and formal hearings? \_\_\_\_\_

Comments: \_\_\_\_\_

**B. Physical Inspection:**

**1. Tenant Information:**

- What are tenants paying for utilities? \_\_\_\_\_
- Who is responsible for repairs? \_\_\_\_\_
- Is the rental subsidy being deducted from rent? \_\_\_\_\_

Comments: \_\_\_\_\_

**2. Posters and Signs Etc.:**

- Is there a project sign? \_\_\_\_\_
- Does it have an equal housing logo? \_\_\_\_\_
- Is there a sign indicating where to apply? \_\_\_\_\_
- Are Equal Housing Opportunity posters visible? \_\_\_\_\_
- Are " \* \* \* and Justice for All" posters visible? \_\_\_\_\_
- Is the Affirmative Fair Housing Marketing Plan available for review? \_\_\_\_\_

Comments: \_\_\_\_\_

**3. Project Maintenance:**

- Are units individually metered? \_\_\_\_\_
- Do units have storm doors and windows? \_\_\_\_\_
- Does the project have a neat appearance? \_\_\_\_\_
- Is maintenance being deferred? \_\_\_\_\_
- Is the landscaping completed? \_\_\_\_\_
- Are equipment and facilities adequate? (trash bins, playground equipment, etc.) \_\_\_\_\_

Comments: \_\_\_\_\_

**C. Borrower Records:**

**1. Management:**

- Does the owner have an interest in the management firm or supplier? \_\_\_\_\_
- Is there an approved management plan? \_\_\_\_\_
- Does it cover maintenance and inspection? \_\_\_\_\_
- Is there an approved management agreement? \_\_\_\_\_
- Is it being followed? \_\_\_\_\_
- Has there been a change in management, partners or stockholders? \_\_\_\_\_
- Is the borrower cooperative in working with FmHA? \_\_\_\_\_
- Is borrower interested in group supervision? \_\_\_\_\_

Comments: \_\_\_\_\_

**2. Bookkeeping System:**

- Is there an approved bookkeeping system? \_\_\_\_\_
- Are borrower accounts current? \_\_\_\_\_
- What kind of borrower accounting and reporting system is being used? \_\_\_\_\_
- Does the borrower accounting system operate on accrual basis? \_\_\_\_\_
- Is the borrower bookkeeping system located on the project site? \_\_\_\_\_

Comments: \_\_\_\_\_

**Exhibit G of Subpart C—Supervisory Visit Report Form—Multiple Family Housing Projects**

Date: \_\_\_\_\_

Borrower \_\_\_\_\_  
 Case No. \_\_\_\_\_ RRH ( )  
 Project Name \_\_\_\_\_  
 County and State \_\_\_\_\_ LH ( )  
 Profit ( ) Limited Profit ( ) Nonprofit ( ) Individual ( )  
 Partnership ( ) Corporation ( ) Other ( ) Owner/manager ( ) Resident Manager ( ) Management Firm ( )  
 Plan I ( ) Plan I SS ( ) Plan II ( ) Plan II RA ( ) RA ( )

- 1. Account status: Current ( ) Delinquent ( )  
 If delinquent, amount and reason: \_\_\_\_\_
- 2. Report status: \_\_\_\_\_ Date last report \_\_\_\_\_  
 Monthly \_\_\_\_\_  
 Annual \_\_\_\_\_  
 Analysis and Audit \_\_\_\_\_  
 Budget \_\_\_\_\_
- 3. Real Estate Taxes: Current ( ) Delinquent ( ) Amount \_\_\_\_\_
- 4. Insurance: \_\_\_\_\_ Coverage \_\_\_\_\_ Expiration \_\_\_\_\_  
 Fire \_\_\_\_\_  
 Fidelity Bond \_\_\_\_\_  
 Liability \_\_\_\_\_  
 Flood (if applicable) \_\_\_\_\_
- 5. Subsidy: RA ( ) No. of Units ( )  
 Section 8 ( ) No. of Units ( )  
 Number of additional units needed ( )
- 6. Rents and Units:

Rent Structure	Utility allowance	Number of units	Current vacancies
_____ / _____	BR _____	_____	_____
_____ / _____	BR _____	_____	_____
_____ / _____	BR _____	_____	_____
_____ / _____	BR _____	_____	_____
_____ / _____	BR _____	_____	_____

Date Approved: \_\_\_\_\_ Date Approved: \_\_\_\_\_ Total

- 7. Development Status: Completed ( ) Partial ( )  
 Rehab ( ) Describe \_\_\_\_\_

- 8. Visits and Reviews:  
 Date last site inspection: \_\_\_\_\_  
 Date last compliance review: \_\_\_\_\_

- 9. Affirmative Fair Housing Marketing Plan  
 Date approved: \_\_\_\_\_ Yes— No—
- 10. Tenant and Application Records: \_\_\_\_\_ Date Lease Approved \_\_\_\_\_

Comments/problems—tenant records, waiting list, RA priority list, tenant selection and tenant grievance and appeal procedures, etc.

- 11. Tenant Information and Physical Inspection:  
 Comment/problems—posters, energy conservation, maintenance, etc.
- 12. Borrower Records:  
 Comments/Problems—management, accounts, financial management, reports, rent increase, etc.
- 13. Servicing Actions:  
 What actions in progress (transfers, reamortization, rent increase, RA request, subsequent loans, etc.) \_\_\_\_\_  
 Have there been Finance Office or District Office errors in applying payments, etc.? \_\_\_\_\_  
 Are they being corrected and how? \_\_\_\_\_  
 Has borrower corrected previous problems when requested to by FmHA? \_\_\_\_\_

- 14. What are the problems that need to be corrected and what specific follow-up action will be planned? (Show planned follow-up and scheduled dates) Continue on another sheet, if necessary.

**PART 1944—GENERAL**

**Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations**

**§ 1944.171 [Amended]**

15. Section 1944.171(d) is amended in the table by changing the title of Exhibit A-5 from "Statement of Budget, Income, and Expense" to "Statement of Budget and Cash Flow."

**Exhibit A-5—[Amended]**

16. Exhibit A-5 is amended by changing the title from "Statement of Budget, Income, and Expense (Excluding Depreciation)" to "Statement of Budget and Cash Flow."

**Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations**

**§ 1944.205 [Amended]**

17. Section 1944.205(f) introductory text is amended by changing the reference from "paragraph V B 1 of Exhibit B to Subpart C of Part 1930" to "paragraph VI B 2 of Exhibit B to Subpart C of Part 1930."

**§ 1944.211 [Amended]**

18. Section 1944.211(a)(5)(i) is amended by removing the words "general fund account" and inserting in their place, the words, "General Operating Account."

19. Section 1944.211(a)(5)(iii) is revised to read as follows:

**§ 1944.211 Eligibility requirements.**

- (a) \* \* \*
- (5) \* \* \*

(iii) In cases where the borrower has provided for the initial 2 percent operating expense amount from the borrower's own funds, after two, but before five full budget years of project operation, the State Director may authorize the borrower to a one-time withdrawal from project funds, an amount not to exceed the borrower's beginning cash contribution to the Initial Operating Capital as described in the loan agreement or resolution, provided that:

(A) The loan was closed on or after October 27, 1980,

(B) The loan agreement or resolution signed by the borrower is Form FmHA 1944-33 "Loan Agreement," 1944-34 "Loan Agreement," or 1944-35 "Loan Resolution,"

(C) The project has at least a 95 percent occupancy level at the time of the withdrawal request,

(D) The withdrawal will not affect the financial integrity of the project. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred.

(E) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or the next year of operation.

(F) The State Director has reviewed and approved any required borrower reports before the Initial Operating Capital is withdrawn.

20. Section 1944.211(a)(5)(iv) is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense," to "Statement of Budget and Cash Flow" and change "item 8" to "line 38."

#### § 1944.215 [Amended]

21. Section 1944.215(b) is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense" to "Statement of Budget and Cash Flow" and change "item 8" to "line 38" in three places in this paragraph.

22. Section 1944.215(i)(3) is amended by changing the reference from "section V B 4 of Exhibit B to Subpart C to Part 1930" to "paragraph VI B 5 of Exhibit B to Subpart C to Part 1930."

23. Section 1944.215(i)(6)(ii) is revised to read as follows:

#### § 1944.215 Special conditions.

- (i) . . . .
- (6) . . . .

(ii) By the use of any objective guide, such as the guide explained in Exhibit B-10 of Subpart C of Part 1930 (FmHA

Instruction 1930-C) and described in Exhibit B-10A of Subpart C of Part 1930 (FmHA Instruction 1930-C) titled "Type of Living Environment Needed in Relation to Nature and Degree of Disability" which is a guide than can be used by management to assess a person's capacity for personal care and independent of semi-independent living.

#### § 1944.232 [Amended]

24. Section 1944.232(d)(2) is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense" to "Statement of Budget and Cash Flow."

#### Exhibit A—[Amended]

25. Exhibit A, "Developing the Loan Docket," paragraph 11 is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense," to "Statement of Budget and Cash Flow."

26. Exhibit A, "Developing the Loan Docket," paragraph 15 is amended by changing the reference in the second sub-paragraph from "Exhibit B-10 to Subpart C to Part 1930" to "Exhibits B-10 and B-10A to Subpart C of Part 1930."

#### Exhibit A-7—[Amended]

27. Exhibit A-7, paragraph 8 is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense," to "Statement of Budget and Cash Flow."

#### Exhibit B—[Amended]

28. Exhibit B, paragraph VI A is amended by changing the reference in the second sentence from "paragraph VII of Exhibit B to Subpart C to Part 1930" to "paragraph VIII of Exhibit B to Subpart C to Part 1930."

#### PART 1965—GENERAL

##### Subpart B—Security Servicing for Multiple Housing Loans

#### § 1965.65 [Amended]

29. Section 1965.65(c)(8) is amended by changing the reference from "paragraph VI E of Exhibit B to Subpart C of Part 1930" to "paragraph VII F of Exhibit B to Subpart C of Part 1930."

30. Section 1965.65(f)(7) is amended by changing the title of Form FmHA 1930-7 from "Statement of Budget, Income and Expense" to "Statement of Budget and Cash Flow."

#### § 1965.90 [Amended]

31. Section 1965.90(b)(2) is amended by changing the reference in the second sentence from "paragraph XIII A 4 of Exhibit B to Subpart C of Part 1930 to

"paragraph XIV A 4 of Exhibit B to Subpart C of Part 1930."

Authorities: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Dated: August 11, 1983.

Michael E. Brunner,  
Acting Administrator, Farmers Home Administration.

[FR Doc. 83-33430 Filed 12-19-83; 8:45 am]

BILLING CODE 3410-07-M

#### 7 CFR Part 1944

##### Tenant Grievance and Appeals Procedures

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) revises its regulations governing tenant grievance and appeals to allow termination of tenancy and eviction to be handled by a judicial process under State or local law and to allow FmHA District Directors to select a hearing officer in the event the borrower and tenant are unable to agree on one.

These changes resulted from comments and concerns expressed by FmHA personnel, tenants and owners and managers of FmHA projects that the prior grievance and appeals procedures required by this regulation were burdensome and difficult to administer.

The intended effect is to reduce the burden of a duplication of effort in the termination of tenancy and eviction process and to provide for the prompt resolution of borrower-tenant disputes.

**EFFECTIVE DATE:** December 19, 1983.

**FOR FURTHER INFORMATION CONTACT:** Dwight A. Carmon, Loan Specialist, Multi-Family Housing Servicing and Property Management Division, Room 5441-S, Farmers Home Administration, 14th and Independence Avenue, SW, Washington, D.C. 20250, Telephone (202) 382-1060.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in Subpart H of Part 1901.

This action is necessary because the Agency has found that the prior regulation did not provide for a speedy resolution of borrower-tenant disputes. Comments received from FmHA personnel and the general public in response to the April 22, 1982 Proposed Rule (47 FR 17300) created additional concerns as how to best resolve borrower-tenant disputes. Therefore, those people and organizations that provided comments were given the opportunity to further clarify their original comments at a meeting held in the South Agriculture Building, Washington, D.C. on December 8, 1982. For those who were not able to attend the meeting in person, the Agency requested clarification of the issues from them in writing.

