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Federal Register

Monday
September 30, 1985

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Internal Revenue Service

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Animal and Plant Health Inspection Service

Aviation Safety
Federal Aviation Administration

Chemicals
Environmental Protection Agency

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Personnel Management Office

Hazardous Substances
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Housing
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Rules and Regulations

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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 week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

[Docket No. 0038A]

Crop Insurance Regulations; 1985 Eastern and Western U.S. Apple, Peach, Almond, and Grape and 1986 Arizona-California and Texas Citrus

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Eastern and Western U.S. Apple, Peach, Almond, and Grape, Crop Insurance Regulations, effective for the 1985 crop year only, and the Arizona-California Citrus and Texas Citrus Crop Insurance Regulations effective for the 1986 crop year only by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE:

Effective: September 30, 1985.

Comment: Written comments, data, and opinions on this interim rule must be submitted not later than November 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, August 28, 1985, FCIC published an interim rule in the **Federal Register** at 50 FR 34801 amending the policies for insuring Eastern and Western U.S. Apple, Almond, and Grape Crop Insurance Regulations, by changing the date for filing contract changes to September 30, 1985, effective for the 1985 crop year only and amending the policies for insuring Arizona-California Citrus and Texas Citrus, effective for the 1986 crop year only. Because of the delay in establishing the premium rates or the price elections offered under each crop insurance policy, additional time to include these rates in the Actuarial Tables is needed under the terms and conditions of the 1985 or 1986 policies to insure that the program is actuarially sound.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered, it is necessary for FCIC to further extend the date for filing changes to the contract an additional 31 days. It has therefore been determined that the date is further extended to October 31, 1985, effective for the 1985 crop year only (1986 crop year only for Arizona-California and Texas Citrus).

FCIC is still reviewing all the actuarial tables for the regulations referred to herein to determine whether the premium rates or the price elections offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is further extended.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract date of September 30. There is not sufficient time to provide for public comment and implement these changes prior to September 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from

September 30, 1985, until October 31, 1985, and made effective for the 1985 crop year only for peaches, apples, grapes, and almonds and for the 1986 crop year only for Arizona-California citrus and Texas citrus.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register.** This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during the regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

Crop Insurance, Peach, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, Almond.

Interim rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peach, Western U.S. Apple, Eastern U.S. Apple, Grape, and Almond Crop Insurance Regulations, effective for the 1985 crop year only and Arizona-California Citrus and Texas Citrus Crop Insurance Regulations, effective for the 1986 crop year only (7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 respectively) in the following instances:

1. The Authority Citation for 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

PART 403—[AMENDED]

2. In 7 CFR § 403.7(d), paragraph 16 to the Crop insurance policy is revised to read as follows:

16. Contract Changes.

We may changes any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by September 30, preceding the cancellation date, except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PARTS 404, 408 AND 439—[AMENDED]

3. In §§ 404.7(d), 408.7(d), and 439.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 409—[AMENDED]

4. In § 409.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date by October 31 preceding the cancellation date for all other counties except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 411—[AMENDED]

5. In § 411.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date and by October 31 preceding the cancellation date for all other counties except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 413—[AMENDED]

6. In § 413.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on September 19, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–23191 Filed 9–27–85; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1806, 1863, 1872, 1924, 1944, 1951, 1965, and 1980

Servicing of Real Estate Security for Single Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations regarding servicing of Single Family Housing (SFH) loans secured by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is for FmHA to be more responsive to SFH borrowers and to clarify servicing authorities and procedures for field employees.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single Family Housing Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor." This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no 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.

FmHA is removing its regulations on servicing and liquidation of real estate security for SFH loans from Subpart A of Part 1872, and incorporating those regulations into new Subpart C of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations. In addition, we are amending related regulations to change affected references from Part 1872 to Subpart C of Part 1965.

Discussion of Final Rule

A proposed rule was published in the **Federal Register** (49 FR 26072) on June 26, 1984. The proposal provided for a 60-day comment period. The comment period ended August 27, 1984. In response to the notice of proposed rulemaking comments were received from FmHA personnel who will be administering the regulation. No comments were received from the public. The proposed rule also covered Subpart A of Part 1965 for servicing security for Farmer Program loans. Subpart A is being finalized along with certain other Farmer Program regulations and will be issued as a final rule at a later date.

Substantive changes to Subpart C of Part 1965 since the proposed rule was published are summarized as follows:

1. A section on servicing real estate taxes is incorporated into this subpart, and the opening paragraph of Subpart E of Part 1863 of this chapter is revised to exclude tax servicing for borrowers who have Single Family Housing loans only. This reflects a policy change wherein taxes can be vouchered by the Government when it is necessary to enable the borrower to become a successful homeowner, although it is before it is legally possible for the borrower to lose title to the security property. This is now § 1965.105; the section that was numbered 1965.105 in the proposed rule is redesignated as § 1965.106. This section provides that when taxes are vouchered, the amount advanced will be charged to the borrower's account as a recoverable cost and amortized over the number of months for which the taxes are being vouchered. Since the taxes accrued over that period of time, it is reasonable to expect repayment over the same length of time. A recent court case indicated that there may have been problems with the previous procedure and has been considered as public comment on the proposed rule.

2. Section 1965.111 on Junior Liens is rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982, specifically, (a) that FmHA consent is not required for a borrower to give a junior lien on the security property, and (b) the creation of a junior lien may not be used as the sole basis for requiring liquidation of the FmHA loan.

3. Section 1965.112 on lease of security property was slightly rewritten for further clarification. The policy in this section also complies with section 341 of the Garn-St Germain Depository Institutions Act of 1982.

4. Section 1965.116 on Deceased Borrowers is also rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982 as it relates to the rights of persons who are relatives, joint tenants, or tenants by the entirety of a deceased borrower.

5. The opening paragraph of § 1965.125 on Liquidation is rewritten to strengthen the Agency's policy on (a) encouraging the borrowers to liquidate voluntarily, (b) requiring that the borrower be advised of the estimated amount of apparent equity, if any, and (c) to increase the time allowed for voluntary liquidation from 60 to 120 days.

6. Section 1965.125(a)(3) is revised to include a real estate broker's commission and points paid by the seller among the items which may be deducted from sale proceeds before payment to FmHA.

7. Section 1965.126(b)(1) is added to clarify (a) the terms on which loans may be assumed and (b) how the loans will be classified after the assumption. Subsequent paragraphs in the section were renumbered accordingly.

8. In § 1965.126, the paragraph entitled "Above-modest property" was retitled to "Suitability of property for retention in program" and rewritten to clarify FmHA's policy on houses which have been improved between the time of the initial loan and the proposed assumption. It also now addresses other situations where FmHA determines the property should not be retained in the program.

9. Section 1965.126(c) on assumptions on eligible terms is slightly rewritten for clarification and paragraph (d) of that section on assumption on ineligible terms is revised to distinguish between the purchaser who intends to use the home as a residence and the investor-type purchaser and provides different repayment terms for each.

10. Subpart M of Part 1951, "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received" was published as a Final Rule on April 2, 1985, with an effective day of May 2, 1985. Since servicing of accounts under the provisions of Subpart M of Part 1951 can result in an account being substantially delinquent, particularly in the case where unauthorized interest credit was recovered through reversal and reapplication of payments, the Agency has determined the authority to reamortize such an account should be incorporated into Subpart G of Part 1951 when this action will assist the borrower in becoming a successful homeowner.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed 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.

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Housing, Rural areas, Mortgages.

Therefore, Chapter XVIII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Real Property Insurance

2. Section 1806.4(b)(2)(ii) is revised to read as follows:

§ 1806.4 Examining and general servicing of insurance.

* * * * *

(b) * * *

(2) * * *

(ii) In a transfer with assumption, insurance will be required in the same amount and according to the same provisions as for an initial loan of the same type.

* * * * *

3. Sections 1806.5 (c)(1)(ii) and (c)(1)(iii) are revised to read as follows:

§ 1806.5 Losses.

* * * * *

(c) * * *

(1) * * *

(ii) When (A) the essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected, or (B) a balance remains after all repairs, replacements, and other authorized disbursements have been made, such insurance funds will be applied on prior liens, or to current payment to the borrower's loan accounts secured by the real estate or disposed of in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved.

(iii) An insurance payment for loss or damage to a nonessential building the borrower voluntarily insured will be (A) applied on prior lines, or to current delinquencies to FmHA or as an extra payment on the borrower's loan accounts secured by real estate, (B) disposed of as authorized by the State Director in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved, or (C) used for other purposes as authorized by the State Director if the loan is adequately secured and the loan account is current.

* * * * *

4. In § 1806.6 the introductory paragraph of paragraph (a)(1)(vii) is revised to read as follows:

§ 1806.6 Failure of the borrower to provide insurance.

* * * * *

(a) * * *

(1) * * *

(vii) After the County Supervisor and the borrower exhaust all efforts to obtain acceptable insurance, the County Supervisor will request advice from the State Office as to companies issuing acceptable policies in the State and from which the borrower might be able to obtain an acceptable policy. If the borrower still cannot obtain an acceptable policy from any such company, and the determination has been made to continue with the borrower, the County Supervisor will temporarily accept from the borrower the available insurance policy the FmHA determines most nearly conforms to the requirements of § 1806.2 of this subpart.

* * * * *

PART 1863—REAL ESTATE TAX SERVICING

5. The authority citation of Part 1863 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

6. Section 1863.1 is revised to read as follows:

§ 1863.1 General.

This Part applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), and Other Real Estate (ORE) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers [Single Family Housing (SFH)] who also have a Farmer Program loan. *It does not apply to borrowers who have a SFH loan only;* those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before the taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

PART 1872—REAL ESTATE SECURITY

7. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

8. Section 1872.1 (a) is revised and reads as follows:

§ 1872.1 General.

(a) *Purpose.* The purpose of this Instruction is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) insured Farmer Program loans, including leasehold interests and certain note-only cases. Where borrowers have *both* FmHA Farmer Program and Single Family Housing (SFH) loans, security servicing will be according to this Instruction. However, where borrowers are indebted for SFH loans *only*, security servicing will be according to Subpart C of Part 1965 of this chapter.

* * * * *

9. In § 1872.2, paragraphs (b)(1) and (e) are revised to read as follows:

§ 1872.2 Preservation of security property and protection of liens.

* * * * *

(b) * * *

(1) *Management/maintenance or lease of security.* Services for the management, care, and maintenance of security property will be obtained according to § 1955.55 or security property may be leased according to the provisions of § 1955.66 of Subpart B of Part 1955 of this chapter.

* * * * *

(e) *Abandonment.* When the borrower has removed personal property from the farm or home or the County Supervisor otherwise has reason to believe security property has been abandoned by the borrower, the County Supervisor will make the determinations and take the actions outlined in § 1955.55 of Subpart B of Part 1955 of this chapter to protect the security property.

§ 1872.3 [Amended]

10. In § 1872.3(h), the second sentence which begins with "Form FmHA 440–2," place a period after "land" and delete the remainder of the sentence.

11. In § 1872.18, paragraph (d)(3) is revised to read as follows:

§ 1872.18 Transfer of real estate security.

* * * * *

(d) * * *

(3) *Term—nonfarm.* For RH loans secured by a lien on a nonfarm tract, the balance of the RH debt assumed will be scheduled for repayment in not more than ten years with amortized annual or monthly installments. Interest on the amount assumed will be charged at the Single Family Housing—Ineligible rate in effect when the transfer is approved *or* the interest rate specified in the note being assumed, whichever is greater.

* * * * *

12. In § 1872.18(f), in the second sentence, delete the phrase "other than

sections 502 and 504 RH loans" and the commas on either side of that phrase.

PART 1924—CONSTRUCTION AND REPAIR

13. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

14. Section 1924.5(g)(4) is revised to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures contained in Subpart A of Part 1872 of this chapter or Subpart C of Part 1965 of this chapter, as appropriate.

* * * * *

PART 1944—HOUSING

15. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Policies, Procedures, and Authorizations.

16. Section 1944.10(g)(3) is revised to read as follows:

§ 1944.10 Rural area designation.

* * * * *

(g) * * *

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized in § 1955.103(q) of Subpart C of Part 1955 or § 1965.126 of Subpart C of Part 1965 of this chapter, respectively.

* * * * *

§ 1944.18 [Amended]

17. Section 1944.18(d) is amended in the first sentence by changing the reference from "§ 1872.11 of Part 1872 of this chapter (FmHA Instruction 465.1, Paragraph XI)" to "applicable portions of Subpart C of Part 1965 of this chapter."

18. Section 1944.34(f)(3) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(f) * * *

(3) *Transfers.* Interest credit may be granted to a borrower assuming an RH loan provided the assuming party(ies) qualifies according to paragraph (f)(1) of this section.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

19. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart G—Borrower Supervision, Servicing and Collection of Single-Family Housing Loan Accounts

20. Section 1951.310 is amended by revising the introductory paragraph and paragraph (a), and reads as follows:

§ 1951.310 Amortization of recoverable cost.

When an advance is made by FmHA to pay recoverable costs, the Finance Office will automatically increase the payments during the amortization period by the amount necessary to repay the advance, with interest computed at the rate which is in effect for the loan to which the advance is charged (the fund code and loan number shown on SF–1034 and Form FmHA 2024–1).

(a) *Monthly payment borrowers.* If there is an outstanding balance from a previous advance when a new advance is made, the two amounts will be combined and reamortized as provided in paragraph (a)(1) or (a)(2) of this section. If the new installment is less than the previous installment, the larger of the two will be used, thus causing the balance to be paid over a shorter period.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher as authorized in § 1965.105 of Subpart C of Part 1965 of this chapter, the tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF–1034 and Form FmHA 2024–1). The amortization period of the tax advance will be the number of months for which the taxes are being vouchered and will be stated on the voucher.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be automatically amortized for 12 months unless the County Supervisor determines that, based on the borrower's repayment ability, a longer period is needed and so specified on the voucher. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type.

* * * * *

21. Section 1951.314(a) is amended by adding subparagraph (5) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(5) When an unauthorized loan or unauthorized interest credit has been serviced in accordance with Subpart M of Part 1951 of this chapter, and the reversal and reapplication of payments have resulted in a delinquency which requires more than 2 years for the borrower to repay under Form FmHA 451–37.

* * * * *

22. Section 1951.315 is added and reads as follows:

§ 1951.315 Servicing a note-only loan.