The Agency specifically requested clarification on the following issues:

(1) What would be the adequacy of State and local laws to protect the rights of all parties to a tenant-landlord dispute? What assurance do State and local laws provide to make sure due process will be afforded?

(2) What would be the burden of time, money and personnel on management, tenants and the FmHA if the proposed rule were implemented?

(3) What would be the effects on tenants, management and FmHA if the provisions for a hearing officer were removed/kept?

In regard to this issue what other alternatives are there?

(4) What would be the effect on management, tenants and the FmHA if failure to maintain the premises according to State and local law was added as a grievance?

The major changes within this regulation are:

(1) Termination of tenancy and eviction will be conducted by a judicial process in accordance with State or local law.

(2) The provision to allow a District Director to select a hearing officer to resolve borrower-tenant grievances when the borrower and tenant are unable to select a hearing officer acceptable to both parties.

#### Discussion of Comments

In general the comments from FmHA personnel and owners and managers of FmHA projects supported the changes presented in the proposed rule. The comments of the legal services corporation and tenants opposed the proposed changes and were directed toward the protection of tenant interests. Of the 38 written responses 20 supported the proposed changes, 14 opposed them and 4 had no position but did make editorial changes.

(1) Certain parts of the regulation were rewritten and reorganized for clarity based on the comments received.

(2) Removal of eviction as a grievable issue. Eleven commenters objected to the wholesale removal of the eviction process from the regulation. The majority of the unfavorable comments alleged many States and local laws failed to provide an effective due process procedure to protect tenant rights as required by section 510(g) of the Housing Act of 1949, as amended.

Twenty commenters supported the removal of the eviction process asserting that State or local laws are adequate to protect tenant rights.

The agency has addressed this issue by stipulating termination of tenancy and evictions are to be handled by judicial action pursuant to State or local law. The Agency determined that in the case of evictions or termination of tenants that the right of tenants are fully protected under State or local law when a Judicial Process is required. This instruction has referenced Exhibit B paragraph XIV B of FmHA Instruction 1930-C which requires the borrower to advise the tenant, in a termination notice, that the tenant is entitled to a court proceeding pursuant to State or local law at which he or she may present a defense to the eviction. The borrower is prohibited from resorting to "self-help" evictions or any non-judicial process, even where authorized by State or local law.

(3) Removal of Hearing Panel in favor of a FmHA District Director Review. Twenty commenters favored the removal of the hearing panel. They said the hearing process was slow. One management agent said the hearing panel process frustrates the removal of tenants who willfully and wantonly violated their rental agreement and other rules and regulations of the

project. The hearing process creates a duplication of effort with State law.

The eight participants in the December 6, 1982 commenters' meeting all agreed the prior regulation did not allow for the conclusion of the appeal process in the event the borrower and tenant couldn't agree on acceptable member(s) of the hearing panel. Those present at the meeting represented both borrower and tenant interests. The participants represented:

- (1) Tulare County Housing Authority;
- (2) National Housing Law Project;
- (3) Housing Assistance Council;
- (4) Counsel For Rural Housing and Development; and
- (5) Georgia Legal Services.

Eleven commenters argued against the removal of the hearing panel for a variety of reasons as follows:

(1) Hearings give tenants an opportunity to present their side of the issue to a disinterested third party.

(2) The hearing process tempers the arbitrary actions of some landlords, resulting from inexperience or personal grudges.

(3) The hearing process insures due process as required by law.

(4) The District Director should not be a substitute for the hearing process. This would place an undue burden on the District Director.

(5) A District Director review would require a tenant(s) to make an appeal in writing. Since some tenants may be illiterate, an appeal in writing would be impossible.

The Agency has determined to retain the hearing officer or panel process within the regulation. In the event the borrower and tenant cannot select a mutually acceptable hearing officer within 30 days from the date of the request for a hearing, the FmHA District Director serving the area in which the project is located will select the sole hearing officer.

(6) Removal of FmHA Tenant Grievance and Appeal Procedures from projects where Housing and Urban Development (HUD) Section 8 agreements require borrowers to use HUD Tenant Grievance and Appeals Procedure. One commenter said removal of FmHA grievance procedures from Section 8 units in a project receiving only partial HUD assistance would require a dual grievance system because the other units in the project would be governed by FmHA procedures. This would create an unwarranted amount of confusion. HUD regulations provide due process through State law.

This regulation will apply to all FmHA projects, because the Agency determines occupancy eligibility in all

rental units regardless of HUD assistance.

(7) Borrower's Failure to Maintain the Property in Accordance with State and local building codes as a grievable item. Two commenters agreed this was a good idea provided it did not impede the tenants' judicial remedy under State law. One commenter requested that, if FmHA implements this provision of the proposed rule, that the wording of the rule would not require conformance with building codes not in effect at the time of final construction.

This regulation requires that the borrower maintain the project in accordance with State and local building codes applicable at the time of construction unless codes made or amended after the date of construction are made retroactive to or prior to the date of construction.

(8) Projects in which an association of tenants has been duly formed and the association of tenants and the borrower have agreed to an alternate method of settling grievances. Three commenters were against this option. One commenter wanted to know if the District Director was required to maintain records of projects with such arrangements.

This option for settling grievances is not required but is a possible method of informally settling disputes.

(9) Definitions of grievance. Two commenters felt the definition was incomplete. Evictions have not been allowed as a grievable item in this rule since evictions will be handled by judicial action in accordance with State or local law.

(10) One commenter objected to the elimination of hearings from the proposed rule while retaining the definition. The hearing process is incorporated in the regulation.

(11) Reasons for grievance. One commenter felt "unwarranted eviction for frivolous reasons" should be included. One commenter felt failure to maintain the property according to State and local laws was already implied as a reason for grievance. Two commenters supported failure to maintain the property as a reason for grievance. One commenter felt the rejection of an application for rental assistance (RA) should not be grievable if no RA is available. A borrower's failure to maintain the property in accordance with State and local laws is included as a reason for grievance.

(12) Notification to applicant or tenant of proposed action and tenant's or applicant's response. One commenter felt the FmHA procedure was inadequate to inform tenants of their right to respond to a borrower's

allegations and in what time frame they were to respond.

A guide letter has been incorporated into the regulations which provides for specific allegations and the tenant's right to respond within 10 days.

(13) Applicant's right to seek admission for occupancy. One commenter felt most State laws protect applicant rights.

(14) A commenter representing borrowers and managers believes cases involving willful falsification of information by applicants or tenants should not be appealable. "Willful" is a question of fact that should be appealable, therefore comment was not adopted. CFDA Numbers and Titles: 10.405, Farm Labor Housing Loans and Grants and 10.415, Rural Rental Housing Loans.

#### List of Subjects in 7 CFR Part 1944

Administrative practices and procedure, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Grant programs—Housing and community development, Rural housing.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended by revising Subpart L of Part 1944 to read as follows:

#### PART 1944—HOUSING

##### Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

Sec.	
1944.551	Purpose.
1944.552	Definitions.
1944.553	Exceptions.
1944.554	Reasons for grievance and appeal.
1944.555	Settlement of grievances and appeals.
1944.556	Procedure for obtaining a hearing.
1944.557	Procedures governing the hearing.
1944.558	Decision of the hearing officer or hearing panel.
1944.559	Responsibilities of the FmHA District Director.
1944.560-1944.599	[Reserved]
1944.600	OMB control number.
	Exhibit A—Summary of Meeting

##### Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

###### § 1944.551 Purpose.

The purpose of this Subpart is to set forth uniform requirements for grievance and appeals procedures in all Rural Rental Housing (RRH) and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under Sections 514, 515, and 516 of the Housing Act of 1949. The objective of this Subpart is to ensure the fair treatment of tenants while providing for

an equitable manner by which borrowers can operate, maintain, and safeguard rental projects. The right to appeal under this Subpart will also extend to persons who seek admission as tenants.

###### § 1944.522 Definitions.

(a) *Applicant*. A person who has submitted an application to occupancy in a RRH or LH project, and is not a tenant. This includes persons who have been denied an application for admission, except when applications are not being processed due to the fact that it will be awhile before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph VI D 1 b of Exhibit B of Subpart C of Part 1930 of this Chapter.

(b) *Borrower*. The borrower (landlord) is the owner or the owner's authorized representative, of a RRH or LH project.

(c) *Eviction*. Dispossession of the tenant by judicial action pursuant to State or local law from a RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

(d) *Grievance*. A dispute which a tenant has with the borrower's action, or failure to act, according to the lease and/or FmHA regulations which results or may result in denial, significant reduction, or termination of benefits (other than eviction by judicial action pursuant to State or local law).

(e) *Hearing*. An informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision, or an applicant's appeal of a rejected application, or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(f) *Lease*. The written agreement, approved by FmHA, between the borrower and tenant.

(g) *Tenant*. An eligible lessee/occupant of a RRH or LH project who has executed a lease agreement.

(h) *Termination of tenancy*. The termination of the lease, either before or at the end of the lease term, as the result of material noncompliance with the terms of the lease, rules for occupancy, or violation of FmHA regulations applicable to conditions for occupancy.

###### § 1944.553 Exceptions.

This Subpart does not apply to:

(a) *Rent changes authorized by FmHA*. Rent changes must be authorized by FmHA in accordance with the requirements of Exhibit C to Subpart C of Part 1930 of this Chapter where tenants are provided an opportunity to

provide comments to FmHA on a borrower's Notice of Proposed Rent Change.

(b) *Discrimination complaints.* When a dual issue is alleged (Lack of service or admission because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap) the grievance which will affect the tenant's rights to decent, safe and sanitary conditions, will be handled in accordance with this Subpart; at the same time a copy of the complaint must be forwarded to the Director, Equal Opportunity Staff, National Office, Washington, D.C. 20250, for review and investigation of the discrimination complaint. The tenant's right to a hearing on his/her grievance will not be delayed pending resolution of the discrimination allegation.

(c) *Projects in which an association of all tenants has been duly formed.* In projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternate method of settling grievances, that method will be used.

(d) *Changes in rules required by FmHA.* Changes in rules required by FmHA in which proper notice and opportunity have been given according to law and the provisions of the lease.

(e) *Notification of termination of tenancy and eviction.* Notification of termination of tenancy and eviction is to be handled in accordance with paragraph XIV B of Exhibit B of Subpart C of Part 1930 of this Chapter and according to State or local law.

(f) *Termination of tenancy and eviction by judicial action as prescribed by State or local law.* Termination of tenancy and eviction must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager in accordance with paragraph XIV A of Exhibit B of Subpart C of Part 1930. The borrower shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this Subpart.

(g) *Disputes between tenants.* This Subpart does not apply to disputes between tenants not involving the borrower.

#### § 1944.554 Reasons for grievance and appeal.

(a) *Tenants.* Grievance and appeal procedures provide a means for a tenant, in an FmHA-financed rental project, to meet with a borrower and to obtain a hearing if the tenant has a grievance. This opportunity relates to a borrower's action or failure to act, in accordance with the lease and/or FmHA regulations and results in a

denial, significant reduction or, termination of benefits; or, when a tenant contests a borrower's notice of proposed adverse action as provided in § 1944.555(b) of this Subpart. This may include:

(1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.

(2) Violation of lease covenants and rules.

(3) Modification of lease.

(4) Rule changes.

(5) Rent changes not authorized by FmHA according to Exhibit C of Subpart C of Part 1930 of this chapter.

(6) Failure to maintain the premises according to State and local laws, statutes, or ordinances in effect at the date of final construction unless new or amended laws and ordinances are made retroactive to, or prior to, the date of final construction.

(7) Denials of rental assistance.

(b) *Applicant.* Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in a RRH or LH project has been rejected, as well as for a person who has been denied an application for admission, except in those cases where applications are not being processed as provided for in paragraph VI D 1 b of Exhibit B of Subpart C of Part 1930 of this Chapter. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

#### § 1944.555 Settlement of grievances and appeals.

(a) *General.* Borrowers and applicants/tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this Subpart.

(b) *Notice to applicant/tenant.* In the case of a borrower's proposed adverse action including denial of admission to occupancy, the borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of the right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this Section and of the right to a hearing in accordance with § 1944.556 of the Subpart. In projects where there is a concentration of non-English speaking individuals, the notice must also be in the non-English concentration language,

when necessary, for the tenant's understanding.

(c) *Presentation of grievances or responses to notice of proposed adverse actions.* If the adverse action cannot be resolved otherwise, the applicant/tenant shall personally present to the borrower or borrower's designee any grievance or response, either orally or in writing, within 10 calendar days after occurrence of the grievance or receipt of a notice of proposed adverse action. If requested, the borrower shall meet with the tenant within 5 working days of the request in an attempt to resolve the grievance. The meeting shall be informal and the borrower shall be responsible for keeping appropriate notes relative to the meeting. If the grievance is not resolved to the applicant's/tenant's satisfaction, the borrower shall prepare a summary of the problem, including the borrower's position, the applicant's/tenant's position, and the results of the meeting (Exhibit A of this Subpart must be used as the format for the summary) within 10 calendar days after the informal meeting. Two copies of the summary must be given to the applicant/tenant, one retained in the borrower's files and one sent to the District Director.

#### § 1944.556 Procedure for obtaining a hearing.

(a) *Request for hearing.* If the applicant or tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after receipt of the summary of any informal meeting. The written request must specify:

(1) The reasons for the grievance or contest of the borrower's proposed action, and

(2) The action or relief sought.

(b) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant shall select a hearing officer or hearing panel. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and the tenant. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. If within 30 days from the date of the request for a hearing the tenant and borrower, or their designee, have not agreed upon the selection of a hearing officer or hearing panel, the borrower shall notify the District Director by mail of the facts of the matter. The District Director shall, within 10 working days of receipt of the letter, appoint a person to serve as the sole hearing officer. The District

Director's selection of a hearing officer is final. The person selected by the District Director should not be an individual previously considered by the tenant or borrower. Members of the hearing panel or the hearing officer must be willing to render their service without compensation. The hearing officer or hearing panel has the authority to reverse the borrower's decision.

(c) *Standing hearing panel.* In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Standing panelist(s) of the tenants would be elected by a majority of the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant, in this latter case, would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice must be conspicuously posted in the rental office and in each apartment building or structure. The meeting must be held at a place which is convenient and accessible to the tenants.

(2) Standing borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A standing mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each "group" gets one vote.

(4) All standing hearing panel members serve one year and may be re-elected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

(d) *Examination of records.* When the borrower has provided the applicant/tenant with a notice of proposed adverse action, the borrower shall allow the tenant to have the opportunity, at a reasonable time before the hearing and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower which the borrower intends to use at the meeting unless otherwise prohibited by law.

(e) *Scheduling of hearing.* A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If

the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(f) *Escrow deposit.* Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by the tenant in the case of a grievance involving a rent increase not authorized by FmHA, or if the borrower fails to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant shall deposit into escrow, when the rent is due, the amount required by the lease. The escrow deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent must be deposited in a federally insured financial institution or with a bonded independent agent. Failure to make timely escrow payments will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease. Receipts of deposit must be available for examination by the borrower or the borrower's designee.

(g) *Failure to request a hearing.* If the applicant/tenant does not request a hearing within the time provided by paragraph (a) of this section, the borrower's disposition of the grievance or appeal will become final.

#### § 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) of this section, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(b) The hearing must be structured so as to provide the basic safeguards for both the borrower and the tenant, which must include:

(1) The right of both parties to be represented by counsel or another person(s) chosen as their representative.

(2) The right of the applicant/tenant to a private hearing unless a public hearing is requested.

(3) The right of the applicant/tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present oral or written evidence and arguments in support of the decision, to refute evidence relied upon by the applicant/tenant, and to confront and cross-examine all witnesses on whose

testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the applicant/tenant must present evidence that he/she is entitled to the relief sought, and thereafter, the borrower shall present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing officer or hearing panel shall require that the borrower, the applicant/tenant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the applicant/tenant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this Subpart. Both the applicant/tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

#### § 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision must be sent to the borrower, the applicant/tenant, and the FmHA District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the District Director that the decision violates FmHA regulations. The notification of the District Director will specify the FmHA regulation that the decision violates. The hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice. (However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek judicial relief through the courts.)

(c) Upon receipt of written notification from the District Director that the

decision is in compliance with FmHA regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

**§ 1944.559 Responsibilities of the FmHA District Director.**

(a) The District Director shall assure that a copy of this Subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry areas, activities rooms, or other places where it will be noticed by tenants. The District Director shall also require that the borrower maintain copies of this Subpart at all times for inspection by the tenants and FmHA upon request. The District Director shall assure that where there is a concentration of non-English-speaking individuals, the regulation is made available in both English and the non-English concentration language.

(b) The District Director shall encourage the borrower and applicant/tenant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by § 1944.555(c) of this Subpart, the District Director shall immediately review the summary to ascertain that the applicant/tenant has received a copy of the summary and a copy of the proceedings to obtain a hearing, if matters could not be resolved through informal discussion.

**§ 1944.560-1944.599 [Reserved]**

**§ 1944.600 OMB control numbers.**

The collections of information requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0046.

**Exhibit A—Summary of Meeting**

Name and Address of Borrower:

Name and Address of Project:

Name and Address of Complainant:

Specific Nature of Complaint:

Date of Meeting:  
Participants in Meeting:

**Decision and Specific Reasons**

Therefore:

Borrower's Signature \_\_\_\_\_

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

Tenant's Acknowledgment:

Tenant's signature \_\_\_\_\_

**Procedures for Obtaining a Hearing:**

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on (date) \_\_\_\_\_.

1. *Request for a Hearing.* Send a written request for a hearing within ten days after you receive this notice to the project address shown in the summary. Indicate specifically: (1) The reason for your grievance or challenge of our proposed action, and (2) the action or relief you seek.

2. *Selection of Hearing Officer or Hearing Panel.* (Strike out paragraph not needed).

(a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

(b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. *Scheduling of Hearing:* The hearing will be scheduled to be held within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a time and place, the hearing officer/hearing panel will designate the time and place.

4. *Examination of Records:* You have the opportunity before the hearing to examine and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

5. *Procedures Governing Hearing:*

(a) The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

(b) Both parties may be represented by legal counsel or another person of one's choice.

(c) You have a right to a private hearing, unless you request a public hearing.

(d) Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

(e) A decision will be based solely and exclusively upon the facts presented at the hearing.

Authorities: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Dated: August 12, 1983.

Michael E. Brunner,

Acting Administrator, Farmers Home Administration.

[FR Doc. 83-33437 Filed 12-16-83; 8:45 am]

BILLING CODE 3410-07-M

# Federal Register

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Monday  
December 19, 1983

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Part III

## Department of Education

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Higher Education Programs in Modern  
Foreign Language Training and Area  
Studies; Final Regulations

## DEPARTMENT OF EDUCATION

## 34 CFR Parts 662, 663, 664, and 665

## Higher Education Programs in Modern Foreign Language Training and Area Studies

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary of Education issues final regulations for the Higher Education Programs in Modern Foreign Language Training and Area Studies (Doctoral Dissertation Research Abroad, Faculty Research Abroad, Group Projects Abroad, and the Foreign Curriculum Consultants Programs). These regulations simplify and clarify provisions contained in previous regulations. The regulations reduce administrative burdens on grantees and eliminate unnecessary provisions.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Hines, Education Program Specialist, International Education Programs, 400 Maryland Avenue, SW., (Room 3916, ROB 3), Washington, D.C. 20202. Telephone (202) 245-2794.

**SUPPLEMENTARY INFORMATION:** On August 26, 1983, the Secretary published in the *Federal Register*, 48 FR 38968-38979, a notice of proposed rulemaking for the Higher Education Programs in Modern Foreign Language Training and Area Studies. These regulations govern four different programs of assistance authorized under Section 102 (b)(6) of the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256 (Fulbright-Hays Act). The main provisions of the regulations are the procedures governing grants designed to assist eligible institutions at various levels in improving and developing their programs in modern foreign languages and area studies.

These regulations simplify and clarify provisions currently contained in 34 CFR Part 662—especially those provisions pertaining to eligibility. They also reduce certain administrative requirements and eliminate unnecessary and outdated provisions.

Interested persons were given 45 days in which to comment on the regulations. One comment was received. The following is a summary of the comment and the Secretary's response to the comment.

*Comment:* One commenter suggested that "geography" should be added as an eligible field of study in §§ 662.5, 663.5, 664.5 of the regulations.

*Response:* This suggestion has been adopted and the change has been made.

Although the current definition of area studies in the referenced sections does not specifically include geography as an eligible field of study, geography is not excluded. The list of fields is representative and is not all inclusive. The definition contained in the NPRM is consistent with the definition of area studies contained in Title VI of the Higher Education Act of 1965, as amended, which governs the other major international education programs administered by the Department of Education.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act**

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations merely simplify and clarify provisions contained in previous regulations.

**Assessment of Educational Impact**

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

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

**Invitation to Comment**

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

**List of Subjects***34 CFR Parts 662 and 663*

Colleges and universities, Education, Educational research, Educational study programs, Fellowships.

*34 CFR Parts 664 and 665*

Colleges and universities, Education, Educational study programs, Teachers.

**Citation of Legal Authority**

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 13, 1983.

T. H. Bell,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers—Faculty Research Abroad Program, 84.019; Foreign Curriculum Consultants Program, 84.020; Group Project Abroad Program, 84.021; Doctoral Dissertation Research Abroad Fellowship Program, 84.022)

The Secretary revises Part 662 and adds Parts 663, 664, and 665 to Title 34 of the Code of Federal Regulations to read as follows:

1. Part 662 is revised to read as follows:

**PART 662—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM**

**Subpart A—General**

Sec.

- 662.1 What is the Doctoral Dissertation Research Abroad program?
- 662.2 Who is eligible to apply for grants under this program?
- 662.3 Who is eligible to receive a fellowship under this program?
- 662.4 What regulations apply to the Doctoral Dissertation Research Abroad Program?
- 662.5 What definitions apply to the Doctoral Dissertation Research Abroad Program?

**Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]**

**Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?**

- 662.20 What is the role of the institution in the application process?
- 662.21 How does an individual apply for a fellowship?

**Subpart D—How Does the Secretary Select Fellows?**

- 662.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Doctoral

Sec.  
Dissertation Research Abroad  
Fellowships?

662.31 How does the Secretary evaluate an individual student application under the Doctoral Dissertation Research Abroad Program?

662.32 What criteria does the Secretary use in recommending individuals for Doctoral Dissertation Research Abroad Fellowships?

662.33 How does the Board of Foreign Scholarships select fellows?

Subpart E—What Conditions Must be Met by an Institution?

662.40 What are an institution's responsibilities regarding the administration of the grant?

662.41 How is the amount of a fellowship determined?

662.42 What are the disbursement procedures?

Subpart F—What Conditions Must be Met by an Individual?

662.50 What is the duration of a fellowship?

662.51 What academic conditions must be met?

662.52 What standards of conduct must be adhered to abroad?

662.53 Can a fellowship be revoked or terminated?

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), unless otherwise noted.

Subpart A—General

§ 662.1 What is the Doctoral Dissertation Research Abroad Program?

(a) The Doctoral Dissertation Research Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to Ph. D. candidates who are proposing to conduct dissertation research abroad in modern foreign languages and area studies.

(22 U.S.C. 2452(b)(6))

§ 662.2 Who is eligible to apply for grants under this program?

Institutions of higher education are eligible to apply for a grant under this program.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands;

(b) Is a graduate student in good standing at an institution of higher education who, when the fellowship period begins, is admitted to candidacy in a doctoral degree program in modern foreign languages and area studies at that institution;

(c) Is planning a teaching career in the United States upon graduation; and

(d) Possesses adequate skills in the language(s) necessary to carry out the dissertation research project.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.4 What regulations apply to the Doctoral Dissertation Research Abroad Program?

The following regulations apply to this program:

(a) The regulations in this Part 662; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(22 U.S.C. 2452(b)(6))

§ 662.5 What definitions apply to the Doctoral Dissertation Research Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant  
Application  
Award  
EDGAR  
Fiscal Year  
Grant  
Grant period  
Nonprofit  
Project  
Project period  
Private  
Public  
Secretary  
State

(22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Doctoral Dissertation Research Abroad Program:

"Area studies" means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

"Binational commission" means an educational and cultural commission established, through an agreement

between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

"Board of Foreign Scholarships" means the presidentially appointed board which is responsible for supervision of the program covered by this part.