A loan made on a note-only basis will be serviced in a manner which is in the Government's best interest.

(a) *Sale of real property improved with note-only funds.* When property improved with note-only funds is sold, the County Supervisor should attempt to collect the balance owed on the loan. If collection cannot be made, the debt may be assumed by the purchaser of the property on the terms of the note. If collection or assumption cannot be effected, the debt should be settled under Part 1864 of this chapter (FmHA Instruction 456.1), if possible, or reclassified to collection-only if the borrower has assets and a judgment is to be sought.

(b) *Note-only in connection with secured loan(s).* When a borrower owes both secured and RH note-only loans and the security property is transferred to a party who will assume the secured loan(s), the amount to be assumed will be the total of the secured and unsecured loans, not to exceed the market value of the security property. When all of the transferor's debt is not assumed, the balance will be collected, secured by a judgment if there are assets from which collection may be made, or settled under Part 1864 of this chapter (FmHA Instruction 456.1).

(c) *Deceased borrower.* When a note-only borrower dies, the County Supervisor will determine whether there are assets in the borrower's estate from which a claim be collected. If there are assets, a claim against the decedent's estate may be recommended under § 1962.49 of Subpart A of Part 1962 of this chapter. If not, the debt will be settled under Part 1864 of this chapter (FmHA Instruction 456.1).

PART 1965—REAL PROPERTY

23. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart B—Security Servicing for Multiple Housing Loans

24. In § 1965.61, paragraphs (d) and (e)(3) are revised to read as follows:

§ 1965.61 General loan servicing requirements.

* * * * *

(d) *Actions by third parties affecting FmHA security.* Cases including third party action will be handled according to the provisions of § 1965.104(c) of Subpart C of Part 1965 of this chapter, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) * * *

(3) *Mineral leases.* Mineral leases will be handled according to § 1965.113 of Subpart C of Part 1965 of this chapter except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

* * * * *

25. Subpart C is added and reads as follows:

PART 1965—REAL PROPERTY

Subpart C—Security Servicing for Single Family Rural Housing Loans

Sec.

1965.101 Purpose.
1965.102 Policy.
1965.103 Responsibilities.
1965.104 Preservation of security and protection of liens.
1965.105 Servicing real estate taxes.
1965.106 Subordination of FmHA lien.
1965.107–1965.109 [Reserved]
1965.110 Release of security.
1965.111 Junior liens.
1965.112 Lease of security property.
1965.113 Mineral leases.
1965.114–1965.115 [Reserved]
1965.116 Deceased borrower.
1965.117 Bankruptcy.
1965.118 Release of FmHA lien without monetary consideration.
1965.119–1965.124 [Reserved]
1965.125 Liquidation.
1965.126 Transfer of property with assumption of indebtedness.
1965.127 Release from liability.
1965.128 Assignment of promissory notes and security instruments.
1965.129 Co-signers.
1965.130–1965.135 [Reserved]
1965.136 Redelegation of authority.
1965.137 Exception authority.
1965.138 State Supplements.
1965.139–1965.150 [Reserved]

Subpart C—Security Servicing for Single Family Rural Housing Loans

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures Section 502 and Section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for an RH loan(s) *only*, herein referred to as Single Family Housing (SFH) loan(s). Security servicing for RH loans when the borrower is also indebted to FmHA for Farmer Programs loans is under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

§ 1965.102 Policy.

Real estate security is servicing under provisions of the security instruments and related agreements, including authorized modifications, in a manner which will assist the borrower in accomplishing the loan objectives and protect the Government's financial interest.

§ 1965.103 Responsibilities.

(a) *Borrower.* The borrower is responsible for:

(1) Making loan payments as agreed;

(2) Paying real estate taxes and/or assessments when due;

(3) Keeping adequate property insurance in force; and

(4) Maintaining the property in good repair.

(b) *FmHA officials.* In this subpart, "County Supervisor" includes an Assistant County Supervisor, GS–7 or above, who has written delegated authority to carry out provisions of this subpart; and "District Director" includes an Assistant District Director or District Loan Specialist who has written delegated authority to carry out the provisions of this subpart. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories. Servicing actions will be documented in the running record of the case file. The County Supervisor is authorized to execute, on behalf of the Government, all forms and other documents necessary to complete transactions under this subpart after the transaction has been approved by the approving official.

(1) The County Supervisor is responsible for servicing the loan account under Subpart G of Part 1951 of this chapter, for seeing that the security property is properly maintained, and for taking appropriate action promptly when necessary to protect the Government's interest.

(2) The District Director will assist in unusual cases or when the County Supervisor requests assistance in servicing any case.

(3) The State Director will obtain legal advice from the Regional Attorney, Office of the General Counsel (OGC), as necessary on an individual-case basis or in issuing a State Supplement where specifically authorized.

§ 1965.104 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect real estate security as necessary to protect the Government's interest.

(b) *Actions by FmHA for account of borrower.* When necessary to protect the interest of the Government, FmHA may make protective advances for purposes outlined in paragraphs (b)(1) through (b)(4) of this section. Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Form FmHA 2024–11, "Solicitation, Quotation, Purchase Order, Inspection, and Invoice," or other approved voucher, and Form FmHA 2024–1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable costs.

(1) *Taxes and/or assessments.* Real estate taxes and assessments will be handled under § 1965.105 of this subpart.

(2) *Insurance.* Property insurance will be handled under Subparts A and B of Part 1806 of this chapter (FmHA Instructions, 426.1 and 426.2), if applicable.

(3) *Maintenance.* When the borrower continues to occupy the security property but is not adequately maintaining it, prior authorization from the National Office must be obtained before funds are advanced for essential repairs. The State Director will submit the facts and reasons why the loan should not be liquidated to the Assistant Administrator, Housing. If there is a prior lien, expenditures for maintenance will not be made by the Government unless the prior lienholder refuses to make them. Evidence of the prior lienholder's refusal to make these expenditures must be fully documented.

(4) *Abandonment.* When the County Supervisor believes the borrower has abandoned security property, actions

will be taken without delay under Subpart B of Part 1955 of this chapter.

(c) *Actions by third parties which affect security property.* When a third party brings suit or takes any other action which affects FmHA security property, borrowers are expected to protect their own interests in the property. Examples of these actions are: condemnation proceedings, trespass suits, and actions to quiet title. When the County Supervisor learns of a third-party action which may jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will send the case file, complete with information concerning the action, and recommendations for FmHA servicing actions to the State Director. A copy of the petition or complaint, as soon as available; the account status; a current appraisal; the name and address of the borrower's attorney, if any; and any other information the County Supervisor believes important will be included. The State Director will consult OGC about all such lawsuits. The State Director will also consult OGC about other third-party actions when legal advice is needed. Protective advances will be authorized only to protect the Government's interest. When foreclosure or other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan in accordance with Subpart A of Part 1944 of this chapter provided the third party agrees to postpone further action pending the processing of a subsequent loan. The State Director will advise the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness, the estimated costs of the foreclosure sale, and whether or not SF-1034 would be accepted if the Government were the successful bidder at the sale.

(i) *Paying the prior lien debt.* When it is advantageous to the Government to pay the prior lienholder in full before the foreclosure sale, title evidence must be obtained. Information clearly supporting the action as being to the Government's financial advantage must be documented in the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery on the secured debt than it could by bidding at the foreclosure sale; and

(B) The FmHA account, after payment of the prior lien, will be liquidated.

(ii) *Bidding at prior lien foreclosure sale.* When acceptable title evidence has been obtained and it is determined that a net recovery on the Government's investment can be made by acquiring the property, the State Director may authorize bidding at the foreclosure sale. Calculation of the bid amount, designation of bidder and reporting of sale will be under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. If payment by voucher is not acceptable, SF-1034 and Form FmHA 2024-1 must be prepared and submitted according to the FMI in time to receive a check before the sale date.

(2) *Junior lien foreclosure.* FmHA will not bid at a junior lien foreclosure sale unless OGC advises that not bidding would likely result in FmHA's lien being extinguished. When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser if the requirements of § 1965.126 (c) or (d) of this subpart can be met; otherwise the FmHA loan will be liquidated.

(3) *Tax sale.*—(i) *Authority.* The State Director may authorize bidding at a tax sale if it is determined to be in the best financial interest of the Government and all of the following conditions exist:

(A) OGC has advised that under applicable State law the tax sale will not extinguish the FmHA lien in case another party is the successful bidder at the tax sale or the borrower redeems the property before the tax deed is delivered.

(B) Under applicable State law the purchaser will be able to obtain a deed to the property sooner than foreclosure could be completed.

(C) Taxes which will accrue during the time that foreclosure is expected to take will create or increase a loss to the Government.

(ii) *Limitations.* (A) When all of the conditions outlined in paragraph (c)(3)(i) of this section are met and the taxing authority schedules the security property to be sold for delinquent taxes (which are a prior lien), the State Director may designate an FmHA employee to bid at the tax sale provided a title search covering the period since the last title opinion in the file reveals no liens which cannot be settled in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter.

(B) When all of the conditions outlined in paragraph (c)(3)(i) of this section are *not* met, FmHA will pay the taxes to protect the Government's security interest as provided in § 1965.105 of this subpart. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(iii) *Bid.* The gross investment will be determined under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. The State Director will designate, in writing, an employee to bid at the tax sale. The designation will specify that incremental bidding will be used starting at the lowest level possible and that the maximum bid will not exceed the gross investment or the market value of the security property (less other liens which must be settled), whichever is less (stated in dollar amount).

(iv) *Credit to borrower.* When title to SFH security property is acquired by tax deed, the borrower's account will be credited as though the acquisition had been through foreclosure by FmHA under Subpart A of Part 1955 of this chapter.

(v) *State Supplement.* The State Director, with the assistance of OGC, will issue a State Supplement to this section setting forth the applicable provisions of State law and giving specific guidance pertinent to the particular state.

(4) *Bankruptcy sale.* With prior advice from OGC, the State Director may authorize bidding at a bankruptcy sale provided title to the security property can be acquired free of liens other than FmHA's lien(s). Bidding and credit to the borrower's account will be the same as outlined in paragraph (c)(3) (iii) and (iv) of this section.

§ 1965.105 Servicing real estate taxes.

In this section, "taxes" includes assessments which, if not paid, will become a lien on the property. Security instruments for FmHA loans provide that the borrower will pay real estate taxes as they become due, and failure to do so is a default of that loan covenant. In credit counseling or assisting the borrower in budgeting or other financial planning, payment of taxes must be included.

(a) *Responsibility.* The County Supervisor is responsible for determining which borrowers have not paid their taxes.

(b) *Decision on servicing.* Upon determining a borrower has not paid taxes when due, the County Supervisor will make a diligent effort to have the borrower pay the taxes. If the borrower

is unable to pay the taxes, the County Supervisor will take one of the following actions:

(1) Based on a realistic budget, if it is determined the borrower can likely be successful if FmHA vouchers the taxes, the voucher will be processed according to paragraph (e) of this section. At the same time, an agreement should be reached as to the amount the borrower must set aside to pay the current year's taxes when due as well as make the increased payments to repay the tax advance. Advances for taxes for more than two consecutive years must have the prior concurrence of the District Director.

(2) If the borrower does not respond and cooperate with FmHA; if it cannot be projected through a budget that vouchering taxes will likely enable the borrower to be successful; or if the taxes are so low that the amount will not have a critical bearing on the success of the borrower, FmHA will not pay the taxes by voucher. If a taxing authority schedules a tax sale and the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA will bid at the tax sale. If those conditions are not met, FmHA will pay the taxes to protect the Government's security interest. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(c) *Foreclosure-pending cases.* When foreclosure action is pending, taxes will not be vouchered until the date for the public sale is set and taxes due up to the sale date can be paid at one time unless the taxing authority schedules a tax sale sooner. If a tax sale is scheduled and the conditions of §1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA may bid at the tax sale; or the taxes will be paid by voucher and foreclosure action continued.

(d) *Other Real Estate (ORE) cases.* As used in this subpart, ORE refers only to ORE loans for SFH property. ORE loans include credit sales from inventory on ineligible terms; assumptions of loans on ineligible terms; and loans which have been rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. FmHA will not voucher taxes of ORE borrowers except to protect the Government's security interest. If a tax sale is scheduled, FmHA may bid at the tax sale if the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met. If those conditions are not met, the taxes will be vouchered and subsequent servicing actions which are in the Government's best financial interest will be taken.

(e) *Processing tax advances.* When a borrower's taxes are to be paid by FmHA, Standard Form 1034, and Form FmHA 2024–1, will be prepared and submitted for payment under FmHA Instruction 2024–P, (available in any FmHA office) and the FMIs as a recoverable cost. The following provisions apply:

(1) Vouchers will be prepared to request that the check be made payable to the taxing authority but mailed to the County Supervisor. The County Supervisor is responsible for delivery of the check to the taxing authority and for obtaining a receipt.

(2) A tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF–1034 and Form FmHA 2024–1). When a borrower has more than one loan secured by the real estate on which taxes are being paid, the advance will be charged to the initial loan or the lowest loan number within the fund code that is still outstanding. The amortization period of the tax advance will be the number of months for which the taxes are being vouchered.

§ 1965.106 Subordination of FmHA lien.

(a) *Conditions for subordination.* Subordination of FmHA's lien to another lender may be granted subject to the following provisions:

(1) The funds obtained from the other lender will be used only for purposes for which an RH loan could be made and subject to the same limitations applicable to RH loan funds.

(2) The prior lien debt plus the FmHA debt will not exceed the market value of the security. (For this purpose, the FmHA debt is the unpaid balance on the loan exclusive of recapture of subsidy.)

(3) The prior lien debt must be on terms and conditions which the borrower can reasonably be expected to meet without jeopardizing repayment of the FmHA indebtedness.

(4) Proposed development, if any, will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or directed by the other lender in a manner which is consistent with that subpart.

(5) The funds obtained from the other lender for development will be handled through a supervised bank account or under other arrangements approved by the County Supervisor which will assure that the funds are used for the planned purposes.

(6) An agreement must be obtained in writing from the prior lienholder providing that at least 30 days advance notice will be given to FmHA before action to foreclose on their prior lien is initiated.

(b) *Approval authority.* An approval official may approve a subordination when the total indebtedness against the security including prior-lien debt(s) does not exceed his/her respective loan approval authority.

(c) *Request for subordination and processing.* When a borrower requests FmHA to subordinate its lien, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. A new appraisal will be made when the latest appraisal report is more than one year old or if it does not reflect market value. When development work is planned, a new appraisal is required to reflect the development. The subordination will be completed according to a State Supplement approved by OGC.

§ 1965.107–1965.109 [Reserved]

§ 1965.110 Release of security.

(a) *Release or partial release.* FmHA may consent to transactions affecting the security, such as sale or exchange of security or granting of a right-of-way across the security, and grant a release or partial release provided:

(1) The consideration is:

(i) In sale of property, cash in an amount equal to the value of the security being disposed of or rights granted;

(ii) In exchange of property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of; or

(iii) In granting an easement or right-of-way, benefits derived which are equal to or greater than the value of the property being disposed of.

(2) The security after the transaction is completed will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(3) Repayment of the FmHA debt will not be jeopardized.

(b) *Approval authority.* An official who has loan approval authority may approve release or partial release transactions when the total indebtedness against the security does not exceed his/her respective loan approval authority.

(c) *Request for consent and processing.* When a borrower requests consent to sell or other disposition of a portion of the security, Form FmHA 465–1 will be prepared. If exchange of all or part of the security is involved, title clearance on the proposed new security and a new security instrument will be obtained in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) before release of existing security. A new appraisal will be made when the latest appraisal is more than one year

old or if it does not reflect market value. When a new appraisal is required, it will be based on the property being retained with a notation on the value of the portion to be released entered on Form FmHA 1922–8, "Residential Appraisal Report," in the "Comments" section of the same appraisal report. Form FmHA 460–1, "Partial Release," or other form approved by OGC, will be used to release a portion of the security. When all or a portion of the security is being exchanged, OGC will be requested to provide a form of release without satisfaction of debt, and the release may be recorded simultaneously with the new security instrument. In sale of all or a portion of the security when full payment is received in the form of cash, money order, certified check, or Cashier's check, the release may be delivered.

(d) *Use of proceeds.* Proceeds from sale of a portion of the security granting of an easement or right-of-way, damage compensation, and all similar transactions requiring FmHA consent, will be used in the following order:

(1) To pay customary and reasonable costs (as determined by FmHA) related to the transaction which must be paid by the borrower, such as real estate taxes which must be paid to conclude the transaction; cost of title examination, survey, abstract, and reasonable attorney's fees; costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without cost; and additional income tax the borrower will be required to pay;

(2) To be applied on a prior lien debt, if any; and

(3) To be applied to the FmHA indebtedness as an extra payment or used for improvements to the security property in keeping with purposes and subject to limitations applicable to use of RH loan funds. Proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this chapter and the proceeds handled through a supervised bank account to assure that the proceeds are used as planned.

§ 1965.111 Junior liens.

Within the scope of credit counseling, SFH borrowers will generally be discouraged from giving junior liens on real estate which secures their SFH debt. However, FmHA consent is not required and the existence of a junior lien may not be treated as a default or used as justification for forced liquidation action. When junior liens exist, the FmHA loan will be serviced in the usual manner as long as the borrower makes payments as scheduled, properly maintains the security, and meets other loan conditions. The existence of a junior lien will not prevent liquidation action if the borrower is in default. Should FmHA be approached by an existing or potential junior lienholder as to the amount of FmHA's debt, the unpaid balance on the FmHA loan for this purpose will be stated as the *sum* of unpaid principal and interest and, if the loan is subject to recapture of subsidy, total subsidy granted and principal reduction attributed to subsidy. The County Supervisor may consent to a junior lien and enter into an agreement to notify the junior lienholder in the event FmHA initiates foreclosure only when:

(a) The proposed loan is for purposes for which FmHA RH loan funds could be used or for business purposes to enhance earning capacity;

(b) Repayment of the FmHA loan will not be jeopardized; and

(c) The total debt against the security will not exceed its market value.

§ 1965.112 Lease of security property.

(a) When the County Supervisor is aware a borrower has leased or proposes to lease security property, the borrower will be informed in writing of the limitations on leasing outlined in subparagraphs (1), (2), and (3) of this paragraph. The borrower will be requested to furnish FmHA a copy of the lease or proposed lease. FmHA consent to lease is not required, and if the County Supervisor is unable to obtain a copy of the lease or is advised by the borrower a written lease does not exist, no further action is required by the County Supervisor and no action to initiate liquidation will be taken unless the borrower:

(1) Has entered into a lease for a term of more than 3 years;

(2) Has entered into a lease for any term containing an option to purchase; or

(3) Is in default of one or more of the following loan obligations:

(i) Keeping the account current.

(ii) Adequately maintaining the property.

(iii) Keeping the property insured.

(iv) Paying real estate taxes when due.

(b) If a borrower leases or proposes to lease security property for a term of more than 3 years, or with an option to purchase, FmHA should normally initiate liquidation action, preferably voluntary. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Housing, is required. The State Director should forward such a request along with a justification to the National Office.

§ 1965.113 Mineral leases.

(a) *Authority.* When a borrower requests consent to lease the mineral rights to security property, the County Supervisor may consent provided the proposed use of the leased rights will not result in the property being made unsuitable as a nonfarm residence and the Government's security interest is not adversely affected.

(b) *Income from lease of mineral rights.* (1) The basic rental proceeds from lease of mineral rights will be treated as income.

(2) If the proposed activity is such that it will decrease the security value of the property (such as oil drilling or quarrying), consent may be given only if the borrower assigns the income from the lease (both damage compensation and royalty payments) to FmHA to be applied to the FmHA loan(s) as extra payments.

(3) If the proposed activity is not likely to decrease the security value of the property, damage compensation must be used to repair the damage or assigned to FmHA for application on the FmHA loan(s) as an extra payment; and royalty payments will be treated as income.

(c) *Processing.* Form FmHA 465–1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on value. Assignment of income will be taken by use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other from approved by OGC which is necessary to comply with State law.

§ 1965.114–1965.115 [Reserved]

§ 1965.116 Deceased borrower.

When an SFH borrower dies, servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section. The case file containing completed Form FmHA 455–17, "Report On Deceased Borrower," will be submitted to the State Director only when the FmHA debt is inadequately secured and the estate has other assets from which collection could likely be made or the County Supervisor needs advice on servicing the case. When arrangements cannot be effected for continuation of the loan under any of the provisions of this section, the loan may be liquidated according to § 1965.125 of this subpart. In the event a person(s) decides to make loan

payments under the provisions of paragraph (b) or (d) of this section without obtaining full title to the property, the County Supervisor will notify the person(s) making the payments, in writing, of the risks involved (such as possible loss of equity to other heirs or dispossession by other heirs) and suggest that legal advice be obtained.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will continue occupying the dwelling and repaying the loan, no action will be taken except to notify the Finance Office by use of Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," to place the account in the name of the surviving borrower if the account is not already in that name. An assumption agreement will not be used.

(b) *Continue with relative, joint tenant, or tenant by the entirety.* When a relative, joint tenant, or tenant by the entirety who inherits title to (or an interest in) the security property by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured. Assumption of the indebtedness is not required, and occupancy of the dwelling is subject only to the restrictions on leasing outlined in § 1965.112 of this subpart. Interest credit, however, may be granted only to a *borrower* (obligor by virtue of a note or assumption agreement); therefore, interest credit may be granted only when at least one obligor is occupying the dwelling except as provided in § 1965.126(c)(2)(ii) of this subpart. The loan remains subject to graduation requirements set forth in Subpart F of Part 1951 of this chapter. Continuation with a relative, joint tenant, or tenant by the entirety under the provisions of this paragraph applies only to the transfer of title resulting from the death of the borrower; it *does not* apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritor(s). Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1965.126 of this subpart.

(c) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the loan may do so in accordance with § 1965.126(c)(2)(i) of this subpart.

(d) *Assumption by person, other than the spouse, who is not liable for the FmHA debt.* A person other than the deceased borrower's spouse who wishes to assme the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1965.126(c)(2)(ii) of this subpart provided:

(1) The dwelling will continue to be occupied by one or more persons who were dependent of the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other loan conditions will be met such as payment of taxes, insurance, maintenance, and assessments.

§ 1965.117 Bankruptcy.

The section applies to SFH borrowers who declare bankruptcy under Chapter 7 (liquidation) or Chapter 13 (adjustment of debts of an individual with regular income) of the Federal Bankruptcy Code. SFH borrowers who declare bankruptcy under Chapter 11 (reorganization) will be handled on a case-by-case basis under a State Supplement or as advised by OGC.

(a) *Meetings and hearings.* It is normally not necessary that FmHA be represented at meetings and hearings during bankruptcy proceedings. If, however, the Reigional Attorney advises that FmHA attend a meeting or hearing, the State Director will appoint an FmHA representative.

(b) *Initial notification of bankruptcy.* When an Order of First Meeting of Creditors is received or the County Supervisor is otherwise informed that a borrower has filed a petition in bankruptcy, the County Supervisor shall:

(1) Continue to accept and remit payments made voluntarily by the borrower, but discontinue collection efforts.

(2) Flag the office management card to indicate that the borrower is in bankruptcy.

(3) Request a statement of account from the Finance Office if a Proof of Claim will be filed.

(4) Determine whether or not FmHA wishes to continue with the borrower and advise the State Director. If the decision is to continue, the actions outlined in paragraph (d)(l) of this section will be taken.

(5) Refer the case to the State Director who will consult OGC for advice. Form FmHA 1965–14, "Proof of Claim," or other form approved by OGC, is required in all Chapter 13 cases unless the Order of First Meeting of Creditors specifically states that a proof of claim is not required. Proofs of claim will be sent to OGC for filing. A proof of claim need not be filed in no-asset Chapter 7 cases, but otherwise it should be filed even if FmHA does not wish to continue with the borrower. The Order of First Meeting of Creditors and a copy of the proof of claim will be placed in the borrower's case file. A proof of claim must be filed within 90 days after the date set for the first meeting of creditors, unless the Bankruptcy Court has granted an extension. The proof of claim will set forth the amount of unpaid principal and interest, as well as principal reduction attributed to subsidy and the total amount of interest credit granted if the loan is subject to recapture. The proof of claim will cover all indebtedness to FmHA except judgments obtained by a U.S. Attorney and will indicate whether the indebtedness is secured or unsecured.

(c) *Continuation in Chapter 13 cases.* FmHA must continue with a borrower covered under a confirmed Chapter 13 plan while the plan is in effect. Prior to confirmation of the plan, the State Director or his/her delegate through OGC will contact the Trustee and request that the plan provide that all payments to FmHA, whether paid through the Trustee or directly to FmHA, will be made through the County Office. If a borrower defaults in payments during the plan, OGC may be requested to petition for relief from the automatic stay if liquidation of the loan is recommended. Upon completion of the Chapter 13 plan, the borrower will not be discharged from the FmHA debt if the final due date on the loan is after expiration of the plan.

(d) *Continuation in Chapter 7 cases.* (1) If a decision is made to continue with the borrower, Form FmHA 460–10, "New Promise to Pay," or other form approved by OGC, will be completed and, with the advice of OGC, forwarded to the borrower or the borrower's attorney with instructions to execute prior to discharge and present the executed Form FmHA 460–10 to the Bankruptcy Court in accordance with section 524(d) of the Bankruptcy Code. The borrower's attorney should be advised to return the fully executed Form FmHA 460–10 to the County Supervisor after the Bankruptcy Court has granted the borrower's discharge and the reaffirmation hearing has been held. The New Promise to Pay should be executed prior to the borrower's discharge even if the Bankruptcy Court has previously

advised that it will not review Form FmHA 460–10.

(2) If Form FmHA 460–10 is not executed prior to discharge, a letter in the form of Exhibit A (available in any FmHA office) of this subpart (with changes approved by OGC) will be sent to the borrower after discharge. This letter will advise the borrower that FmHA acknowledges that he/she is not personally liable for the debt; the security property will be the only source to which FmHA may look for recovery of the debt, and in the event of foreclosure, FmHA will be barred from seeking a deficiency judgment. The Letter will also indicated that as long as the scheduled payments are made and all other covenants contained in the promissory note(s) and security instrument(s) are complied with, FmHA will not foreclose, but will continue servicing the loan in accordance with this subpart and Subpart G of Part 1951 of this chapter.

(e) *Not continuing with borrower.* If a decision is made not to continue with a secured loan, liquidation action, either voluntary or foreclosure, may be initiated as soon as one of the following has occurred:

(1) The bankruptcy case is dismissed or closed.

(2) An order lifting the automatic stay is received. This may be in connection with an order of abandonment or a separate order; however, an order of abandonment without specific language that the automatic stay is removed *does not* permit liquidation to be initiated. To petition for relief from the automatic stay, the State Director will forward a request to OGC along with the borrower's case file including a current appraisal and the account status.

(3) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(f) *Servicing prior to discharge or during a Chapter 13 plan.* A petition filed under Chapter 7 or 13 of the Bankruptcy Code operates as an automatic stay. This stay prohibits all collection efforts and foreclosure actions. The receipt of voluntary payments, granting of interest credit and moratoriums, and collection letters for a borrower under a confirmed Chapter 13 plan that are sent to the Trustee, however, are allowed. Any other servicing actions may not be initiated or approved without the prior consent of OGC.

(g) *Servicing discharged borrowers.* Discharge under Chapter 7 of the Bankruptcy Code operates as an injunction against any act to collect a debt which implies personal liability of the debtor. Chapter 13 debtors' discharges will not include the FmHA debt if the final due date is after expiration of the plan. For borrowers who have received discharges under Chapter 7, normal servicing procedures may be followed after the discharge provided the borrower has received the letter specified in paragraph (d)(2) of this section or properly executed Form FmHA 460–10. For borrowers who filed under Chapter 13, normal servicing may be resumed when the confirmed plan has expired or been terminated. After discharge of an *unsecured* debt (for example, a note-only loan), the State Director will request the Finance Office to cancel the account balance. This will be done by memorandum with copy of the Order of Discharge attached.

§ 1965.118 Release of FmHA lien without monetary consideration.

FmHA liens may be released without monetary consideration as follows:

(a) *Additional security.* The State Director may approve and authorize the release from FmHA's lien real estate which was taken as additional security before the loan is repaid provided the market value of the remaining security is clearly adequate to secure the loan balance. Property considered as "additional security" may not be any part of the tract bought with RH loan funds or part of the minimum-adequate site on which the dwelling is located.