"Dependent" means any of the following individuals who accompany the program participant to his or her research or training site if the individual will receive more than 50 percent of his or her support from the participant during the fellowship period:

(1) The participant's spouse;  
(2) The participant's or spouse's children who are unmarried and under 21;

(3) The participant's or spouse's mother or father if the mother or father is incapable of self-support.

"Foreign currencies" means those currencies of foreign countries which currencies are owned by the United States.

"Institution of higher education" means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a recognized accrediting agency or association.

(22 U.S.C. 2452(b)(6), 2456)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?

§ 662.20 What is the role of the institution in the application process?

An eligible institution is responsible for—

(a) Distributing individual application packets to students;

(b) Accepting and screening individual applications in accordance with its own technical and academic criteria; and

(c) Forwarding individual applications to the Secretary through a request for an institutional grant.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

**§ 662.21 How does an individual apply for a fellowship?**

(a) An applicant for a fellowship obtains an application from the institution of higher education at which the individual is enrolled in a doctoral program and submits the completed application through that institution to the Secretary.

(b) The applicant shall provide sufficient information concerning his personal and academic background, and proposed research project, to enable the Secretary to determine whether the individual—

(1) Is eligible to receive a fellowship under § 662.3; and

(2) Should be selected for a fellowship under subpart D of this part.

(c) If an applicant plans to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, he or she must simultaneously submit an application to the International Research and Exchanges Board (IREX) in accordance with the procedures of that Board.

(22 U.S.C. 2452(b)(6))

**Subpart D—How Does the Secretary Select Fellows?**

**§ 662.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Doctoral Dissertation Research Abroad Fellowships?**

(a) The Secretary makes a preliminary selection of individuals for Doctoral Dissertation Research Abroad Fellows with the advice of—

(1) Panels of U.S. academic specialists in modern foreign languages and area studies; and

(2) Binational commissions and/or U.S. diplomatic missions in the proposed country(ies) of research.

(b) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(c) The Secretary does not recommend an individual to the Board of Foreign Scholarships if the individual proposes to carry out research in a country with which the United States has no diplomatic relations.

(22 U.S.C. 2452(b)(6), 2456)

**§ 662.31 How does the Secretary evaluate an individual student application under the Doctoral Dissertation Research Abroad Program?**

(a) The Secretary evaluates an application for a Doctoral Dissertation Research Abroad Fellowship based on the criteria in § 662.32 and any pertinent information provided by binational commissions or U.S. diplomatic missions abroad or both.

(b) In general, the Secretary awards up to 90 possible points. However, if priority criteria are used, the Secretary awards up to 100 possible points. The maximum possible points for each criterion are shown in parentheses.

(22 U.S.C. 2452(b)(6))

**§ 662.32 What criteria does the Secretary use in recommending individuals for Doctoral Dissertation Research Abroad Fellowships?**

The Secretary uses the criteria in this section and pertinent information provided by U.S. diplomatic missions abroad and binational commissions to evaluate an application of a graduate student for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this part. The Secretary gives preference to American citizens who have served in the armed services of the United States. The criteria are weighted and may total 100 points.

(a) *Quality of proposed project.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the quality of the research project proposed by the student.

(2) The Secretary looks for information that shows the extent to which—

(i) The project is original; the problems, questions, hypotheses are well formulated;

(ii) The project is well formulated and demonstrates adequate knowledge of related research;

(iii) The methodology is specifically described, sound, and appropriate to the project;

(iv) The applicant demonstrates knowledge and utilization of resources pertinent to the project in the United States;

(v) The project's location in the proposed foreign country(ies) is necessary for the successful completion of the project;

(vi) The applicant has made preparations to establish research contacts and affiliations abroad, and the overseas facilities indicated will afford sufficient and appropriate locations for the proposed research;

(vii) The application reflects the intent to share with scholars and officials of the host country the results of the research in progress and a copy of the dissertation;

(viii) The application reflects guidance and supervision on the part of the dissertation advisor or committee throughout all stages, including the development of the project, understanding of research conditions abroad, and actual research in the field; and

(ix) The project can be completed within the proposed fellowship period.

(b) *Qualifications of the applicant.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the qualifications of the applicant.

(2) The Secretary looks for information that shows the extent to which—

(i) The applicant's academic record is excellent and relevant to the proposed project;

(ii) The applicant possesses adequate foreign language skills to carry out the proposed project; and

(iii) The applicant has the ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience.

(c) *Priorities.* (Maximum 10 points)

(1) The Secretary may establish priorities each year for the selection of fellows. These priorities relate to: certain world areas, countries, academic disciplines, languages, or combinations of any of these categories. For example, the Secretary may establish a priority for: a specific world area or country such as the Caribbean or Poland, an academic discipline such as economics or political science, or certain languages such as Tajiki or Serbo-Croatian.

(2) The Secretary announces any priorities in the application notice published in the *Federal Register*.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

**§ 662.33 How does the Board of Foreign Scholarships select fellows?**

(a)(1) The Board of Foreign Scholarships selects Doctoral Dissertation Research Abroad Fellows on the basis of the preliminary selections by the Secretary and pertinent information supplied by U.S. diplomatic missions and binational commissions.

(2) The Board of Foreign Scholarships does not select fellows to carry out research in the U.S.S.R. unless the applicant has been approved for that purpose by the International Research and Exchanges Board (IREX).

(b) Pertinent information used by the Board of Foreign Scholarships and the Secretary in the selection process, which is provided by U.S. diplomatic missions and/or binational commissions may include, but is not necessarily limited to, information concerning the feasibility of the project, and the political sensitivity of the host country.

(22 U.S.C. 2452(b)(6), 2456(a)(1))

#### Subpart E—What Conditions Must Be Met by an Institution?

##### § 662.40 What are an institution's responsibilities regarding the administration of the grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant subject to the provisions of § 662.4.

(b) The institution is responsible for processing individual applications in accordance with procedures described in § 662.20.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 662.42.

(d) The Secretary awards the institution an administrative allowance of \$100 for each fellowship listed in the grant agreement.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

##### § 662.41 How is the amount of a fellowship determined?

(a) In accordance with sections 104(b)(1) and (e)(2) of the Mutual Educational and Cultural Exchange Act of 1961, the Secretary pays—

(1) Travel expenses, including excess baggage to and from the residence of the fellow to the host country of research;

(2) A maintenance allowance for the fellow and his or her dependents;

(3) An allowance for research-related expenses overseas such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses; and

(4) Health and accident insurance premiums.

(b) The Secretary may pay for—

(1) Emergency medical expenses not covered by health and accident insurance; and

(2) The costs of preparing and transporting to his or her former home, participants or dependents who die during the term of the fellowship.

(c) In the application notice published annually in the Federal Register, the Secretary announces the amount of benefits expected to be available.

(22 U.S.C. 2452(b)(6), and 2454(e) (1) and (2))

##### § 662.42 What are the disbursement procedures?

The grantee institution is responsible for disbursing funds for allowances authorized by the grant except that the appropriate U.S. diplomatic mission disburses directly to the fellow allowances paid in foreign currencies.

(22 U.S.C. 2452(b)(6))

#### Subpart F—What Conditions Must Be Met by an Individual?

##### § 662.50 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than six nor more than twelve months.

(b) The fellowship may not be renewed.

(22 U.S.C. 2452(b)(6))

##### § 662.51 What academic conditions must be met?

A fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in gainful employment during the period of the fellowship; and

(d) Remain a student in good standing with the grantee institution during the entire period of the fellowship.

(22 U.S.C. 2452(b)(6))

##### § 662.52 What standards of conduct must be adhered to abroad?

The Secretary furnishes to each fellow a copy of the Board of Foreign Scholarships statement of the rights and obligations of American grantees and participants abroad. Fellows must adhere to the standards in the statement, and comply with the legal and moral standards of the host country(ies). Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

##### § 662.53 Can a fellowship be revoked or terminated?

(a) The Board of Foreign Scholarships, upon the recommendation of the Secretary, may revoke or terminate a fellowship because of—

(1) A fellow's failure to maintain eligibility; or

(2) Misconduct by the fellow.

(b) As used in this section misconduct includes, but is not limited to—

(1) A violation of the laws of the United States or the host country; or

(2) An act that gives offense to the host country.

(22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

2. Part 663 is added to read as follows:

### PART 663—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

#### Subpart A—General

Sec.

663.1 What is the Faculty Research Abroad Program?

663.2 Who is eligible to apply for grants under this program?

663.3 Who is eligible to receive a fellowship under this program?

663.4 What regulations apply to this program?

663.5 What definitions apply to the Faculty Research Abroad Program?

#### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]

#### Subpart C—How does an Institution and an Individual Apply for a Grant or Fellowship?

663.20 What is the role of the institution in the application process?

663.21 How does an individual apply for a fellowship?

#### Subpart D—How Does the Secretary Select Fellows?

663.30 How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Faculty Research Abroad Fellowships?

663.31 How does the Secretary evaluate an individual application under the Faculty Research Abroad Program?

663.32 What criteria does the Secretary use in recommending individuals for Faculty Research Abroad Fellowships?

663.33 How does the Board of Foreign Scholarships select fellows?

#### Subpart E—What Conditions Must Be Met by an Institution?

663.40 What are an institution's responsibilities regarding the administration of the grant?

663.41 How is the amount of the fellowship determined?

663.42 What are the disbursement procedures?

#### Subpart F—What Conditions Must Be Met by an Individual?

663.50 What is the duration of the fellowship?

663.51 What academic conditions must be met?

663.52 What standards of conduct must be adhered to abroad?

663.53 Can a fellowship be revoked or terminated?

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

**Subpart A—General****§ 663.1 What is the Faculty Research Abroad Program?**

(a) The Faculty Research Abroad Program is designed to contribute to the development and improvement of modern foreign language training and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to faculty members of the institutions who are proposing to conduct research abroad in modern foreign languages and area studies to improve their skill in languages and their knowledge of the culture of the people of these countries.

(22 U.S.C. 2452(b)(6))

**§ 663.2 Who is eligible to apply for grants under this program?**

Institutions of higher education are eligible to apply for grants under this program.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

**§ 663.3 Who is eligible to receive a fellowship under his program?**

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands;

(b) Is employed by an institution of higher education;

(c) Has been engaged in teaching relevant to his or her foreign language or area studies specialization for the two years immediately preceding the date of the award;

(d) Proposes research relevant to his or her modern foreign language or area studies specialization which—

(1) Cannot be conducted in the United States, or for which a foreign country or region provides significantly superior research facilities;

(2) Will contribute to the development or improvement of the study of modern foreign languages or area studies in those fields needed for full understanding of the area, regions, or countries in which the modern foreign languages are commonly used; and

(3) Is not dissertation research for a Ph. D.; and

(e) Possesses adequate skills in the language or languages necessary to successfully carry out the project.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

**§ 663.4 What regulations apply to this program?**

The following regulations apply to this program:

(a) The regulations in this Part 663; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(22 U.S.C. 2452(b)(6))

**§ 663.5 What definitions apply to the Faculty Research Abroad Program?**

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant  
Application  
Award  
EDGAR  
Fiscal Year  
Grant  
Grant period  
Project  
Project period  
Private  
Public  
Secretary  
State

(22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program.* The following definitions apply to the Faculty Research Abroad Program:

"Area studies" means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

"Binational commission" means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

"Board of Foreign Scholarships" means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

"Dependent" means any of the following individuals who accompany the program participant to his or her training site if the individual will receive more than 50 percent of his or her support from the participant during the fellowship period:

(1) The participant's spouse;

(2) The participant's or spouse's children who are unmarried and under 21;

(3) The participant's or spouse's mother or father if the mother or father is incapable of self-support.

"Foreign currencies" means those currencies of foreign countries which currencies are owned by the United States.