(b) *Mutual mistake.* The State Director may approve and authorize the release of property included in the FmHA security instrument through mutual mistake when substantiated by facts and when he/she can determine with the advice of OGC that a mutual error existed at the time the property was included in the security instrument.

(c) *Valueless lien.* The State Director may approve and authorize release of an FmHA lien which is determined to have no present or prospective value or when enforcement would be ineffectual or uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC. When recommending release of an FmHA lien as valueless, the County Supervisor will forward to the State Director the case file and the following:

(1) Current appraisal report reflecting market value of the property;

(2) The name(s) of prior lienholder(s) and the amount secured by each lien which is prior to FmHA;

(3) Amount of real estate taxes and/or assessments which are or will become a prior lien on the property; and

(4) Facts which substantiate that the lien is valueless.

§§ 1965.119–1965.124 [Reserved]

§ 1965.125 Liquidation.

(a) *Voluntary liquidation.*—(1) *Agreement.* When it is determined the borrower cannot or will not successfully achieve the loan objectives, the County Supervisor will attempt to have the borrower liquidate voluntarily. The exception is: A borrower who has bankruptcy proceedings pending should not be requested to liquidate voluntarily until one of the situations outlined in § 1965.117(e) of this subpart exists. If it appears the borrower has equity in the property, the County Supervisor will advise the borrower of the estimated market value and the approximate amount of equity. The borrower will be encouraged to sell the property, paying FmHA in full and realizing the equity. After reaching agreement for voluntary liquidation, the County Supervisor may allow the borrower 120 days to sell the property or otherwise arrange to pay FmHA in full, after which voluntary conveyance should be considered unless a transaction is pending which will likely result in paying the loan in full. At the borrower's request, an extension of time may be allowed to complete a transaction provided:

(i) The property is listed with a real estate broker for not more than the market value as determined by FmHA;

(ii) A sales contract has been entered into and assumption of the FmHA loan, or a loan from another lender, is pending; or

(iii) The borrower has applied to a lender for a long-term loan to pay FmHA in full.

(2) *Consent to sale for less than the FmHA debt.* If a borrower proposes to sell or transfer the property for an amount less than the FmHA debt (and prior lien(s), if any), the County Supervisor will appraise the property and may consent to the sale if the proposed sale price is not less than the market value. When consent under this paragraph is given and payment in an amount at least equal to the market value of the security property (less prior liens if paid separately and/or allowable costs authorized in paragraph (a)(3) of this section is received by FmHA in cash, money order, certified check, or Cashier's Check, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full. Release of the borrower from liability

for the deficiency is covered in § 1965.127(b) of this subpart.

(3) *Distribution of proceeds.* If the FmHA debt will not be paid in full, the entire sale proceeds must be applied to the FmHA debt (and prior lien(s), if any), minus costs which the seller customarily or legally must pay in order the convey title; a real estate broker's commission, and no more than 3 points to enable the buyer to obtain credit from another lender. Points will not be paid to reduce the interest rate. The allowable costs may include real estate taxes, preparation of the deed, abstract fees, and deed or other revenue stamps. A real estate commission allowed under this subparagraph must not exceed the prevailing rate for sale of similar property in the area.

(4) *Accelerated repayment agreement.* If liquidation is necessary for reasons other than failure to graduate to other credit, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. When this type agreement has been reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed according to the FMI. Forms FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," and 1965–23, "Supplemental Information on Assumption and/or Change of Terms" will be prepared and distributed according to the FMIs. Accounts rescheduled by means of Form FmHA 1965–11 will be reclassified to "Other Real Estate (ORE)" loans. The term for the rescheduled payments may not exceed 10 years or the final due date of the note being rescheduled, whichever is sooner. The interest rate will be the SFH-Ineligible rate in effect on the date the agreement is executed or the note rate, whichever is greater.

(b) *Forced liquidation.* If the borrower will not agree to voluntary liquidation or fails to accomplish it within the time agreed to by FmHA, the County Supervisor will recommend foreclosure in accordance with Subpart A of Part 1955 of this chapter.

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on eligible or ineligible terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

(a) *Authority.* Subject to prior concurrence of the State Director required by paragraph (b)(8) of this section, the County Supervisor may approve transfer and assumption on eligible or ineligible terms and release borrowers and co-signers from liability, when applicable, when the indebtedness involved does not exceed his/her loan approval authority. If the indebtedness exceeds the County Supervisor's loan approval authority, approval must be by an official with appropriate approval authority.

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Loan classification and/or changes.* A loan may be assumed as outlined in this subparagraph, after which the loan will be classified according to the terms on which it was assumed. Assumption on eligible terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suitable for the housing program. The following loans may be assumed on eligible or ineligible terms under paragraphs (c) or (d) of this section:

(i) Low-or moderate-income.

(ii) Above-moderate-income.

(iii) ORE for residential property.

(2) *Forms.* (i) Form FmHA 465–5, "Transfer of Real Estate Security," or an executed sales contract, will reflect the agreement between the transferor and the party(ies) who will assume the FmHA debt.

(ii) Form FmHA 1940–1, "Request for Obligation of Funds," will be used for approval of the assumption and/or a subsequent loan, if any.

(iii) Form FmHA 1965–15, "Assumption Agreement—Single Family Housing Loan(s)," will be executed by the assuming party(ies).

(iv) Form FmHA 1965–22, except for assumptions under paragraph (c)(2) of this section.

(v) Form FmHA 1965–23, except for assumptions under paragraph (c)(2) of this section.

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude an otherwise-suitable dwelling from being transferred to another program-eligible applicant simply because it is situated on more than a minimum-adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program. When all of the security property is not being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid and it is necessary to release the portion of the security property not transferred within the program, OGC will be requested to prepare the release document.

(4) *Suitability of property for retention in program.* (i) A single-family dwelling presently financed by FmHA may be transferred to an eligible applicant on eligible terms provided it meets FmHA program requirements and policies. These properties are not being brought into the RH program in the same sense as existing properties not already financed by FmHA. They are properties in which FmHA already has a long-term lending commitment and security interest. Therefore, such properties may be suitable although they contain more than 1,400 square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling. It must, however, be typical of modest homes in the area.

(ii) In some instances a property presently financed under the Section 502 RH program may be determined to be unsuitable for retention in the program. In those instances, assumption may be on ineligible terms only, according to paragraph (d) of this section. Situations of this type include, but are not limited to:

(A) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(B) When a determination is made a dwelling should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program requirements and policies at the time it was originally financed by

FmHA but which does not conform to current policies. This includes the older and/or larger homes of a type which have been proven to create excessive energy and maintenance costs to low- or moderate-income borrowers.

(5) *Amount of assumption.* The transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the market value of the property, in which case the transferee will assume an amount equal to the market value of the property, less the amount of prior liens, if any. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on market value of the security property must be calculated and included as part of the total indebtedness.

(6) *Recapture of subsidy.* Recapture of subsidy in connection with assumptions will be as provided in Subpart I of Part 1951 of this chapter.

(7) *Consent of prior lineholder.* If there is a prior lien and if required by security instruments or other agreement, written consent of the prior lienholder will be obtained before approval of a transfer and assumption.

(8) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to the FmHA lien(s) being assumed unless the State Director determines those liens will not adversely affect the Government's security interest and that the transferee's ability to repay the FmHA debt will not be impaired. When less than the full indebtedness is being assumed, there must be no liens against the security which are junior to the FmHA lien(s).

(9) *Loan in connection with assumption.* A loan for which the assuming party is eligible may be made according to Subpart A of Part 1944 of this chapter in connection with the assumption.

(10) *Withdrawal of jointly liable borrower.* When a jointly liable borrower withdraws, such as in a divorce case, the remaining borrower will not execute an assumption agreement. Form FmHA 450–10 will be prepared and submitted to the Finance Office if the account is not in the name of the person with whom the account will be continued.

(11) *Change in rural area designation.* Where security property is located in an area which has been redesignated from rural to nonrural, a loan may be assumed without considering the nonrural designation.

(12) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or child (children), assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other loan conditions are met. Interest credit may be granted only to a qualified borrower; therefore, if the house is not occupied by the borrower, interest credit may not be granted. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section as applicable to the circumstances. The loan remains subject to the graduation requirements set forth in Subpart F of Part 1951 of this chapter.

(c) *Assumption on eligible terms.* A loan may be assumed on eligible terms when the transferee meets eligibility requirements in the loan making regulation for the type loan involved, except that a section 504 transferee may have only an ownership interest in the property and must occupy the dwelling as his/her residence after the assumption is closed. Interest rates and amortization periods will be as follows:

(1) Except as provided in paragraph (c)(2) of this section, all assumptions will be at the interest rate in effect when the assumption is approved as determined from Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type loan involved. The repayment period may be up to the maximum legal limit for the type loan involved.

(2) In the situations outlined in paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3)(iii) of this section *only*, the assuming party will execute Form FmHA 1965–15; however, Forms FmHA 1965–22 and FmHA 1965–23 will *not* be completed or submitted to the Finance Office. The name on the account will be changed by submitting Form FmHA 450–10 to the Finance Office. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule), and whether or not the loan is subject to recapture will not be changed by virtue of the assumption. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

(i) A deceased or divorced borrower's spouse, other relative, or joint tenant, who acquires title to the property but is not liable for the debt and wishes to assume the loan may do so, after which compliance with the loan conditions is required.

(ii) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1965.116 (b) or (d) of this subpart may do so without considering the assuming party's eligibility for program assistance. In this type situation, interest credit may be considered based on the income of only the occupants of the security property, whether or not the assuming party is one of the occupants, if the loan is otherwise eligible for interest credit.

(iii) A borrower's spouse, other relative or joint tenant who is not liable for the debt and wishes to assume the debt with an existing borrower may do so.

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the housing program, the debt may be assumed on ineligible terms if the assuming party as repayment ability and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on ineligible terms, the loan will be classified as an ORE loan. A payment on the debt of not less then 10 percent of the unpaid balance, including any subsidy to be recaptured, must be made. The assumption agreement will bear interest at the SFH-Ineligible rate in effect on the date the assumption is approved. The loan balance after the 10 percent payment will be amortized as follows, except the terms will never be longer than the period for which the property will serve as adequate security:

(1) When the purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will be not more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale. When the State Director determines more favorable terms should be given, the assumption may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Processing and closing transfer with assumption.*—(1) *Refund of unused funds and loan funds not advanced.* Funds remaining in a supervised bank account will be applied to the transferor's account unless the transfer is to an eligible applicant and the funds will be used to complete planned development. In this case the funds will

be transferred to a supervised bank account in the transferee's name at closing. Obligation of funds not yet advanced, if any, will be cancelled.

(2) *Preparation and distribution of docket.* Loan docket preparation and forms required will be the same as in Subpart A of Part 1944 of this chapter for section 502 loans or Subpart J of Part 1944 of this chapter for section 504 loans, with the addition of the forms in paragraph (b)(2) of this section. Forms will be prepared and distributed according to the respective FMIs.

(3) *Title clearance and loan closing.* Title clearance and closing of the assumption (and subsequent loan, if any) will be under Part 1807 of this chapter (FmHA Instruction 427.1) and Subpart A of Part 1944 of this chapter for a section 502 loan or Subpart J of Part 1944 of this chapter for a section 504 loan. A State Supplement will be issued with the advice of OGC to provide instructions on:

(i) The type security instrument which is required to secure recapture of subsidy when the loan being assumed is not subject to recapture and a new loan is not being made simultaneously; and

(ii) Whether or not a new security instrument is required when the term of the assumption is extended beyond the final due date of the loan(s) being assumed.

(4) *Property insurance.* Property insurance will be required in accordance with Subpart A and B of Part 1806 of this chapter (FmHA Instructions 426.1 and 426.2), as applicable.

(5) *Account balance.* The unpaid balance of the transferor's account will be obtained from the Inquiry Station of the Finance Office or account status report prepared by the Finance Office. If the loan being assumed is subject to recapture of subsidy, the account balances including total subsidy granted and principal reduction attributed to subsidy must be obtained from the Finance Office Inquiry Station. If the borrower has made a payment which has not been applied, the account will be assumed on the basis of the balance reflected by the Inquiry Station. If a payment pending results in overpayment of the transferor's account, the Finance Office will contact the County Supervisor to determine the disposition of the overpayment.

(f) *Release from liability.* Release from liability will be under § 1965.127 of this subpart when authorized.

§ 1965.127 Release from liability.

(a) *Circumstances when release from liability is authorized.* Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability," according to the FMI as follows:

(1) When the total debt is assumed on eligible terms, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) When the total debt is assumed on ineligible terms, upon recommendation of the County Committee the borrower and co-signer, if any, may be released by the County Supervisor *only* when the term of the assumption is not more than 5 years.

(3) When a person who is jointly liable for a loan requests release from liability, he/she may be released from liability by the County Supervisor provided:

(i) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(ii) The value of the security property is at least equal to the debt;

(iii) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; *and*

(iv) The person with whom the loan will be continued has adequate repayment ability.

(4) When the value of the security property is less than the total debt and an amount equal to the market value of the security is assumed under § 1965.126(b)(5), of this subpart, or sale outside the program for an amount not less than the market value is approved under § 1965.125(a)(2) of this subpart, the transferor (and co-signer, if any) may be released from liability when the determination is made that the transferor (and cosigner, if any) does not have reasonable ability to repay the balance of the debt and the transferor has acted in good faith, adequately maintined the security property and otherwise fulfilled the loan covenants to the best of the borrower's ability. If a cosigner is involved, the transferor will not be released unless the cosigner is also released. Authority to determine release of liability is as follows:

(i) When assumption on eligible terms is approved, the County Supervisor may determine release from liability and will document the determination in the case file.

(ii) When assumption on ineligible terms is approved, or when the property is sold outside the program, the County Committee must make a favorable recommendation on release from liability on Form FmHA 440–2, "County Committee Certification or Recommendation," according to the FMI. After obtaining the County Committee's recommendation, the County Supervisor will determine release from liability.

(b) *Account balances.* When security property is sold for an amount not less than the market value as authorized in § 1965.125(a)(2) of this subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.126(b)(5) of this subpart, the account balance will be handled as follows:

(1) When the transferor (and co-signer, if any) is released from liability, the Finance Office will satisfy the transferor's account when one of the following is received:

(i) In the case of sale outside the FmHA program, a memorandum from the County Supervisor requesting satisfaction of the transferor's account balance, with a copy of Form FmHA 1965–8 attached indicating release from liability;

(ii) In the case of assumption, Form FmHA 1965–22 indicating the transferor is released from liability.

(2) When the transferor (and co-signer, if any) is not released from liability, the account balance after the assumption is processed or cash proceeds are applied will be accelerated using Form FmHA 455–21, "Notice of Acceleration and Demand for Payment."

§ 1965.128 Assignment of promissory notes and security instruments.

When a borrower requests it, with the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis to a third party, who has paid the borrower's account in full. For loans subject to recapture of subsidy, recapture will be calculated based on market value and collected at the time of the assignment. The assignment will be made by a form prepared and furnished by OGC on an individual-case basis. The State Director will execute the assignment instrument(s); and this authority may not be redelegated.

§ 1965.129 Co-signers.

Although a co-signer is personally liable for repayment of the FmHA debt, he/she is not entitled to any interest in the security or the rights of the borrower under the loan or security instruments. If the security is transferred to the co-signer, he/she may assume the FmHA indebtedness on eligible or ineligible terms, as applicable.

(a) *Replacement of co-signer.* If it is necessary to replace a co-signer, a person determined by the County Supervisor to have repayment ability may be substituted. The new co-signer will execute an agreement prepared by

OGC to guarantee payment of the balance owed on the RH debt. The original of the agreement will be attached to the original note and a copy of the agreement will be attached to each copy of the note.

(b) *Release of co-signer.* Upon satisfactory substitution of a new co-signer, the previous co-signer of a note may be released from personal liability by completion of Form FmHA 1965–8 prepared according to the FMI.

§§ 1965.130–1965.135 [Reserved]

§ 1965.136 Redelegation of authority.

The State Director may redelegate in writing any authority delegated to the State Director in this subpart, except where specifically excluded, to one or more of the following State Office employees: Chief, Rural Housing, or Rural Housing Specialist.

§ 1965.137 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statue or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of residents of the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.138 State Supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State Supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

§§ 1965.139–1965.150 [Reserved]

PART 1980—GENERAL

26. The authority citation for Part 1980 is revised to read as follows:

Authority: U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70

Subpart D—Rural Housing Program Loans

27. Section 1980.337, Administrative A, is revised to read as follows:

§ 1980.337 Loan servicing.

* * * * *

Administrative

A. The County Supervisor is authorized to approve any servicing action consistent with customary and reasonable private sector servicing practices, but not more lenient than practices outlined in Subpart C of Part 1965 of this chapter.

* * * * *

Dated: September 9, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85–23238 Filed 9–27–85; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies and affirms the requirement that a decision be issued and the applicant be notified in all cases involving an application for a Certificate of Citizenship, and specifically includes cases which are closed administratively. Additionally, minor technical amendments, including removing sexist language, are made.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW.; Washington, D.C. 20536, Telephone: (202) 633–3048;

For Specific Information: R. Michael Miller, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION:

Presently, 8 CFR 341.6 does not address cases which are closed administratively. Therefore, in order to ensure that a decision is issued in all cases, including those which are closed administratively, the regulation is being revised.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule merely clarifies an existing regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, does not have a significant impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 341

Administrative practice and procedure, Certificates of citizenship.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation for Part 341 continues to read as follows:

Authority: Secs. 103 and 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103 and 1452.

2. Section 341. is revised to read as follows:

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall report his/her findings and recommendation by completing the Report and Recommendation section of the Form N–600 application, or by formal order, as appropriate. The record, includig the report and recommendation, shall be submitted to the distict director, who shall sign the report either approving or disapproving the recommendation.

3. Section 341.6 is revised to read as follows:

§ 341.6 Denial of application.

If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certifcate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the

amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

4. Section 341.7 is revised to read as follows:

§ 341.7 Issuance of certificate.

If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he/she shall take and subscribe to the oath or renunciation and allegiance, prescribed by Part 337 of this chapter, before an officer of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

Dated: August 28, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85-23279 Filed 9-27-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-087]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by designating the entire State of Wyoming as Class Free. Prior to the effective date of the interim rule, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. The amendment is necessary because it has been determined that the entire State of Wyoming meets the standards for Class Free status. The amendment relieves certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 7, 1985 (50 FR 23937-23938), amended the brucellosis regulations in 9 CFR Part 78 by designating the entire State of Wyoming as Class Free. Prior to the effective date of the interim rule, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. The amendment, which was made effective upon signature on June 3, 1985, relieves certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of June 7, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Wyoming reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle for Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by the amendment.

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

Executive Order 12732

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 23937-23938 on June 7, 1985, is adopted as a final rule.

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

Done at Washington, D.C., this 24th day of September 1985.

B.J. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-23278 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 85-088]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by designating the entire State of Montana as Class Free. Prior to the effective date of the interim rule, Flathead County, Montana, was designated as Class A, and the remainder of Montana was designated as Class Free. The amendment is necessary because it has been determined that the entire State of Montana meets the standards for Class Free status. The amendment relieves certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 7, 1985 (50 FR 23938–23939), amended the brucellosis regulations in 9 CFR Part 78 by designating the entire State of Montana as Class Free. Prior to the effective date of the interim rule, Flathead County, Montana, was designated as Class A, and the remainder of Montana was designated as Class Free. The amendment, which was made effective upon signature on June 3, 1985, relieves certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of June 7, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 78

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

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 23938–23939 on June 7, 1985, is adopted as a final rule.

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

Done at Washington, D.C., this 24th day of September 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–23274 Filed 9–27–85; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–20–AD; Amdt. 39–5125]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 85–17–07, Amendment 39–5125 (50 FR 34450), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when it was published in the **Federal Register.**

EFFECTIVE DATE: Septmber 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE–120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 85–17–07, Amendment 39–5125 (50 FR 3450), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes, the FAA found that an error had been made in the serial number effectively statement of the AD when it was published in the **Federal Register.** Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, safety.

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

(Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD:

In FR Doc. 85–20262 (50 FR 34450), appearing in the **Federal Register** of August 26, 1985, make the following correction:

Correct the applicability statement to read as follows:

"Cessna: Applies to the following Cessna airplanes certificated in any category:

Model	Serial No.
U206F/TU206F U206G/TU206G 207/T207 207A/T207A	S/N U20601701 through U20603521 S/N U20603522 through U20604649 S/N 20700001 through 20700315 S/N 20700316 through 20700767"

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-23202 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-CE-33-AD; Amdt. 39-5138]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT and SA226-TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 85-04-01 Amendment 39-5005 (50 FR 7748) applicable to Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT and SA226-TC airplanes by clarifying hydraulic line part numbers, changing Service Bulletin (S/B) references that would lead operators to believe replacement of certain hydraulic lines is optional, and deleting certain serial number airplanes from the effectivity of the oxygen system modification portion of the AD. Subsequent to issuing AD 85-04-01, the FAA determined that clarification was necessary to avoid incorrect applicability and unnecessary compliance by some owners and operators. This revision will eliminate this unnecessary burden.

EFFECTIVE DATE: October 28, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation S/B 226-29-005 revised July 19, 1985, S/B 226-35-003 revised July 19, 1985 and S/B 24-021 dated March 21, 1983, may be obtained from Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284; Telephone (512) 824-9421. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sills, Telephone (817) 877-2073 or Mr. Mark Schilling, Telephone (817) 877-2598, Airplane Certification Branch, ASW-150, Southwest Region, FAA, Post Office Box 1689, Fort Worth, Texas 76101.

SUPPLEMENTARY INFORMATION: AD 85-04-01, Amendment 39-5005 (50 FR 4478) applicable to Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA-226-AT and SA226-TC airplanes requires inspections and modifications of the oxygen and hydraulic systems. Subsequent to the issuance of this AD, questions regarding proper hydraulic line replacement were brought to the manufacturer's and the FAA's attention. Fairchild issued S/B 226-29-005 revised July 19, 1985, to answer these questions. In addition, the FAA determined that certain serial number airplanes were inadvertently included in the oxygen system portion of the AD. Therefore, the FAA is revising AD 85-04-01 by specifying the correct serial number applicability and incorporating the latest S/B references in the oxygen system portion of the AD.

This amendment updates the AD by incorporating presently available service information and lists the correct serial numbers for the oxygen system modifications. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and contrary to the public interest.

The FAA has determined that this document involves an amendment which is classifying and corrective in nature. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291 and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1969). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 85-04-01 as follows:

Revise paragraph (c) to read as follows:

"(c) On or before December 31, 1985, modify Model SA226 airplanes in accordance with the following:

(1) On Models SA226-T (S/N's T201 through T275, T277 through T291), SA226-T(B) (S/N's TB276, TB292 through TB417), SA226-AT (S/N's AT001 through AT074), and SA226-TC (S/N's TC201 through TC397) airplanes, modify the hydraulic system in accordance with Fairchild S/B 226-29-005 revised July 19, 1985.

Note.—Inspect condition of cushion clamps when changing hydraulic lines and change as necessary.

(2) On Models SA226-T (S/N's T249 through T275, T227 through T291), SA226-T(B) (S/N's TB276, TB292 through TB417), SA226-AT (S/N's AT001 through AT074), and SA226-TC (S/N's TC201 through TC397) airplanes, modify the crew oxygen system in accordance with Fairchild S/B 226-35-003 revised July 19, 1985."

This amendment revises AD 85-04-01, Amendment 39-5005.

This amendment becomes effective October 28, 1985.

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-23205 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-18-AD; Amdt. 39-5140]

Airworthiness Directives; Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C airplanes which requires replacement of the seat belt attachment brackets. It is possible for the seat belt attachment bracket to fail in the event of decelerations experienced in a minor crash, which could result in injury to an occupant. Replacement of the seat belt attachment brackets with increased strength brackets will prevent the possibility of failure during a minor crash.

EFFECTIVE DATE: October 28, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: Gulfstream Service Bulletin No. 173, dated March 11, 1985, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402-2206; Telephone (912) 964-3000. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the seat belt attachment brackets on certain Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C airplanes was published in the Federal Register on June 7, 1985 (50 FR 23993). It has been found that the seat belt attachment brackets used on Gulfstream Models AA-1, AA-1A, AA-1B, and AA-1C airplanes may fail during decelerations occurring in a minor crash. Failure of this bracket could result in injury to an occupant. The manufacturer has developed a strengthened replacement bracket which exceeds the emergency landing requirements of FAR 23.561. The FAA determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, and therefore an AD was proposed which would require replacement of the seat belt attachment brackets with improved brackets in accordance with Gulfstream Aerospace Service Bulletin No. 173, dated March 11, 1985. Interested persons have been afforded an opportunity to comment on the proposal. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation only involves 1,800 airplanes at an approximate one-time cost of $30 for each aircraft or a total one-time fleet cost of $54,000.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Gulfstream Aerospace: Applies to Models AA-1 (S/Ns AA1-0001 to AA1-0459), AA-1A (S/N AA1A-0001 to AA1A-0470), AA-1B (S/N AA1B-0001 to AA1B-0680) and AA-1C (S/N AA1C-0001 to AA1C-0211) airplanes.

Compliance: Required within 25 hours time-in-service after the effective date of this AD unless already accomplished by installing parts in accordance with Gulfstream Aerospace Service Bulletin No. 173 dated March 11, 1985. To prevent failure of the seat belt attachment bracket in a minor crash, accomplish the following:

(a) Replace the seat belt attachment bracket, (Part Number (P/N) 60152-2) as follows:

(1) Take out the seat belts by removing the AN-3 bolts through the end fittings. Discard the bolts and nuts but retain the bushings and washers.

(2) Take out the P/N 60152-2 belt attach brackets by removing the two nuts holding them to the floor. Discard the brackets and nuts, but retain the washers. Visually inspect the retaining plates under the fuselage for corrosion and replace if necessary.

(3) Install P/N 5102391-1 brackets, using the washers retained in paragraph (a)(2) above and new nuts. Torque the nuts to 20 to 25 inch pounds.

(4) Visually inspect the seat belts for fraying or other signs of deterioration and replace any worn or deteriorated belts.

(5) Reinstall the seat belts, using NAS623-3-8 bolts, MS20365-1032 nuts and the bushings and washers retained in paragraph (a)(1) above.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402-2206, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Gulfstream Aerospace Corporation Bulletin No. 173, dated March 11, 1985, covers the subject matter of this AD.

The amendment becomes effective on October 28, 1985.

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavking,

Acting Director, Central Region.

[FR Doc. 85-23203 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-41-AD; Amdt. 39-5143]

Airworthiness Directives: McDonnell Douglas Model DC-8-70 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of the drain mast assemblies on CFM-56-2 engines installed on DC-8-70 series airplanes. This AD is prompted by 18 reported instances of damage to the engine drain mast and transfer gear box horizontal drive shaft housing due to drain mast contact with the runway during landing. This action is necessary to minimize the potential of inflight shutdown if drain mast failure is not detected during preflight inspection.

DATES: Effective November 4, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long

Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to adopt a new airworthiness directive (AD) to require installation of modified drain mast assemblies was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 30, 1985 (50 FR 18270). The comment period for the proposal closed June 21, 1985

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Three comments were received.

The first commenter strongly endorsed adoption of the amendment.

The second commenter requested an extension of the compliance time from eighteen (18) months to thirty-six (36) months to coincide with their scheduled shop visits for a fleet of fifty-nine CFM-56-2 engines. This commenter noted that the special emphasis implemented during walk-around inspections, conducted prior to each originating flight and crew change flight, to inspect for evidence of ground contact of the masts has proved to be adequate in detecting any damaged masts and should provide an acceptable level of safety to justify this extended time of compliance. Upon reconsideration, the FAA has determined an equivalent level of safety will be achieved by requiring at least one engine on each side of the airplane to be modified within eighteen (18) months, and all engines to be modified within thirty-six (36) months. This provision will preclude engine oil loss due to drain mast impact and potential inflight shutdowns of both engines on the same side of the airplane.