"Institution of higher education" means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(22 U.S.C. 2452(b)(6), 2456)

**Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program? [Reserved]****Subpart C—How Does an Institution and an Individual Apply for a Grant or Fellowship?****§ 663.20 What is the role of the institution in the application process?**

An eligible institution is responsible for—

(a) Distributing individual application packets to faculty interested in applying for fellowships;

(b) Accepting and screening individual applications in accordance with its own technical and academic criteria; and

(c) Forwarding individual applications to the Secretary through a request for an institutional grant.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

**§ 663.21 How does an individual apply for a fellowship?**

(a) An applicant for a fellowship obtains an application from the institution of higher education at which he or she is employed and submits his or her application to the Secretary through that institution.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background

and proposed research project to enable the Secretary to determine whether the individual—

- (1) Is eligible to receive a fellowship; and
  - (2) Should be selected for a fellowship under subpart D of this part.
- (c) If an applicant plans to conduct research in the U.S.S.R., Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, or Yugoslavia, he or she must simultaneously submit an application to the International Research and Exchanges Board (IREX) in accordance with the procedures of that Board.

[22 U.S.C. 2452(b)(6)]

#### Subpart D—How Does the Secretary Select Fellows?

**§ 663.30** How does the Secretary select individual applicants for recommendation to the Board of Foreign Scholarships for selection for Faculty Research Abroad Fellowships?

(a) The Secretary makes a preliminary selection of individuals for Faculty Research Abroad Fellows with the advice of—

- (1) Panels of U.S. academic specialists in modern foreign languages and area studies; and
- (2) Binational commissions or U.S. diplomatic missions in the proposed country(ies) of research.

(b) All selections by the Secretary are subject to a review and final approval by the Board of Foreign Scholarships.

(c) The Secretary does not recommend an individual to the Board of Foreign Scholarships if the individual proposes to carry out research in a country with which the United States has no diplomatic relations.

[22 U.S.C. 2452(b)(6), 2456]

**§ 663.31** How does the Secretary evaluate an individual application under the Faculty Research Abroad Program?

(a) The Secretary evaluates an application for a Faculty Research Abroad Fellowship based on the criteria in § 663.32 and any pertinent information provided by binational commissions and/or U.S. diplomatic missions.

(b) In general, the Secretary awards up to 90 possible points. However, if priority criteria are used, the Secretary awards up to 100 possible points. The maximum possible points for each criterion are shown in parentheses.

[22 U.S.C. 2452(b)(6)]

**§ 663.32** What criteria does the Secretary use in recommending individuals for Faculty Research Abroad Fellowships?

The Secretary uses the criteria in this section to evaluate applications of faculty for the purpose of recommending to the Board of Foreign Scholarships candidates for fellowships under this part. The Secretary gives preference to American citizens who have served in the armed services of the United States. The criteria are weighted and may total 100 points.

(a) *Quality of proposed project.* (Maximum 45 points)

(1) The Secretary reviews each application for information that shows the quality of the research project proposed by the faculty member.

(2) The Secretary looks for information that shows the extent to which—

- (i) The project is well formulated and demonstrates adequate knowledge of related research;
- (ii) The methodology is specifically described, sound, and appropriate to the project;
- (iii) The objectives of the project are relevant to the sponsoring institution's plans for developing and/or strengthening programs in modern foreign languages and area studies;
- (iv) The applicant demonstrates knowledge and utilization of resources pertinent to the project in the United States;
- (v) The project's location in the proposed foreign country(ies) is necessary for the successful completion of the project;
- (vi) The applicant has made preparations to establish research contacts and affiliations abroad;
- (vii) The application reflects the intent to share the results of the research with scholars and officials of the host country and of the American scholarly community;
- (viii) The overseas facilities indicated will afford sufficient and appropriate locations for the proposed research; and
- (ix) The project can be completed within the proposed fellowship period.

(b) *Qualifications of the applicant.* (Maximum 45 points)

- (1) The Secretary reviews each application for information that shows the qualifications of the applicant.
- (2) The Secretary looks for information that shows the extent to which—

- (i) The applicant's academic record is excellent and relevant to the proposed project;
- (ii) The applicant possesses adequate foreign language skills to carry out the proposed project; and

(iii) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience.

(c) *Priorities.* (Maximum 10 points)

(1) The Secretary may establish priorities each year for the selection of fellows. These priorities relate to: certain world areas, countries, academic disciplines, languages, or combinations of any of these categories. For example, the Secretary may establish a priority for a specific world area or country such as East Asia or the U.S.S.R., for an academic discipline such as history or political science, or for languages such as Hausa or Telegu.

(2) The Secretary announces any priorities in the application notice published in the *Federal Register*.

[22 U.S.C. 2452(b)(6), 2456(a)(2)]

**§ 663.33** How does the Board of Foreign Scholarship select fellows?

(a)(1) The Board of Foreign Scholarships selects Faculty Research Abroad Fellows on the basis of the preliminary selections of the Secretary and pertinent information supplied by U.S. diplomatic missions and binational commissions.

(2) The Board of Foreign Scholarships does not select fellows to carry out research in the U.S.S.R. unless the applicant has been approved for that purpose by the International Research and Exchanges Board (IREX).

(b) Pertinent information used by the Board of Foreign Scholarships and the Secretary in the selection process, which is provided by U.S. diplomatic missions and binational commissions, may include, but is not necessarily limited to, information concerning the feasibility of the project and the political sensitivity of the host country.

[22 U.S.C. 2452(b)(6), 2456(a)(1)]

#### Subpart E—What Conditions Must be Met by an Institution?

**§ 663.40** What are an institution's responsibilities regarding the administration of the grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant subject to the provisions of § 663.4

(b) The institution is responsible for processing individual applications in accordance with procedures described in § 663.20.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 663.42.

(d) The Secretary awards the institution an administrative allowance

of \$100 for each fellowship listed in the grant agreement.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

**§ 663.41 How is the amount of the fellowship determined?**

(a) In accordance with sections 104 (b)(1) and (e)(2) of the Mutual Educational and Cultural Exchange Act of 1961, the Secretary pays—

(1) Travel expenses, including excess baggage to and from the residence of the fellow to the host country of research;

(2) A maintenance allowance for the fellow; and

(3) An allowance for research related expenses overseas such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses.

(b) The Secretary may pay for—

(1) Emergency medical expenses not covered by the faculty member's health and accident insurance; and

(2) The costs of preparing and transporting to his or her former home, participants or dependents who die during the term of the fellowship.

(c) In the application notice published annually in the Federal Register, the Secretary announces the amount of benefits expected to be available.

(22 U.S.C. 2452(b)(6), and 2454(e) (1) and (2))

**§ 663.42 What are the disbursement procedures?**

(a) A grantee institution is responsible for disbursing funds for allowances authorized by the grant.

(b) In cases where grants are made in foreign currencies, the appropriate U.S. diplomatic mission disburses directly to the fellow allowances paid in foreign currencies.

(22 U.S.C. 2452(b)(6))

**Subpart F—What Conditions Must Be Met by an Individual?**

**§ 663.50 What is the duration of the fellowship?**

(a) A fellowship is for a period of not fewer than three nor more than twelve months.

(b) The fellowship may not be renewed.

(22 U.S.C. 2452(b)(6))

**§ 663.51 What academic conditions must be met?**

A fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in gainful employment overseas during the period of the fellowship; and

(d) Remain employed by the grantee institution during the entire period of the fellowship.

(22 U.S.C. 2452(b)(6))

**§ 663.52 What standards of conduct must be adhered to abroad?**

The Secretary furnishes to all fellows a copy of the Board of Foreign Scholarships Statement on the rights and obligations of American grantees and participants abroad. Fellows must adhere to the standards in the statement and comply with the legal and moral standards of the host country(ies).

Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

**§ 663.53 Can a fellowship be revoked or terminated?**

(a) The Board of Foreign Scholarships, upon the recommendation of the Secretary, may revoke or terminate a fellowship because of—

(1) A fellow's failure to maintain eligibility; or

(2) Misconduct by the fellow.

(b) As used in this section misconduct includes, but is not limited to—

(1) A violation of the laws of the United States or the host country; or

(2) An Act that gives offense to the host country.

(22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

3. Part 664 is added to read as follows:

**PART 664—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—GROUP PROJECTS ABROAD PROGRAM**

**Subpart A—General**

Sec.

664.1 What is the Group Projects Abroad Program?

664.2 Who is eligible to apply for assistance under the Group Projects Abroad Program?

664.3 Who is eligible to participate in projects funded under the Group Projects Abroad Program?

664.4 What regulations apply to the Group Projects Abroad Program?

664.5 What definitions apply to the Group Projects Abroad Program?

**Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?**

664.10 What kinds of projects does the Secretary assist?

664.11 What is a short-term seminar project?

664.12 What is a curriculum development project?

Sec.

664.13 What is a group research and study project?

664.14 What is an advanced overseas intensive language training project?

**Subpart C—[Reserved]**

**Subpart D—How Does the Secretary Make a Grant?**

664.30 How does the Secretary evaluate an application?

664.31 What selection criteria does the Secretary use?

664.32 What priorities may the Secretary establish?

664.33 What costs does the Secretary pay?

**Subpart E—What Conditions Must Be Met by a Grantee?**

664.40 What standards of conduct must be adhered to abroad?

**Authority:** Sec. 102 (b) (6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), (22 U.S.C. 2452(b) (6), unless otherwise noted.

**Subpart A—General**

**§ 664.1 What is the Group Projects Abroad Program?**

(a) The Group Projects Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries.

(b) Under the program, the Secretary awards grants to eligible institutions, departments, and organizations to conduct overseas group projects in research, training, and curriculum development.

(22 U.S.C. 2452(b)(6))

**§ 664.2 Who is eligible to apply for assistance under the Group Projects Abroad Program?**

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) State departments of education;

(c) Private non-profit educational organizations; and

(d) A consortium of institutions, departments, and organizations described in paragraphs (a), (b), or (c) of this section.

(22 U.S.C. 2452(b)(6))

**§ 664.2 Who is eligible to participate in projects funded under the Group Projects Abroad Program?**

An individual is eligible to participate in a Group Projects Abroad, if the individual—

(a)(1) Is a citizen or national of the United States,

(2) Is a permanent resident of the United States,

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a resident of the Trust Territory of the Pacific Islands; and

(b)(1) Is a faculty member who teaches modern foreign languages or area studies in an institution of higher education;

(2) Is a teacher in an elementary or secondary school;

(3) Is an experienced education administrator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or postsecondary level; or

(4) Is a graduate student, or a junior or senior in an institution of higher education, who plans a teaching career in modern foreign languages or area studies.

(22 U.S.C. 2452(b)(6))

#### § 664.4 What regulations apply to the Group Projects Abroad Program?

The following regulations apply to this program:

(a) The regulations in this Part 664; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(22 U.S.C. 2452(b)(6), 2454(e)(1), 2456(a)(2))

#### § 664.5 What definitions apply to the Group Projects Abroad Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant  
Application  
Award  
EDGAR  
Equipment  
Facilities  
Fiscal Year  
Grant  
Grantee  
Grant Period  
Nonprofit  
Project  
Project Period  
Private  
Public  
Secretary  
State  
State educational agency  
Supplies

(22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Group Projects Abroad Program:

"Area studies" means a program of comprehensive study of the aspects of a society or societies, including the study

of their geography, history, culture, economy, politics, international relations, and languages.

"Binational commission" means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

"Board of Foreign Scholarship" means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

"Institution of higher education" means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

(22 U.S.C. 2452(b)(6), 2456)

#### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

##### § 664.10 What kinds of projects does the Secretary assist?

The Secretary assists projects which are designed to develop or improve programs in modern foreign language or area studies at the elementary, secondary, or postsecondary level by supporting overseas projects in research, training, and curriculum development by groups of individuals engaged in a common endeavor. Projects may include, as described in § 664.11 through § 664.14, short-term seminars, curriculum development teams, group research or study, and advanced intensive language programs.

(22 U.S.C. 2452(b)(6))

##### § 664.11 What is a short-term seminar project?

A short-term seminar project is—

(a) Designed to help integrate international studies into an institution's or school system's general curriculum.

(b) Normally six weeks in length and focuses on a particular aspect of area

study, such as, for example, the culture of the area or a portion of the culture.

(22 U.S.C. 2452(b)(6))

##### § 664.12 What is a curriculum development project?

(a) A curriculum development project—

(1) Is designed to permit faculty and administrators in institutions of higher education and elementary and secondary schools, and administrators in State Departments of Education the opportunity to spend generally from six to eight weeks in a foreign country acquiring resource materials for curriculum development in modern foreign language and area studies.