The third commenter suggested that an alternate compliance period be expressed in flight cycles in lieu of months. The FAA concurs and has revised the wording in the final rule to establish an alternate compliance time in terms of flight cycles.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

Approximately 76 airplanes of U.S. registry will be affected by this AD. Each airplane contains four nacelles which will be affected by this AD. It is estimated that 6.5 man-hours per engine are needed to accomplish the required modification. Average labor cost is $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $79,040.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact effect on a substantial number of small entities, because few, if any, Model DC-8-70 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-8-71, -72, and -73 series airplanes certificated in any category. To minimize inflight shutdowns due to oil loss, accomplish the following unless previously accomplished:

A. Within eighteen (18) months, or three thousand (3000) landings, whichever occurs earlier, after the effective date of this AD, modify at least one engine on each side of the airplane in accordance with paragraph B., below, and complete the modifications on all engines within thirty-six (36) months, or six thousand (6000) landings, whichever occurs earlier after the effective date of this AD.

B. Accomplish the modification described in paragraph A., above, in accordance with McDonnell Douglas Service Bulletin 71-96, dated February 12, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective November 4, 1985.

Issued in Seattle, Washington, on September 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-23207 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-CE-12-AD; Amdt. 39-4851]

Airworthiness Directives; Piper Models PA-31T, PA-31T1, PA-31T2 and PA-31T3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 84-08-06 Amendment 39-4851 (49 FR 18468), applicable to certain models of Piper PA-31 Series airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.**

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 84-08-06 Amendment 39-4851 (49 FR 18468), applicable to certain models of Piper PA-31 Series airplanes, the FAA found that an error had been made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register.** Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD.

In FR Doc. 84-11623, [49 FR 18468], appearing in the **Federal Register** of May 1, 1984, make the following correction:

Piper: Applies to Models PA-31T (Serial Numbers 31T7400002 thru 31T-8120104 and 31-T8275002); PA-31T1 (Serial Numbers 31T-7804001 thru 31T-8104101, 31T-8304003, 31T-1104004 thru 31T-1104007); PA-31T2 (Serial Numbers 31T-8166001 thru 31T-8166032, 31T-8166034 thru 31T-8166065, 31T-8166067 thru 31T-8166071, 31T-8166073 thru 31T-8166075); and PA-31T3 (Serial Numbers 31T-8275001, 31T-8275003 thru 31T-8275012, 31T-8275014 thru 31T-8275017, 31T-8275025, 31T-8375001 thru 31T-8375005) airplanes certificated in any category.

Issued in Kansas City, Missouri on September 12, 1985.

Jerold M. Chavkin

Acting Director, Central Region.

[FR Doc. 85-23204 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-44]

Changes to VOR Federal Airways, Jet Routes and Compulsory Reporting Points—Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments change the descriptions of several Federal Airways, Jet Routes and names of Compulsory Reporting Points located in the vicinity of Phoenix, AZ. The name of the Casa Grande, AZ, Very High Frequency Omni-Directional Range and Tactical Air Navigation Facility (VORTAC) has been changed to Salt River, AZ. This action also changes the descriptions of Federal Airways, Jet Routes and names of Compulsory Reporting Points to reflect the new name for the Phoenix navigational aid (NAVAID), but does not alter the location or configuration of any controlled airspace. NAVAID's not located on the airport must be changed so that they do not have the same name as NAVAID's located on the airport, to preclude any misunderstanding by pilots.

DATES: Effective date—0901 GMT, November 21, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-44, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8686.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the descriptions of several VOR Federal Airways, Jet Routes and names of Compulsory Reporting Points affected by the name changes for Casa Grande, AZ, and Phoenix, AZ, VORTAC's to Stanfield and Salt River, respectively. Sections 71.123, 71.203, 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were published in Handbook 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of all Airways, Jet Routes and names of Compulsory Reporting Points affected by the name change to Casa Grande and Phoenix, AZ, VORTAC's. These amendments merely substitute the new VORTAC's name where the former name appears, and is not a matter in which the public would have a particular interest. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes and compulsory reporting points.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (49 FR 48532, 50 FR 11845, 50 FR 14089, 50 FR 14091 and 50 FR 14092), are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. Section 71.123 is amended as follows:

V-257, V-95, V-190, V-567, V-327 and V-528 [Amended]

Where "Phoenix" appears substitute "Salt River"

V-94 [Amended]

Where "Casa Grande" appears substitute "Stanfield"

V-16 and V-105 [Amended]

Where "Phoenix" appears substitute "Salt River" and where "Casa Grande" appears substitute "Stanfield"

3. Section 71.203 is amended as follows:

Casa Grande, AZ [Revoked]

Stanfield, AZ [New]

Phoenix, AZ [Revoked]

Salt River, AZ [New]

4. Section 71.207 is amended as follows:

Phoenix, AZ [Revoked

Salt River, AZ [New]

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

6. Section 75.100 is amended as follows:

J-11, J-44, J-18, J-19, J-102, J-65, and J-181 [Amended]

Where "Phoenix" appears substitute "Salt River"

J-4 and J-50 [Amended]

Where "Casa Grande" appears substitute "Stanfield"

J-92 [Amended]

Where "Phoenix" appears substitute "Salt River" and where "Casa Grande" appears substitute "Stanfield"

Issued in Washington, D.C., on September 20, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-23211 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-24]

Alteration of Jet Routes and VOR Federal Airways—Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns one Jet Route and five Federal Airways and cancels one Federal Airway. All actions arise from decommissioning of the Lewis, IN, Very High Frequency Omni-Directional Radio Range and Tactical Air Navigation Aid (VORTAC). The affected Jet Route and Federal Airways will be realigned using the upgraded Terre Haute, IN, VORTAC. These actions are expected to help increase utility and efficiency in use of navigational aids (NAVAID) by users of the National Airspace System (NAS).

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 15, 1984, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign one Jet Route, five VOR Federal Airways and cancel one VOR Federal Airway (49 FR 45171. These actions were proposed due to decommissioning of the Lewis, IN, VORTAC. Functions of the old Lewis VORTAC are transferred to the upgraded Terre Haute, IN, VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and a slight change to the original proposed alignment of Federal Airway V-7, these amendments are the same as those proposed in the notice. As proposed in the NPRM the revised V-7 would have been realigned direct between Pocket City and Terre Haute. However, to ensure airway clearance from the Red Hills MOA, the airway is configured from the Pocket City 016° and the Terre Haute, IN, 191° radials. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign Jet Route J-73, Federal Airways V-7, V-12, V-171, V-221 and V-243 and cancels V-514.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certifed that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOT Federal airways and Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (49 FR 48532, 50 FR 14092 and 50 FR 23398) are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-7 [Amended]

By removing the words "INT Pocket City 015° and Lewis, IN, 198° radials, Lewis; Terre Haute, IN;" and substituting the words "INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute;

V-12 [Amended]

By removing the words "Lewis, IN;"

V-171 [Amended]

By removing the word "Lewis," and substituting the words "Terre Haute,"

V-221 [Amended]

By removing the words "via INT Bible Grove 087° and Bloomington, IN, 253° radials; Bloomington;" and substituting the words "via Bloomington, IN;"

V-243 [Amended]

By removing the words "Lewis, IN," and substituting the words "Terre Haute, IN."

V-514 [Revoked]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J-73 [Amended]

By removing the words "Lewis, IN;" and substituting the words "Terre Haute, IN;"

Issued in Washington, D.C., on September 23, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-23210 Filed 9-27-85; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative Statement of the Office of the General Counsel.

SUMMARY: In 1982, Congress authorized the Commodity Futures Trading Commission to establish a pilot program for option trading on agricultural commodities. The Commission determined to permit the offer and sale of agricultural options on contract markets. At the same time, it considered whether to permit so-called "trade" options, *i.e.*, off-exchange options on a physical commodity entered into among commercial users of the commodity or its byproducts, in the initial phase of the pilot agricultural program. However, the Commission deferred the final decision whether to permit trade options until there had been greater experience with the agricultural option pilot program.

Since this pilot program began, the staff has received inquiries and information about various proposed and already existing commodity contracts between agricultural producers and merchants in which the producer pays a "premium" in return for a minimum guaranteed price for the commodity. Certain of these contracts have characteristics of both "forward" and option contracts. Forward contracts are generally exempt from the Commodity Exchange Act's regulatory scheme. In contrast, trade options are not currently permitted under the agricultural option pilot program. Therefore, the Office of the General Counsel is issuing this interpretation regarding the nature of these types of instruments and distinctions between them to provide guidance to the public.

ADDRESS: Any comments on this interpretation should be sent to Kenneth M. Raisler, General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Joan L. Loizeaux, Assistant General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581; (202) 254–9880.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act ("Act") creates a comprehensive framework for the regulation of futures contracts and options. Thus, no person may offer, enter into or confirm a commodity option transaction unless that transaction is specifically permitted under the Commission's rules.[1] Similarly, the Act prohibits the offer and sale of a contract for future delivery of a commodity unless that contract is effectuated on or subject to the rules of a board of trade (exchange) that has been designated a contract market.[2] To obtain this designation, a board of trade must satisfy the criteria set forth in the Act including enforcing its rules to prevent manipulations and corners of the market.[3] After its designation the contract market must continue to satisfy these initial criteria, as well as fulfill ongoing requirements set forth in the Act.[4]

However, Congress generally exempted from the Act's regulatory scheme commercial, merchandizing transactions in a physical commodity in which delivery was delayed or deferred for commercial convenience or necessity. Thus, section 2(a)(1)(A) provides that the term "future delivery" does not include "any sale of any cash commodity for deferred shipment or delivery."[5] The history of this exemption and its use in commercial practice, together with a brief description of options and the Commission's regulation of options, are set forth below.

A. The Exclusion of Forward Contracts from the Scope of the Commodity Exchange Act

In 1921, Congress enacted the Futures Trading Act to curb both the increasingly disruptive activities by grain speculators on exchanges and the proliferation of off-exchange "bucket" shop operations.[6] Congress sought to bring federal control to futures trading to prevent economic disturbances in the price of grain, by imposing a "prohibitive tax"[7] on contracts for future delivery not traded on contract markets. However, witnesses testified before the Congressional committees considering the bill that there were a variety of legitimate off-exchange commercial transactions in which delivery of the grain was delayed.[8] Thus, then-Secretary of Agriculture Henry Wallace urged that the bill preserve the right to buy or sell part of next season's crop which had not yet been planted or harvested "but which would exist in time for delivery."[9] Another witness urged Congress to distinguish prohibited futures contracts

> from transactions which might be made for forward delivery or forward shipment, such, for example, as an exporter might enter into obligating himself to ship a certain amount of grain three months hence, which would be a transaction for future delivery, but which the Secretary thought was not really intended to be governed by this bill.[10]

Therefore, to make clear that forward contracts were not to be subject to taxation, the Senate added language to section 2 of the bill to exclude "any sale of cash grain for deferred shipment" from the term "future delivery."[11] This exclusion was designed to make clear that all "cash grain sales in which actual delivery of the physical commodity is deferred for later shipment" were exempt from taxation under the Act.[12]

To determine whether a particular contract is exempt from the Act's jurisdiction as a forward contract, the courts and the Commission have required that the contract's terms and the parties' practice under the contract make clear that

> both parties to the contracts deal in and contemplate future delivery of the *actual* . . . [commodity].[13]

First, the contract must be a binding agreement on both parties to the contract: one must agree to make delivery and the other to take delivery

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[1] Sections 4c(b), 4c(c), 4c(d), 7 U.S.C. 6c(b), 6c(c), 6c(d) (1982). *See, e.g.*, Parts 32 and 33 of the Commission's rules, 17 CFR Parts 32, 33 (1984).

[2] Section 4(a), 7 U.S.C. 6(a) (1982).

[3] Sections 5, 5(d), 7 U.S.C. 7, 7(d) (1982).

[4] Section 5a, 7 U.S.C. 7a (1982).

[5] 7 U.S.C. 2 (1982). *But see*, section 6(b), 7 U.S.C. 9 (1982) (granting the Commission enforcement jurisdiction over manipulation and attempted manipulation of "the market price of any commodity, in interstate commerce").

[6] Act of August 24, 1921, ch. 86, 42 Stat. 187, *et seq. See, e.g.*, S. Rep. No. 212, 67th Cong., 1st Sess. 4–5 (1921).

[7] *Hearings on H.R. 168, H.R. 231, H.R. 2238, H.R. 2331, H.R. 2363, H.R. 5228 Before the House Committee on Agriculture*, 67th Cong., 1st Sess. 10 (1921) (colloquy between Mr. Kincheloe and Mr. Tincher).

[8] *Futures Trading in Grain: Hearings on H.R. 5676 Before the Senate Committee on Agriculture and Forestry*, 67 Cong., 1st Sess. 8–9, 214, 431, 462 (1921) (statements of Chester Morrill, George T. McDermott, F. B. Wells, Henry Wallace) ("1921 Senate Hearings").

[9] 1921 Senate Hearings at 462.

[10] 1921 Senate Hearings at 9 (statement of Chester Morrill).

[11] S. Rep. No. 212, 67th Cong., 1st Sess. 1 (1921). In agreeing to the addition of this exclusionary language to section 2, the House added the words "or delivery" after the word "shipment." *See* H.R. Rep. No. 345, 67th Cong., 1st Sess. 7 (1921).

[12] 1921 Senate Hearings at 431 (statement of F. B. Wells). *See also*, 1921 Senate Hearings at 213–215 (statement of George T. McDermott); 61 Cong. Rec. 4762 (1921) (statement of Senator Capper).

In *Hill* v. *Wallace*, 259 U.S. 44 (1922), the Futures Trading Act of 1921 generally was declared unconstitutional as an impermissible attempt at regulation through the taxing power. Therefore, Congress enacted the Grain Futures Act of 1922 which regulated grain futures trading under the commerce clause. 42 Stat. 998. The exemption for forward contracts was included without change in the Grain Futures Act of 1922. 42 Stat. 998. In 1936, the Commodity Exchange Act broadened the exclusion to apply to sales of "any cash commodity" for deferred shipment or delivery since that Act covered commodities in addition to grains. 49 Stat. 1491.

[13] *CFTC v. CoPetro Marketing Group, Inc.*, 680 F.2d 573, 578 (9th Cir. 1982) (emphasis in the original). ("*CoPetro*").

of the commodity.[14] Second, because forward contracts are commercial, merchandizing transactions which result in delivery, the courts and the Commission have looked for evidence of the transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts.[15]

Forward contracts frequently are not standardized. Contract terms are often negotiated, particularly grade, delivery point and settlement date. Even in those instances when contract terms are standardized by a single contracting party, certain terms may nonetheless be left open to negotiation.[16] Historically, forward contracts have set a fixed price for grain or cotton at the time the contract was entered.