(2) Shall provide for the systematic use and dissemination in the United States of the acquired materials.

(b) For the purpose of this section, resource materials include artifacts, books, documents, educational films, museum reproductions, recordings and other instructional material.

(22 U.S.C. 2452(b)(6))

##### § 664.13 What is a group research or study project?

(a)(1) A group research or study project is designed to permit a group of faculty of an institution of higher education and graduate and undergraduate students to undertake research or study in a foreign country.

(2) The period of research or study in a foreign country is generally from two to twelve months.

(b) As a prerequisite to participating in a research or training project, participants—

(1) Shall possess the requisite language proficiency to conduct the research or study, and disciplinary competence in their area of research; and

(2) In a project of a semester or longer, shall have completed, at a minimum, one semester of intensive language training and one course in area studies relevant to the projects.

(22 U.S.C. 2452(b)(6))

##### § 664.14 What is an advanced overseas intensive language training project?

(a)(1) An advanced overseas intensive language project is designed to take advantage of the opportunities present in the foreign country that are not present in the United States when providing intensive advanced foreign language training.

(2) Projects may range from two to twelve months and include year projects, academic year projects, semester, trimester, or quarter projects, or summer projects.

(3) Language training shall be given at the advanced level, i.e., at the level equivalent to that provided to students who have successfully completed two academic years of language training.

(4) The language to be studied shall be indigenous to the host country and maximum use shall be made of local institutions and personnel.

(b) Participants in projects under this program shall have successfully completed at least two academic years of language study.

(22 U.S.C. 2452(b)(6))

#### Subpart C—Reserved

#### Subpart D—How Does the Secretary Make a Grant?

##### § 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad under the criteria in § 664.31.

(b) In general, the Secretary awards up to 90 possible points for these criteria. However, if priority criteria are used, the Secretary awards up to 105 possible points. The maximum possible points for each criterion are shown in parentheses.

(c) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(22 U.S.C. 2452(b)(6), 2456)

##### § 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this part. The criteria are weighted and may total 105 points:

(a) *Plan of operation.* (Maximum 25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups

that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of Key Personnel.* (Maximum 20 points).

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objections of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plans for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (Maximum 20 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education. (Maximum 5 points).

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies. (Maximum 5 points).

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (Maximum 10 points).

(g) *Priorities.* (Maximum 15 points).

The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

##### § 664.32 What priorities may the Secretary establish?

(a) The Secretary may establish for each funding competition one or more of the following priorities:

(1) Categories of projects described in § 664.10.

(2) Specific languages, countries or geographic regions of the world; for example, Chinese and Arabic, Brazil and Nigeria, Middle East and South Asia.

(3) Levels of education; for example, elementary and secondary, postsecondary or postgraduate.

(b) The Secretary announces any priorities in the application notice published in the *Federal Register*.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

##### § 664.33 What costs does the Secretary pay?

(a) The Secretary pays only part of the cost of a project funded under this part. Other than travel costs, the Secretary does not pay any of the costs for project-

related expenses within the United States.

(b) The Secretary pays the cost of the following—

(1) A maintenance stipend based on 50 percent of the amount established in the U.S. Department of State publication "Maximum Travel Per Diem Allowances For Foreign Areas;"

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(22 U.S.C. 2452(b)(6), 2454(e)(1))

#### Subpart E—What Conditions Must Be Met by a Grantee?

§ 664.40 What standards of conduct must be adhered to abroad?

The Secretary furnishes all U.S. participants going abroad under a grant authorized under this part with a statement prepared by the Board of Foreign Scholarships which sets forth the rights and obligations of participants. Each participant must adhere to the standards in the statement and comply with the legal and moral standards of the host country. Failure to do so may result in the revocation or termination of the fellowship by the Board of Foreign Scholarships.

(22 U.S.C. 2452(b)(6), 2456, Policy Statements of the Board of Foreign Scholarships, 1972)

4. Part 665 is added to read as follows:

### PART 665—HIGHER EDUCATION PROGRAMS IN MODERN FOREIGN LANGUAGE TRAINING AND AREA STUDIES—FOREIGN CURRICULUM CONSULTANTS PROGRAM

#### Subpart A—General

Sec.

665.1 What is the Foreign Curriculum Consultants Program?

665.2 Who is eligible to apply for assistance under the Foreign Curriculum Consultants Program?

665.3 Who is eligible to become a Foreign Curriculum Consultant?

665.4 What regulations apply to the Foreign Curriculum Consultants Program?

665.5 What definitions apply to the Foreign Curriculum Consultants Program?

#### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program,

Sec.

665.10 What activities does the Secretary assist?

#### Subpart C—How Does an Applicant Apply for a Grant?

665.20 How does an applicant apply for a grant?

#### Subpart D—How Does the Secretary Make a Grant?

665.30 How does the Secretary evaluate an application submitted under the Foreign Curriculum Consultants Program?

665.31 What selection criteria does the Secretary use?

665.32 What priorities may the Secretary establish?

665.33 How does the Secretary select foreign curriculum consultants?

665.34 What costs does the Secretary pay?

#### Subpart E—What Conditions Must be Met by a Grantee?

665.40 What costs does the Grantee pay?

Authority: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

#### Subpart A—General

§ 665.1 What is the Foreign Curriculum Consultants Program?

(a) The Foreign Curriculum Consultants Program is designed to contribute to the development and improvement of curricula for teaching modern foreign languages and area studies in the United States.

(b) Under the program, the Secretary assists institutions of higher education, State and local educational agencies, and nonprofit private educational organizations that are improving developing curricula to teach modern foreign languages and area studies by recruiting and paying for part of the costs for a foreign curriculum consultant.

(22 U.S.C. 2452(b)(6))

§ 665.2 Who is eligible to apply for assistance under the Foreign Curriculum Consultants Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) A State educational agency;

(c) A local educational agency;

(d) A private nonprofit educational organization; and

(e) A consortium of institutions described in paragraphs (a), (b), (c), or (d) of this section.

(22 U.S.C. 2452(b)(6))

§ 665.3 Who is eligible to become a Foreign Curriculum Consultant?

A foreign educator is eligible to be a candidate in the Foreign Curriculum Consultants Program if the individual—

(a) Has at least five years of experience as an educator in modern foreign languages or area studies and appropriate experience in curriculum planning and development, preparation of teaching materials, or training of teachers;

(b) Speaks English fluently;

(c) Is willing to apply for and receive an exchange visitor visa; and

(d) Possesses the special qualifications set forth in the applicant's request.

(22 U.S.C. 2452(b)(6))

§ 665.4 What regulations apply to the Foreign Curriculum Consultants Program?

The following regulations apply to this program:

(a) The regulations in this Part 665; and,

(b) The Education Department General Administrative Regulations (EDGAR) [34 CFR Parts 74, 75, 77, and 78].

(22 U.S.C. 2452(b)(6), 2452(e)(1), 2456(a)(2))

§ 665.5 What definitions apply to the Foreign Curriculum Consultants Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant  
Application  
Award  
EDGAR  
Fiscal Year  
Grant  
Grantee  
Grant Period  
Local educational agency  
Nonprofit  
Project  
Project Period  
Private  
Public  
Secretary  
State educational agency  
(22 U.S.C. 2452(B)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Foreign Curriculum Consultants Program:

"Area Studies" means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

"Binational commission" means an educational and cultural commission established, through an agreement between the United States and either a

foreign government or an international organization, to carry out functions in connection with the program covered by this part.

"Board of Foreign Scholarships" means the Presidentially appointed board which is responsible for supervision of the program covered by this part.

"Institution of higher education" means an educational institution in any State which—

- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- (2) Is legally authorized within such State to provide a program of education beyond secondary education;
- (3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;
- (4) Is a public or other nonprofit institution; and
- (5) Is accredited by a nationally recognized accrediting agency or association.

(22 U.S.C. 2452(b)(6), 2456)

#### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

##### § 665.10 What activities does the Secretary assist?

- (a) The Secretary awards grants to eligible applicants to enable them to bring foreign consultants to the United States for a year so that the consultants may assist the applicant in planning and developing curricula in modern foreign languages or area studies.
  - (b) A foreign consultant may—
    - (1) Review and evaluate textbooks and other educational materials;
    - (2) Develop new units of study;
    - (3) Prepare new instructional materials for use in the classroom;
    - (4) Conduct demonstration classes, workshops, and other in-service training for teachers;
    - (5) Evaluate library holdings and recommend new acquisitions;
    - (6) Speak at community functions; and
    - (7) Teach (normally not to exceed one regular classroom course per semester).

(22 U.S.C. 2452(b)(6))

#### Subpart C—How Does an Applicant Apply for a Grant?

##### § 665.20 How does an applicant apply for a grant?

An applicant applies for a grant to receive the services of a foreign

curriculum consultant by submitting an application which describes—

- (a) The applicant's plan to improve or develop curriculum to teach modern foreign languages and area studies; and
- (b) The manner in which the applicant will use a foreign curriculum consultant in that effort.

(22 U.S.C. 2452(b)(6))

#### Subpart D—How Does the Secretary Make a Grant?

##### § 665.30 How does the Secretary evaluate an application submitted under the Foreign Curriculum Consultants program?

- (a) The Secretary evaluates an application submitted under this part based upon the criteria in § 665.31.
- (b) In general, the Secretary awards up to 100 possible points. However, if priority criteria are used, the Secretary awards up to 110 possible points. The maximum possible points for each criterion are indicated in parentheses.
- (c) All selections by the Secretary are subject to review and final approval by the Board of Foreign Scholarships.

(22 U.S.C. 2452(b)(6))

##### § 665.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the Board of Foreign Scholarships projects for funding under this part. The criteria are weighted and may total 110 points:

- (a) *Plan of operation* (Maximum 25 points).
  - (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.
    - (2) The Secretary looks for information that shows—
      - (i) High quality in the design of the project;
      - (ii) An effective plan of management that insures proper and efficient administration of the project;
      - (iii) A clear description of how the objectives of the project relate to the purpose of the program; and
      - (iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(b) *Quality of key personnel* (Maximum 20 points).

- (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.
  - (2) The Secretary looks for information that shows—
    - (i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Handicapped persons; and
- (D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (Maximum 10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

- (i) The budget for the project is adequate to support the project activities; and
  - (ii) That costs are reasonable in relation to the objectives of the project.
- (d) *Evaluation plan* (Maximum 5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources*. (Maximum 5 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and/or supplies that the applicant plans to use are adequate.

(f) *Specific program criteria*. (Maximum 35 points).

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) Potential impact of the applicant's plans for developing or improving its program in modern foreign languages or area studies; (Maximum 5 points).

(ii) The applicant's need for a foreign curriculum consultant; (Maximum 5 points).

(iii) Potential effective use of the results of the consultant's work following the completion of the project; (Maximum 5 points).

(iv) Appropriateness of the consultant's duties and the allocation of time among the duties; (Maximum 5 points).

(v) Approximate number of faculty, students, and members of the relevant community who are expected to be affected by the consultant's activities; (Maximum 5 points).

(vi) Concrete evidence that other educational institutions, agencies and organizations, other than the applicant, will share in the consultant's services and that they have participated in helping define the nature of these services; (Maximum 5 points) and,

(vii) Adequacy of the arrangements made for coordinating the consultant's work under the supervision of a project director. (Maximum 5 points).

(g) *Priorities.* (Maximum 10 points).  
The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(22 U.S.C. 2452(b)(6); 2456(a)(2))

**§ 665.32 What priorities may the Secretary establish?**

(a) The Secretary may establish, for each funding competition, one or more of the following priorities:

(1) Specific countries or regions of study: for example, India or Kenya, the Middle East, North Africa, East Asia, or the languages of those areas.

(2) Levels of education: for example, elementary and secondary, postsecondary or postgraduate.

(3) The following types of activities: developing or revising language text books, developing or improving new courses, or methodology of foreign language instruction.

(b) The Secretary announces any priorities in the application notice published in the *Federal Register*.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

**§ 665.33 How does the Secretary select foreign curriculum consultants?**

(a)(1) The Secretary forwards an approved application through the United States Information Agency to the appropriate American diplomatic mission abroad, and if appropriate, to the relevant binational commission, to enable the mission or commission to recruit qualified consultant candidates.

(2) The mission or commission forwards the names of the qualified candidates to the Secretary.

(b)(1) Upon receipt of the list of candidates, the Secretary forwards the names of approved candidates to each applicant for review and selection of the best qualified candidate.

(2) The Secretary forwards the names of the candidates selected by the applicants to the Board of Foreign Scholarships for approval.

(22 U.S.C. 2452(b)(6), 2456(a)(2))

**§ 665.34 What costs does the secretary pay?**

The Secretary makes awards under this part for use only on or after the effective date of the grant and only to pay for the following costs and allowances—

(a) Roundtrip international travel, for the consultant only, to and from the consultant's home country to the location of his or her assignment;

(b) An unaccompanied baggage allowance not to exceed a total of 300 pounds roundtrip from the consultant's home country to the location of his or her assignment;

(c) Eighty percent of the consultant's monthly maintenance; the monthly allowance for the 1984-1985 academic year shall be \$2,000. This amount will be increased each year to correspond to the increase in the cost of living as represented by the increase in the Consumer Price Index; and

(d) Health and accident insurance, for the consultant only, under a U.S. Government contracted group insurance policy, to be arranged by the grantee institution.

**Subpart E—What Conditions Must Be Met by a Grantee?**

**§ 665.40 What costs does the grantee pay?**

The grantee pays—

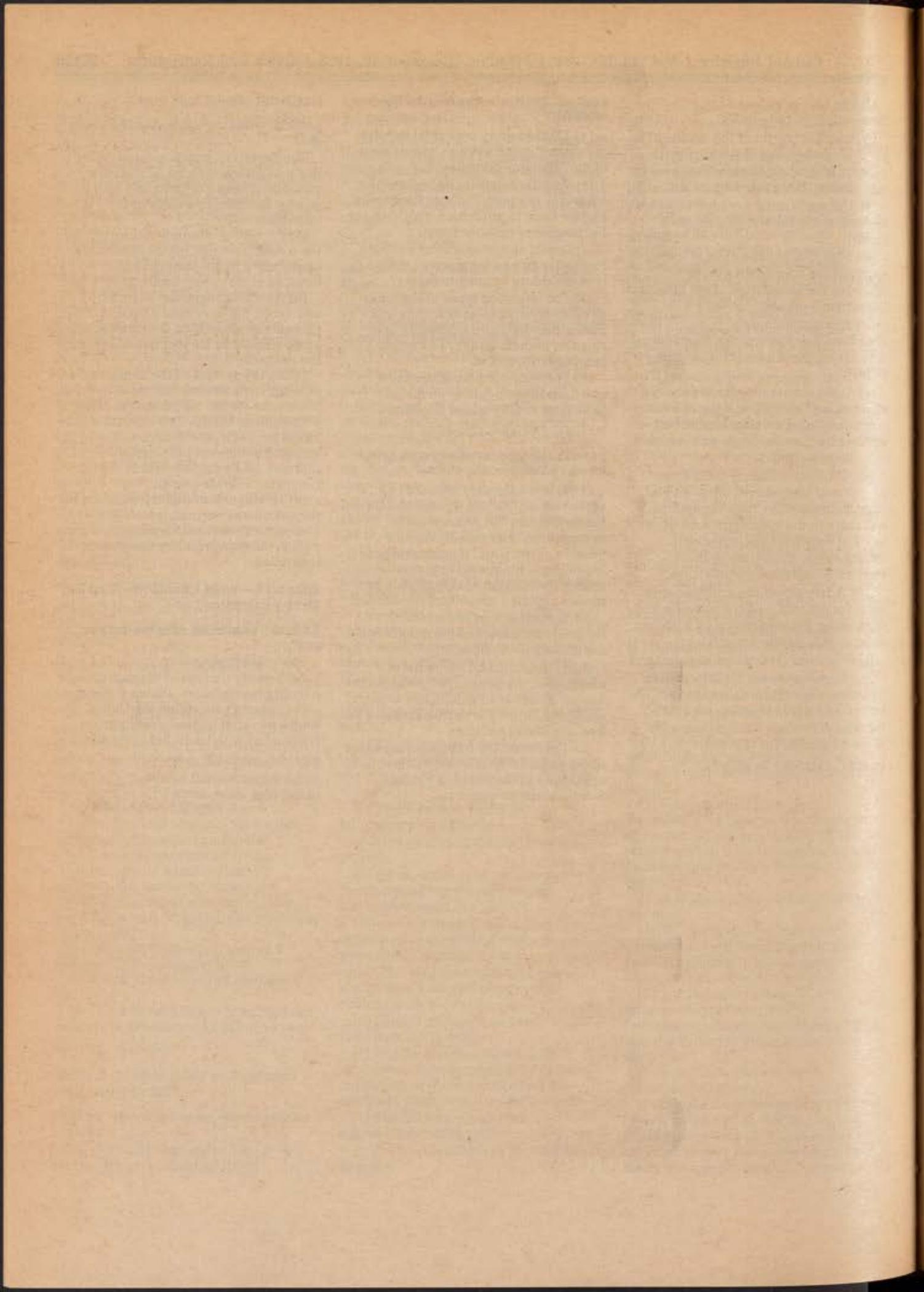
(a) Twenty percent of the consultant's monthly maintenance allowance; and

(b) Travel costs within the United States incurred by the consultant in connection with his or her assignment.

(22 U.S.C. 2452(b)(2), 2454(e)(1))

[FR Doc. 83-33595 Filed 12-19-83; 8:45 am]

BILLING CODE 4000-01-M



# **federal register**

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Monday  
December 19, 1983

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**Part IV**

**Office of  
Management and  
Budget**

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**Cumulative Report on Rescissions and  
Deferrals**

**OFFICE OF MANAGEMENT AND BUDGET****Cumulative Report on Recessions and Deferrals**

December 1, 1983.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of December 1, 1983 of 20 deferrals

contained in the first special message, and 3 deferrals contained in the second special message of FY 1984. These messages were transmitted to the Congress on November 7, 1983.

**Rescissions (Table A)**

No rescission proposals are currently pending before the Congress.

**Deferrals (Table B and Attachment A)**

As of December 1, 1983, \$1,953.5 million in 1984 budget authority was being deferred from obligation and another \$5.9 million in 1984 outlays was being deferred from expenditure.

Attachment A shows the history and status of each deferral reported during FY 1984.

**Information From Special Messages**

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Register** listed below:

Vol. 48, FR p. 45730, Thursday, October 6, 1983

Vol. 48, FR p. 53060, Wednesday,

November 23, 1983

David A. Stockman,

Director.

BILLING CODE 3110-01-M

TABLE A  
STATUS OF 1984 RESCISSIONS

	<u>Amount (In millions of dollars)</u>
Rescissions proposed by the President.....	-0-
Accepted by the Congress.....	-0-
Rejected by the Congress.....	<u>-0-</u>
Pending before the Congress.....	-0-

\*\*\*\*\*

TABLE B  
STATUS OF 1984 DEFERRALS

	<u>Amount (In millions of dollars)</u>
Deferrals proposed by the President.....	\$2,026.9
Routine Executive releases through November 1983.....	-71.4
Overturned by the Congress.....	<u>-2.0</u>
Currently before the Congress.....	\$1,953.5 <u>a/</u>

a/ This amount includes \$5.9 million in outlays for a Department of the Treasury deferral (D84-16).

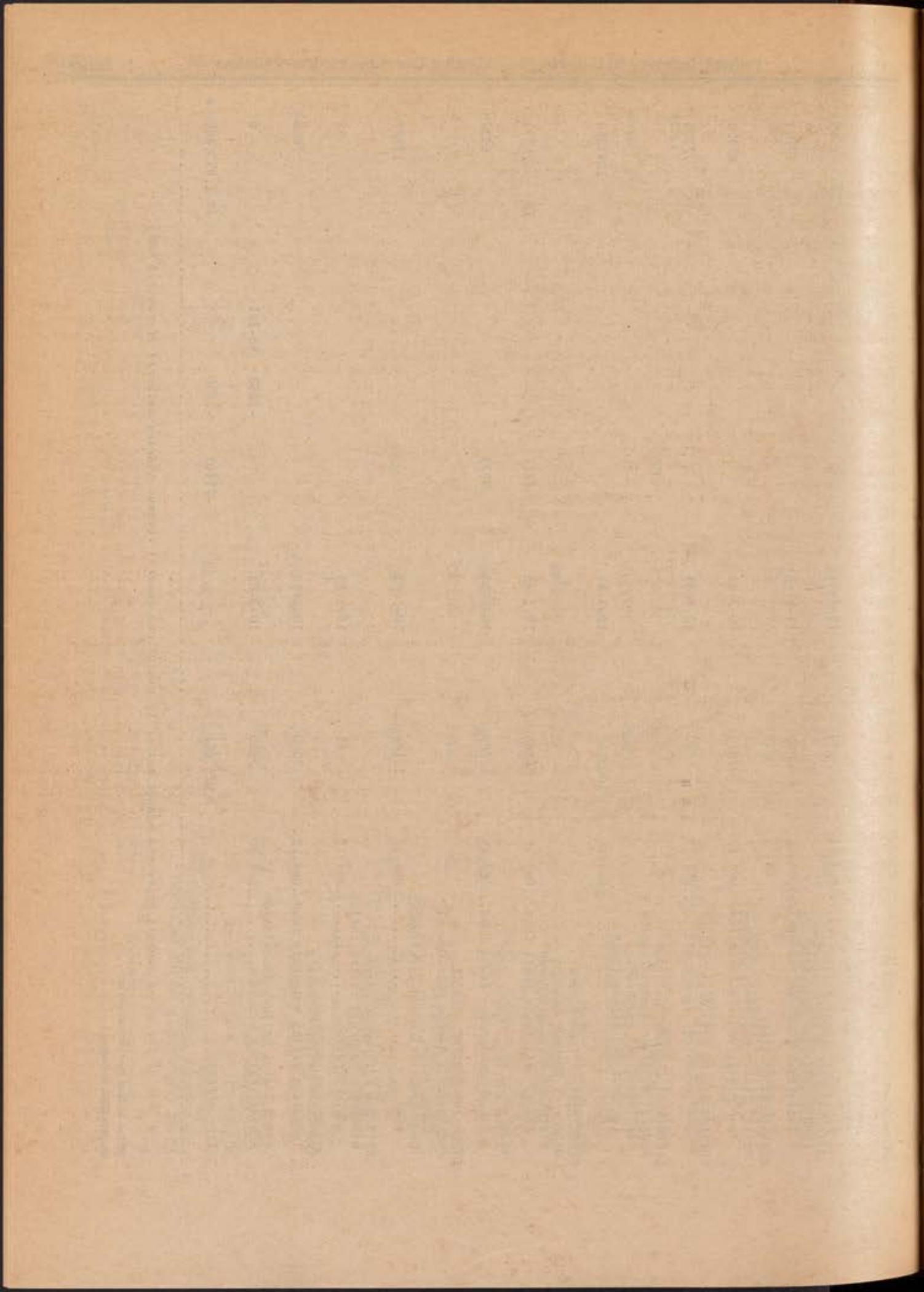
Attachments

## Attachment A - Status of Deferrals - Fiscal Year 1984

As of December 1, 1983 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congress- ionally Required Releases	Congress- ional Action	Cumulative Adjustments	Amount Deferred as of 12-1-83
<b>FUNDS APPROPRIATED TO THE PRESIDENT</b>									
Appalachian regional development programs.....	084-1	10000		10-3-83					10000
<b>DEPARTMENT OF AGRICULTURE</b>									
Forest Service Timber salvage sales.....	084-2	6211		10-3-83					6211
Expenses, brush disposal.....	084-3	42674		10-3-83					42674
<b>DEPARTMENT OF COMMERCE</b>									
National Oceanic and Atmospheric Administration Promote and develop fishery products and research pertaining to American fisheries.....	084-4	33600		10-3-83	-2050				31550
<b>DEPARTMENT OF DEFENSE - MILITARY</b>									
Military construction, all services.....	084-5	414597		10-3-83					414597
Family housing, Air Force.....	084-6	53000		10-3-83					53000
<b>DEPARTMENT OF DEFENSE - CIVIL</b>									
Wildlife conservation, military reservations Wildlife conservation.....	084-7	777		10-3-83					777
<b>DEPARTMENT OF ENERGY</b>									
Energy programs Uranium supply and enrichment activities.....	084-8	130000		10-3-83					130000
Fossil energy research and development.....	084-21	58364		11-17-83					500
Alternate fuels production.....	084-22	13800		11-17-83	-57864				13800
<b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>									
Office of the Assistant Secretary of Health Scientific activities overseas (special foreign currency program).....	084-9	6463		10-3-83					6463
Social Security Administration Limitation on administrative expenses (construction).....	084-10	10571		10-3-83					10571