However, an instrument, called a "deferred pricing" contract, has evolved in which the price is not established at the time the contract is entered. Rather, the contract sets a formula to determine the final contract price by a later "closing date." The formula may specify a particular base price, such as a futures contract price or major cash market price. The agreement may also set a differential to be added to or subtracted from the base price to determine the final price. The contract also specifies a period of time during which the producer may "fix" the final price. For example, the parties might enter into a contract in March which guarantees the farmer the price of the December futures contract plus or minus an agreed-upon differential. The farmer may set the final price for the commodity between the time at which the contract is entered and the "closing date," *e.g.* the last business day in November, based on the producer's expectation of the price trend for that contract.[17]

Some deferred pricing contracts require immediate delivery. Title passes upon delivery. However, the contract permits the farmer to delay fixing the final price for the commodity until the agreed-upon closing date although the commodity has already been delivered and title has passed to the merchant. The contract also eliminates the producer's need to secure storage space for the commodity. The Commission staff views such deferred pricing contracts as a form of spot contract. These contracts are used solely to merchandize the commodities. Both parties have transferred title to the commodity and delivery has occurred.

B. Commodity Options

The Commodity Exchange Act vests the Commission with plenary jurisdiction over "any transaction which is of the character of, or is commonly known to the trade as an 'option'. . . ." [18] The Act does not define the term "option." Therefore, to determine whether an instrument is an option, the Commission and the courts have examined pre-existing contract law, commercial practice and the economic nature of the contract.[19]

Traditional contract law defines an option as a contract in which

> the option holder makes no promise, but pays cash or gives some other executed consideration. The option giver's promise is enforceable, in spite of lack of mutuality of promise.[20]

Similarly, the Commission relied on traditional contract analysis in its determination whether a particular instrument was an option. Thus, an option is

> necessarily a unilateral contract which binds the optionee to do nothing but grants him the right to accept or reject the offer in accordance with its terms within the time and manner specified in the option. The outstanding factor is that the optionee is not bound until he acts on the option one way or another. At the same time, during the period when the optionee is free to accept or reject, the optionor cannot act in derogation of the terms of the option.[21]

The courts and the Commission have carefully examined "the economic reality of the transaction, not its name" to determine whether an instrument is an option.[22] In particular, an option is a limited risk instrument. That is, the option purchaser is not liable for payment resulting from any adverse price movement of the commodity underlying the option. Rather, the option purchaser will benefit from a favorable price move and will not be liable for any other losses beyond the premium or other payment that the purchaser pays for the option.

Following the Congressional and Commission bans on options in 1978,[23] certain companies began to offer and sell instruments with a variety of names which had the characteristics of options. In *CFTC v. U.S. Metals Depository Co.*, the Commission alleged that defendants were selling options in another guise. The Honorable Edward Weinfeld stated that the determination whether the instrument was an option

> must begin with the definition of "options." Although neither the Act nor the Commission's regulations define the term, Courts have often differentiated between options and deferred delivery (or futures) contracts. The latter is a transferable contractual agreement "to buy or sell a fixed amount and grade of a certain commodity on some specified date. A commodity option, on the other hand, confers upon the holder the right to buy ('call option') or to sell ('put option') either a specified amount of a commodity or a futures contract for that amount of a commodity within a certain period of time at a given price (the 'strike price')." [24]

From that definitional basis, Judge Weinfeld identified three aspects which convinced the court that defendants' instruments were options. An option gives the purchaser the right to make or take delivery of the commodity. The initial charge for an option is normally a nonrefundable premium covering the grantor's commissions, costs and

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[14] *In re Stovall*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,941 at 23, 77–78 (C.F.T.C. 1979); Office of the Chief Economist, U.S. Commodity Futures Trading Commission, Forward Contracting in Selected Agricultural Commodities: An Inquiry into Defaults 1–5 (1977). *See also* Gillen & Jaeger, *Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry*, 12 J. Mar. J. Prac. & Proc. 253, 267 (1979) ("Gillen & Jaeger"); E. Roy, *Contract Farming and Economic Integration*, 248–249 (1972).

[15] *CoPetro*, 680 F.2d at 578–579; *NRT Metals, Inc. v. Manhattan Metals (Non-Ferrous), Ltd.*, 576 F. Supp. 1046, 1050 (S.D.N.Y. 1983); *In re Stovall*, Comm. Fut. L. Rep. at 23,778–23,779. *See also CFTC v. Commercial Petrolera Internotional S.A.*, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,222 at 25,096–97 (S.D.N.Y. 1981).

[16] Advisory Committee on Definition and Regulation of Market Instruments, U.S. Commodity Futures Trading Commission, Recommended Policies on Futures, Forward and Leverage Contracts and Transactions, 18–19, 21 nn. 5, 6 (1976).

[17] A. Paul, R. Heifner & J. Helmuth, U.S. Department of Agriculture, Agriculture Economic Report No. 320, Farmers' Use of Forward Contracts and Futures Markets 17–18 (1976). ("Farmers' Use of Forward Contracts and Futures Markets").

[18] Section 2(a)(1)(A), 7 U.S.C. 2 (1982). *See also* section 4c, 7 U.S.C. 6c (1982).

[19] *CTFC v. Precious Metals Associates*, 620 F.2d 900, 907–908 (1st Cir. 1980) ("*Precious Metals Associates*"); *British American Commodity Options Corp. v. Bagley*, 552 F.2d 482, 484–485 nn. 4, 5; *cert. denied*, 464 U.S. 938 (1977) ("*BACO*"); *CFTC v. Goldex International Ltd.*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,839 at 23,441 (N.D. Ill. 1979) at 23,441 ("*Goldex*").

[20] A. Corbin, Contracts section 152 at 222 (1952). *See* Precious Metals Associates, 620 F.2d at 907 *citing with approval* A. Corbin, Contracts § 259 at n.5 (1952).

[21] *In the Matter of Precious Metals Associates*, Comm. Fut. L. Rep. ¶ 20,882 at 23,596 n.8, citing with approval, 1 Williston, Contracts section 61B at 199, 200 (3d ed. 1957).

[22] *Precious Metals Associates*, 620 F. 2d 908. *See also CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 675 (S.D.N.Y. 1979).

[23] Section 4c(c), 7 U.S.C. 6c(c) (1982); Rule 32.11, 17 C.F.R. 32.11 (1984).

[24] *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1149, 1154–1155 (S.D.N.Y. 1979). (*U.S. Metals Depository*").

profits.[25] The purchaser's losses on an option are normally limited to the premium. Therefore, the Court concluded options are "limited risk" investments—the buyer is under no obligation to exercise his option and will, at most, lose the initial fee . . .[26]

Thus, an option is a contract in which only the grantor is obligated to perform. As a result, the option purchaser has a limited risk from adverse price movements. This characteristic distinguishes an option from a forward contract in which both parties must routinely perform and face the full risk of loss from adverse price changes since one party must make and the other take delivery of the commodity. In contrast, in an option, only the grantor of a call (put) is required to sell (buy) a given quantity of a commodity (or a futures contract on that commodity) on or by a specified date in the future if the option is exercised. The purchaser of the option may buy or sell the commodity, but he or she is under obligation to do so.[27] If the price of the underlying commodity moves in the manner favorable to the option purchaser, the purchaser can exercise the option. If the price does not move in a favorable direction, the purchaser can simply abandon the option and forfeit any premium.[28]

C. The Commission's Consideration of "Trade" Options on Agricultural Commodities

In 1982, Congress determined to permit a pilot program in the trading of options on agricultural commodities.[29] The Commission therefore began a rulemaking to determine whether and under what circumstances agricultural options should be offered.[30] Among other issues, the Commission considered whether to permit so-called "trade" options on agricultural commodities. "Trade options" generally are off-exchange options in a physical commodity entered into in normal commercial channels for that commodity or its byproducts.[31] Section 4c(c) of the Act authorizes the Commission to permit trade options to be offered and sold to a purchaser who is

a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or by-products thereof.[32]

The Commission specifically asked for comments whether the agricultural option pilot program should include trade options, recognizing that there might be benefits to producers and commercial handlers of agricultural commodities in permitting trade options. However, the Commission ultimately deferred a determination whether to permit trade options until there had been experience with the offer and sale of exchange-traded agricultural options. The Commission was of the view that limiting options to exchanges initially would provide additional self-regulatory oversight by the exchanges in the offer, sale and trading of agricultural options which would not be available for off-exchange trade options.[33] Thus, agricultural trade options may not be lawfully offered or sold at this time.[34]

D. Examples of Agricultural Contracts.

As noted above, various agricultural contracts either are currently being entered into between producers of agricultural commodities and elevators or merchants handling or dealing in that commodity or its byproducts in commercial channels or are being proposed to be offered by merchants to producers. Three examples of contracts are described and analyzed below.

1. The producer agrees to deliver a specified quantity and grade of a commodity to a dealer by a specified date in the future. Delivery of the commodity is mandatory, absent an intervening event such as crop failure.[35] Generally, the contract does

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[25] *U.S. Metals Depository*, 468 F. Supp. at 1155. *See also, CFTC v. Morgan Harris & Scott, Ltd.*, 484 F. Supp. 669, 675–676 (S.D.N.Y. 1979) ("Morgan, Harris & Scott"). *See* A Corbin, Contracts § 152 at 222, section 259 at n.5 (1952) (the purchaser of an option pays a premium or other consideration); *SEC v. Commodity Options International, Inc.*, 553 F.2d 628–631 (9th Cir. 1977) (a rebate was paid on the premium in addition to any profit realized).

[26] *U.S. Metals Depository*, 468 F. Supp. at 1155. *See also BACO*, 552 F.2d at 485; *Morgan, Harris & Scott*, 484 F. Supp. at 675, 678.

[27] *Precious Metals Associates*, 620 F.2d at 907–908; *BACO*, 552 F.2d at 484–485.

[28] *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 675–676 (S.D.N.Y. 1979) ("*Morgan, Harris & Scott*"); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. at 1155.

[29] "The Commission may . . . establish a pilot program for a period of three years" in agricultural options. "The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test" of these options. Section 4c(c), 7 U.S.C. 6c(c) (1982). Options may be permitted on "Wheat, cotton, rice, corn, oats barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. . . ." Section 2(a)(1)(A), 7 U.S.C. 2 (1982).

[30] 48 *FR* 46797 (October 14, 1983); 48 *FR* 6128 (February 10, 1983). The Commission also convened an Agricultural Options Advisory Committee, pursuant to 5 U.S.C. App. I, Section 1, *et seq.*, to provide advice on the nature of a pilot program. That committee was succeeded by an Agricultural advisory Committee with a broader membership and mandate. The issue of "trade" options was extensively discussed at the new committee's first two meetings.

[31] Report of the Advisory Committee on Market Instruments, reprinted in *Hearings Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry*, 95th Cong., 2d Sess. 337, 345–346 (1978).

[32] 7 U.S.C. 6c(c) (1982).

The Commission currently permits trade options only in the commodities which are not enumerated in Section 2(a)(1)(A) (*see* n. 30 *supra*). These options may be "offered by a person who has a reasonable basis to believe that the option is offered to a qualified commercial entity if "such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." Rule 32.4(a), 17 CFR 32.4(a) (1984).

[33] 49 FR 2752, 2756 (January 23, 1984). *See also* 48 FR at 46800.

[34] Further, Section 4c, 7 U.S.C. 6c (1982), generally prohibits any person "in the business of buying, selling, producing, or otherwise using" an agricultural commodity from granting options on a physical agricultural commodity. Pub. L. 97–444, section 206(4), 96 Stat. 2301 (1983). *See* 50 FR 10786, 10787 n.2 (March 18, 1985).

[35] Some contracts provide for a liquidated damages or penalty clause if the producer fails to deliver. For example, if the seller fails to deliver any part of the crop specified in the contract, the seller is liable to the merchant for the difference between the contract price and the current market value of that commodity. Some contracts appear to require that the farmer obtain the grain from another source if the producer's crop is not sufficient to meet the contract's requirements. Other contracts are silent as to the effect of non-performance. In each of these instances, however, it is intended that delivery of the physical crop occur, absent destruction of all or a portion of the crop by forces which neither party can control. The presence of such clauses in a contract does not change the analysis of the nature of the contract.

Some commodities are sold through acreage or output contracts in which the farmer agrees to sell the total output on a specified number of acres, based generally on prior output. *See Gillen & Joeger* at 268–269. However, if the farmer cannot produce the anticipated amount of commodity using accepted agricultural techniques for the crop, there is no penalty as long as the producer delivers the remaining production from the contracted for acreage. Again, the parties intend delivery and, but for intervening conditions, such as weather, insects or disease, would transfer title to the entire crop. Indeed, it appears that a party who did not deliver his crop under such a contract and instead marketed it elsewhere would be in breach of the contract and likely liable for damages. *Gillen & Joeger* at 269.

However, a contract provision which permitted a producer to avoid delivery for a reason other than for an intervening condition not in the control of either party could change any conclusion about the nature of the contract. Moreover, the Commission is aware that public marketing and sales presentations made to prospective purchasers of certain instruments sometimes differ markedly from the written offering material. Thus, the Commission and the courts have consistently looked beyond written materials and examined the day-to-day operations of a transaction to determine its underlying purpose.

not establish the final price to be paid for the commodity, but rather the method by which a final price will be determined. In some contracts, the agreement establishes a particular futures contract which will be used as the base price. In addition, some contracts may establish the "basis" which will be used to calculate the final price for the commodity.[36]

This particular contract mandates delivery by the producer and acceptance of that delivery by the dealer. The parties are commercial participants in the stream of commerce for the commodity. The unique feature common to these contracts is a "minimum price guarantee." The merchant guarantees the producer a minimum price for the commodity. In return for this minimum price guarantee, a premium is deducted from the final price paid for the commodity. The producer is required to deliver the commodity but has the right to receive the minimum price for the commodity. If, however, the pricing formula or the subsequent market price specified in the contract entitles the producer to a higher price, the producer may demand this higher price for the commodity.

The Office of the General Counsel believes that this type of contract comes within the forward contract exemption of section 2(a)(1)(A) since legally the contract's predominant feature is its use by producers and merchants to market a commodity through actual delivery. The producer, absent depredation to the crop, must make delivery of the commodity. The merchant or the elevator must accept that delivery. Because both parties are participants in the normal commercial channels for these commodities, each is in a position to fulfill all obligations under the contract, and both parties intend that commercial marketing of the commodity by means of delivery will occur.