DEPARTMENT OF THE INTERIOR					
Minerals Management Service					
Payments for proceeds, sale of					
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of 1920.....004-11					
National Park Service					
Land acquisition and state	11-17-83	30000			30000
assistance (contract authority)004-23					
DEPARTMENT OF STATE					
United States emergency refugee					
and migration assistance fund...004-12	10-3-83	37928			37928
United States bilateral science					
and technology agreements.....004-13	10-3-83	2000			2000
DEPARTMENT OF TRANSPORTATION					
Federal Aviation Administration					
Facilities and equipment					
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fund).....004-14	10-3-83	1083268			1083268
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Office of Revenue Sharing					
State and local government					
fiscal assistance trust fund...004-15	10-3-83	56068	-2216		53930
State and local government					
fiscal assistance trust fund...004-16	10-3-83	15209	-9273		5936
OTHER INDEPENDENT AGENCIES					
Pennsylvania Avenue Development					
Corporation					
Land acquisition and development					
fund).....004-17	10-3-83	13148			13148
Railroad Retirement Board					
Milwaukee Railroad restructuring					
administration.....004-18	10-3-83	85			85
Tennessee Valley Authority					
Tennessee Valley Authority fund...004-19.	10-3-83	7000			7000
United States Railway Association					
Administrative expenses.....004-20	10-3-83	2050	-2050	98-181	0
TOTAL, DEFERRALS.....		2,026,861	-71403	-2050	78 1,953,486
		a			a

a All of the above amounts represent budget authority except one general revenue sharing deferral of outlays only.



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Monday, December 19, 1983

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#### LIST OF PUBLIC LAWS

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1983.

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

**H.R. 1035 / Pub. L. 98-211**  
To make certain technical amendments to improve

implementation of the Education Consolidation and Improvement Act of 1981, and for other purposes. (Dec. 8, 1983; 97 Stat. 1412) Price: \$2.00

#### **H.R. 4185 / Pub. L. 98-212**

Department of Defense Appropriation Act, 1984. (Dec. 8, 1983; 97 Stat. 1421) Price: \$3.50

#### **S. 589 / Pub. L. 98-213**

To authorize \$15,500,000 for capital improvement projects on Guam, and for other purposes. (Dec. 8, 1983; 97 Stat. 1454) Price: \$1.75

#### **H.R. 2755 / Pub. L. 98-214**

Federal Communications Commission Authorization Act of 1983. (Dec. 8, 1983; 97 Stat. 1467) Price: \$1.75

#### **H.R. 2968 / Pub. L. 98-215**

Intelligence Authorization Act for Fiscal Year 1984 (Dec. 9, 1983; 97 Stat. 1473) Price: \$1.75

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (\*) precedes each entry that has been changed since last week.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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Title	Price	Revision Date	Title	Price	Revision Date
1, 2 (2 Reserved) .....	\$6.00	Jan. 1, 1983	<b>16 Parts:</b>		
3 (1982 Compilation and Parts 100 and 101) .....	6.00	Jan. 1, 1983	0-149 .....	7.00	Jan. 1, 1983
4 .....	7.50	Jan. 1, 1983	150-999 .....	7.00	Jan. 1, 1983
<b>5 Parts:</b>			1000-End .....	7.00	Jan. 1, 1983
1-1199 .....	8.50	Jan. 1, 1983	<b>17 Parts:</b>		
1200-End, 6 (6 Reserved) .....	6.00	Jan. 1, 1983	1-239 .....	8.00	Apr. 1, 1983
<b>7 Parts:</b>			240-End .....	7.00	Apr. 1, 1983
0-45 .....	9.00	Jan. 1, 1983	<b>18 Parts:</b>		
46-51 .....	7.50	Jan. 1, 1983	1-149 .....	7.00	Apr. 1, 1983
52 .....	9.00	Jan. 1, 1983	150-399 .....	8.00	Apr. 1, 1983
53-209 .....	7.50	Jan. 1, 1983	400-End .....	6.50	Apr. 1, 1983
210-299 .....	7.00	Jan. 1, 1983	19 .....	8.50	Apr. 1, 1983
300-399 .....	5.50	Jan. 1, 1983	<b>20 Parts:</b>		
400-699 .....	6.50	Jan. 1, 1983	1-399 .....	5.50	Apr. 1, 1983
700-899 .....	6.50	Jan. 1, 1983	400-499 .....	7.00	Apr. 1, 1983
900-999 .....	8.50	Jan. 1, 1983	500-End .....	7.50	Apr. 1, 1983
1000-1059 .....	7.50	Jan. 1, 1983	<b>21 Parts:</b>		
1060-1119 .....	6.50	Jan. 1, 1983	1-99 .....	6.00	Apr. 1, 1983
1120-1199 .....	7.00	Jan. 1, 1983	100-169 .....	6.50	Apr. 1, 1983
1200-1499 .....	7.00	Jan. 1, 1983	170-199 .....	6.50	Apr. 1, 1983
1500-1899 .....	6.50	Jan. 1, 1983	200-299 .....	4.75	Apr. 1, 1983
1900-1944 .....	8.00	Jan. 1, 1983	300-499 .....	8.00	Apr. 1, 1983
1945-End .....	7.00	Jan. 1, 1983	500-599 .....	6.50	Apr. 1, 1983
8 .....	6.50	Jan. 1, 1983	600-799 .....	5.00	Apr. 1, 1983
<b>9 Parts:</b>			800-1299 .....	6.00	Apr. 1, 1983
1-199 .....	7.50	Jan. 1, 1983	1300-End .....	5.00	Apr. 1, 1983
200-End .....	7.50	Jan. 1, 1983	22 .....	8.50	Apr. 1, 1983
<b>10 Parts:</b>			23 .....	7.00	Apr. 1, 1983
0-199 .....	9.00	Jan. 1, 1983	<b>24 Parts:</b>		
200-399 .....	7.50	Jan. 1, 1983	0-199 .....	6.00	Apr. 1, 1983
400-499 .....	6.50	Jan. 1, 1983	200-499 .....	8.00	Apr. 1, 1983
500-End .....	7.00	Jan. 1, 1983	500-799 .....	5.00	Apr. 1, 1983
11 .....	5.50	July 1, 1983	800-1699 .....	6.50	Apr. 1, 1983
<b>12 Parts:</b>			1700-End .....	6.00	Apr. 1, 1983
1-199 .....	7.00	Jan. 1, 1983	25 .....	8.00	Apr. 1, 1983
200-299 .....	8.00	Jan. 1, 1983	<b>26 Parts:</b>		
300-499 .....	7.00	Jan. 1, 1983	§§ 1.0-1.169 .....	8.00	Apr. 1, 1983
500-End .....	8.00	Jan. 1, 1983	§§ 1.170-1.300 .....	7.50	Apr. 1, 1982
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60-139 .....	7.00	Jan. 1, 1983	§§ 1.641-1.850 .....	7.50	Apr. 1, 1982
140-199 .....	5.50	Jan. 1, 1983	§§ 1.851-1.1200 .....	8.00	Apr. 1, 1983
200-1199 .....	7.00	Jan. 1, 1983	§§ 1.1201-End .....	8.50	Apr. 1, 1983
1200-End .....	6.50	Jan. 1, 1983	2-29 .....	7.00	Apr. 1, 1983
<b>15 Parts:</b>			30-39 .....	6.00	Apr. 1, 1983
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300-399 .....	7.00	Jan. 1, 1983	300-499 .....	6.00	Apr. 1, 1983
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			1-199 .....	6.50	Apr. 1, 1983
			200-End .....	6.50	Apr. 1, 1983
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			<b>29 Parts:</b>		
			0-99 .....	8.00	July 1, 1983
			100-499 .....	5.50	July 1, 1983
			500-899 .....	8.00	July 1, 1983
			900-1899 .....	5.50	July 1, 1983
			1900-1910 .....	8.50	July 1, 1983
			1911-1919 .....	4.50	July 1, 1983
			1920-End .....	8.00	July 1, 1983
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			0-199 .....	7.00	July 1, 1983
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			<b>31 Parts:</b>		
			0-199 .....	6.00	July 1, 1983
			200-End .....	6.50	July 1, 1983
			<b>32 Parts:</b>		
			1-39, Vol. I .....	8.50	July 1, 1983

Title	Price	Revision Date	Title	Price	Revision Date
1-39, Vol. II	13.00	July 1, 1983	<b>43 Parts:</b>		
1-39, Vol. III	9.00	July 1, 1983	1-999	7.00	Oct. 1, 1982
40-189	6.50	July 1, 1983	1000-3999	8.50	Oct. 1, 1982
*190-399	13.00	July 1, 1983	4000-End	7.00	Oct. 1, 1982
400-699	10.00	July 1, 1982	<b>44</b>	7.50	Oct. 1, 1982
700-799	7.50	July 1, 1983	<b>45 Parts:</b>		
800-999	6.50	July 1, 1983	1-199	7.00	Oct. 1, 1982
1000-End	6.00	July 1, 1983	200-499	6.00	Oct. 1, 1982
<b>33 Parts:</b>			500-1199	7.50	Oct. 1, 1982
1-199	9.00	July 1, 1982	1200-End	7.50	Oct. 1, 1982
200-End	7.00	July 1, 1983	<b>46 Parts:</b>		
<b>34 Parts:</b>			1-29	6.00	Oct. 1, 1982
*1-299	13.00	July 1, 1983	30-40	5.50	Oct. 1, 1982
300-399	6.00	July 1, 1983	41-69	7.50	Oct. 1, 1982
400-End	8.50	July 1, 1982	70-89	6.00	Oct. 1, 1982
35	5.50	July 1, 1983	90-109	6.50	Oct. 1, 1982
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1-199	6.50	July 1, 1983	140-155	7.00	Oct. 1, 1982
200-End	7.50	July 1, 1982	156-165	7.50	Oct. 1, 1982
37	6.00	July 1, 1983	166-199	7.00	Oct. 1, 1982
<b>38 Parts:</b>			200-399	8.50	Oct. 1, 1982
0-17	7.00	July 1, 1983	400-End	7.00	Oct. 1, 1982
18-End	6.50	July 1, 1983	<b>47 Parts:</b>		
39	7.00	July 1, 1982	0-19	8.50	Oct. 1, 1982
<b>40 Parts:</b>			20-69	9.00	Oct. 1, 1982
0-51	7.50	July 1, 1983	70-79	8.00	Oct. 1, 1982
52	9.00	July 1, 1982	80-End	9.00	Oct. 1, 1982
53-80	8.50	July 1, 1982	48	1.50	<sup>2</sup> Sept. 19, 1983
81-99	7.50	July 1, 1983	<b>49 Parts:</b>		
100-149	6.00	July 1, 1983	1-99	6.50	Oct. 1, 1982
150-189	6.50	July 1, 1983	100-177	9.00	Oct. 1, 1982
190-399	7.00	July 1, 1983	178-199	8.00	Oct. 1, 1982
400-424	6.50	July 1, 1983	200-399	7.50	Oct. 1, 1982
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<b>41 Chapters:</b>			1000-1199	7.50	Nov. 1, 1982
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1, 1-11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983	1300-End	7.50	Oct. 1, 1982
*3-6	7.00	July 1, 1983	<b>50 Parts:</b>		
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<b>42 Parts:</b>					
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61-399	7.00	Oct. 1, 1982			
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<sup>1</sup> No amendments to these volumes were promulgated during the period Apr. 1, 1982 to March 31, 1983. The CFR volumes issued as of Apr. 1, 1982 should be retained.

<sup>2</sup> No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

<sup>3</sup> Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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