In stating this view, we recognize that these contracts have characteristics of a cash-settled put option because the minimum price guarantee places a floor on the producer's losses. In addition, the guarantee is secured by the payment of a premium which covers the merchant's expenses and exposure in offering these contracts, such as the cost of the merchant's purchasing of an exchange-traded option to offset its risks. If the commodity price is above the minimum guarantee price, the producer receives the prevailing price. If the commodity price is less than the minimum guarantee price, the producer receives the guaranteed amount. However, these contracts lack a salient characteristic of an option: the farmer cannot "accept or reject the offer."[37] Rather, the parties use this contract as a marketing vehicle. Thus, the producer is normally required to deliver the commodity. Moreover, in order to collect any payment for the commodity, including the minimum price guarantee, the producer must first make delivery. Further, under the contracts described in this example, the producer would be in breach of the contract if he or she failed to deliver to the merchant and could be liable for damages under the contract.

Because this type of contract is a hybrid of both a forward and an option contract, an examination must be made of the parties' use of the contract in their marketing program, as well as the contract's terms. In this example, the contract mandates delivery, absent events beyond the parties' control, and a primary purpose of the contract is to market agricultural commodities in the normal channels of commerce. To the extent that this contract includes characteristics of an option, those terms cannot be severed or marketed separately from the hybrid contract, and particularly from that contract's requirement of delivery. The intent of the exemption for forward contracts in section 2(a)(1)(A) is to exclude marketing transactions in the normal stream of commerce for a commodity or its byproducts where delivery is intended, but delivery is delayed for commercial convenience or necessity. In this Office's view, the contract in this example serves these purposes and, as such, is exempt under section 2(a)(1)(A) of the Act.

2. The producer and merchant enter into a contract to make and take delivery of the commodity immediately, but the price is fixed later. Title to the commodity passes to the merchant upon delivery. However, although the producer may receive some payment upon delivery, the final price is not set at that time. However, as in example 1, the merchant offers a minimum price guarantee on the commodity to the farmer in return for a premium. Thereafter, the producer has an agreed-upon period after delivery occurs in which to determine whether to elect the minimum price guaranteed by the merchant or a higher final price based on that contract's pricing formula or an agreed-upon cash market price for the commodity.

The Office of General Counsel is of the opinion that this is a spot contract which is generally outside the Act's regulatory scheme.[38] As in example 1, both parties are obligated to perform under this type of contract, and delivery occurs at the time that the contract is entered. Both parties have performed upon the contract and transferred title to the commodity. However, the final determination of price may be delayed for a substantial period after delivery occurs.

This contract is a hybrid of a spot contract and a cash settled put option in which the strike price is equal to the minimum price guarantee. Nonetheless, this is an agricultural marketing vehicle under which both parties are obligated to perform under the contract. The producer actually delivers the crop before he or she can demand any price, under the minimum price guarantee or otherwise, for the commodity. Thus, the option component is inseparable from the actual delivery of the commodity between participants in normal marketing channels. In this Office's view, this example is generally exempt from Commission regulation as a spot contract.

3. The contract establishes a minimum contract price determined when the contract is written, and a premium is collected, either at the initiation of the contract, during the life of the contract or, together with interest accumulated over the life of the contract, at the time of settlement. In return for the premium, the producer has the right to require the merchant to accept delivery of and pay a minimum contract price for the crop. However, the producer may forfeit the premium and seek a higher price for, and deliver, the crop elsewhere.

This instrument is a "trade" option. For the payment of a premium, the buyer has the right, but not the obligation, to sell his crop to the merchant who must accept delivery and pay the minimum contract price. The producer, however, can determine not to exercise the option and sell the crop to another buyer. The producer thereby forfeits the premium, but that is the limit of his or her liability. Thus, unlike the examples above, this contract does not require delivery. This type of contract is currently not permitted under the Commodity Exchange Act and the rules thereunder.

The Office of the General Counsel hopes that these examples will provide useful guidance to participants in

[36] Basis is defined as the difference between the price of a particular futures contract and the price for the same or similar commodity for spot delivery at a particular location. Farmers' Use of Forward Contracts and Futures Markets at iv.

[37] 1 Williston, Contracts section 61B at 199 (3d ed. 1957).

[38] *See* n.5f *supra*.

agricultural commerce and to interested members of the public as to the types of agricultural marketing instruments which are permitted under the Act. The staff will continue to provide its views on specific instruments if written requests are submitted to the Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581.

Issued in Washington, DC on September 23, 1985 by the Office of the General Counsel.

Kenneth M. Raisler,

General Counsel.

[FR Doc. 85-23270 Filed 9-27-85; 8:45 am]

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DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statues

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of interim final rule.

SUMMARY: This notice extends the interim final rules published in the **Federal Register** on January 3, 1985 (50 FR 384) until December 31, 1985. These rules, which implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1693, were effective on December 27, 1984, and were to remain in effect until October 1, 1985, unless extended. The Department has determined that additional time is necessary to evaluate the procedures established by the interim final regulations in light of the concerns expressed in the written comments submitted to the Department.

EFFECTIVE DATE: September 30, 1985. The interim final rules will remain in effect until December 31, 1985, unless extended or suspended by another issuance.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC. 20210, telephone (202) 523-7503.

Signed at Washington, DC., this 26th day of September 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-23366 Filed 9-27-85; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8053]

Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations; final regulations.

SUMMARY: This document contains temporary regulations and final regulations relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.** Changes to the applicable law were made by the Spending Reduction Act of 1984. The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

DATES: The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988 and are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code. Section 6402 (d) and (e) was added to the Internal Revenue Code, and section 3720A was added to title 31 of the United States Code, by section 2653 of the Spending Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 1153). The temporary regulations contained in this document will remain in effect until superseded by additional temporary or final regulations published in the **Federal Register.**

Explanation of Statutory Provisions

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (1) to reduce the amount of any overpayment (*i.e.*, tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a federal agency of which the Service has been notified, (2) to pay the amount of the reduction to the agency to which the debt is owed, and (3) to notify the taxpayer that the overpayment has been reduced. That subsection also provides that before reduction for past-due legally enforceable debt, an overpayment shall be reduced for an outstanding liability for past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and in case more than one debt is owed by a taxpayer, the reduction of the overpayment shall be applied to the debts in order in which they accrued.

Section 6402(e) provides that no court of the United States shall have jurisdiction to hear any action brought to restrain or review a reduction of an overpayment for past-due support under 6402(c) or past-due legally enforceable debt under 6402(d), and that no such reduction can be reviewed by the Service in an Administrative proceeding.

Section 3720A(a) of title 31 provides that any Federal agency that is owed a past-due legally enforceable debt shall notify the Internal Revenue Service of the amount of the debt. Under section 3720A(b), a Federal agency must, before notifying the Service, notify the taxpayer who is responsible for the debt that the agency plans to refer the taxpayer's debt to the Service for offset of any Federal tax refund; determine that the debt is past-due and legally enforceable after providing the taxpayer at least 60 days in which to present evidence to the contrary; and make reasonable efforts to collect the debt. Section 3720A(c) requires the Service to reduce the tax refund, if any, payable to a taxpayer by the amount of the past-due legally enforceable debt owed to the creditor agency and to pay the amount of the reduction to the agency. Under section 3720A(d), the Service is directed to issue regulations providing the time and manner of submission of notification. Section 3720A(e) requires any Federal agency which has received

an erroneous payment from the Service to repay such amount to the Service.

Explanation of Regulatory Provisions

The temporary regulations under section 6402 (d) and (e) and section 3720A provide that, for purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those creditor Federal agencies which are eligible to enter into an agreement with the Service with regard to their participation in this offset program. In addition, the regulations provide guidance as to which past-due legally enforceable debts qualify for offset. The regulations include the statutory requirements that prior to referral of a debt to the Service, an agency must give the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, consider any evidence presented, and determine that the debt is past due and legally enforceable. The regulations also require that debts to be offset after 1986 first must be referred to a consumer reporting agency under 31 U.S.C. 3711(f), which includes a similar 60-day period for notice and administrative review prior to referral to a consumer reporting agency. Agencies will not be required to duplicate such administrative review to the extent they have previously complied with identical requirements under 31 U.S.C. 3711(f).

The regulations set forth requirements relating to time of notification to the Service, the content of the notification, and procedures for correction of notification after submission of the initial information. The regulations describe the disposition of the amounts collected and provide that a fee sufficient to cover the Service's cost of the offset procedure shall be billed to, and collected from, the participating agencies.

The final regulations conform existing regulations under section 6402 to the changes made to 6402 (c) and (d) by section 2653 of the Spending Reduction Act of 1984 and section 21 of the Child Support Enforcement Amendments of 1984.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these temporary and final rules are not major rules as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations or for final regulations subject to 5 U.S.C. 553(b)(3). Accordingly, these temporary and final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall 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 on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

PART 30—[AMENDED]

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6402-6T also issued under 31 U.S.C. 3720A.

Par. 2. Section 301.6402-1 is revised to read as follows:

§ 301.6402-1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

Par. 3. Section 301.6402-3(a)(6) is revised to read as follows:

§ 301.6402-3 Special rules applicable to income tax.

(a) * * *

(6) Notwithstanding paragraph (a)(5) of this section, the Internal Revenue Service, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, including interest thereon, against—

(i) First, any outstanding liability for any tax (or for any interest, additional amount, additions to the tax, or assessable penalty) owed by the taxpayer making the overpayment;

(ii) Second, in the case of an individual taxpayer, amounts of past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act under procedures set forth in the regulations under section 6402(c);

(iii) Third, past-due and legally enforceable debt under procedures set forth in the regulations under section 6402(d); and

(iv) Fourth, qualifying amounts of past-due support not assigned to a State under procedures set forth in the regulations under section 6402 (c).

Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected.

* * * * *

Par. 4. The following new section is added immediately after § 301.6402-5 to read as follows:

§ 301.6402-6T Offset of past-due legally enforceable debt against overpayment (temporary).

(a) *General rule.* (1) A Federal agency (as defined in section 6402(f)) that has entered into an agreement with the Internal Revenue Service with regard to its participation in the tax refund offset program and that is owed a past-due legally enforceable debt may notify the Internal Revenue Service, pursuant to the terms of such agreement, of past-due legally enforceable debts owed to such agency that are to be collected by tax refund offset. The Service shall, after making appropriate credits as provided by § 301.6402-3(a)(6) (i) and (ii), reduce the amount of any overpayment payable to a taxpayer by the amount of any past-due legally enforceable debt owed to such agency of which the Service has been properly notified. This section does not apply to any debt incurred by an overpayment of benefits to a taxpayer under Title II of the Social Security Act (OASDI overpayment) or debt subject to section 464 of the Social Security Act (past-due support).

(2) For purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those Federal agencies eligible to enter into the agreement with the Service described in paragraph (a)(1) of this section.

(b) *Past-due legally enforceable debt eligible for refund offset.* For purposes of this section, a past-due legally enforceable debt which may be referred by a Federal agency to the Service for offset is a debt—

(1) Which, except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Which cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Which is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be currently collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the agency has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which has been disclosed by such agency to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to the Service after June 30, 1986;

(6) With respect to which that the agency has notified, or has made a reasonable attempt to notify, the taxpayer that—

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, will be referred to the Service for offset against any overpayment of tax; and

(7) Which is at least $25.

((c) *Time and content of notification of liability for past-due legally enforceable debt.* (1) A Federal agency must submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by December 1 of each year. Such notification must contain—

(i) The name and identifying number (as defined in section 6109) of the taxpayer who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency submitting the notification of liability and identification of the agency program under which the debt was incurred.

(2) Accompanying each magnetic tape, the agency must submit a statement certifying that, with respect to each debt reported on the tape, all of the requirements of § 301.6402-6 (b) have been satisfied.

(d) *Correction of notification.* If, after submitting to the Service notification of liability for past-due legally enforceable debt as provided by paragraph (c), an agency determines that an error has been made with respect to the information contained in the notification, or if an agency receives a payment or credits a payment to the account of a taxpayer named in this notification, the agency shall promptly notify the Service, which shall make the appropriate correction of its records. However, this paragraph does not apply to a subsequent increase in the amount of past-due legally enforceable debt owed by a taxpayer named in an agency's original notification to the Service.

(e) *Priorities for offset.* (1) An overpayment shall be reduced first by the amount of an outstanding liability for any tax under section 6402(a); second, by the amount of any past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act which is to be offset under section 6402(c) and the regulations thereunder; third, by the amount of any past-due legally enforceable debt owed to a Federal agency under section 6402(d) and this section; and fourth, by the amount of any qualifying past-due support not assigned to a State which is to be offset under section 6402(c) and the regulations thereunder.

(2) If a taxpayer owes more than one past-due legally enforceable debt to a Federal agency or agencies, the overpayment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the debt became past due.

(3) Reduction of the overpayment pursuant to section 6402 (a), (c) and (d) shall occur prior to crediting of the overpayment to any future liability for an internal revenue tax. Any amount remaining after offset under section 6402 (a), (c) and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer.

(f) *Notice of offset.* The Service shall notify the taxpayer in writing of the amount and date of the offset for past-due legally enforceable debt and of the Federal agency to which this amount has been paid or credited. Such notice shall include a notification to any other person who may have filed a joint return with the taxpayer of the steps which such other person may take in order to secure his or her proper share of the refund. The Service shall advise each agency on a monthly basis of the names, mailing addresses and identifying numbers of the taxpayers from whom amounts of past-due legally enforceable debt were collected and of the amounts collected from each taxpayer. If the refund from which an amount of past-due legally enforceable debt is to be withheld is based upon a joint return, the Service shall so notify the agency, and furnish the names and address of each taxpayer filing such joint return.

(g) *Offset made with regard to refund based upon joint return.* If the person filing the joint return with the taxpayer owing the past-due legally enforceable debt takes appropriate action to secure his or her proper share of a refund from which a withholding was made, the Service shall pay such person his or her share of the refund and shall deduct that amount from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(h) *Disposition of amounts collected.* Amounts collected under this section shall be transferred to a special account maintained by the Bureau of Financial Management Services for each Federal agency. If an erroneous payment is made to any agency, the Service shall deduct the amount of such payment from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(i) *Fees.* Refund offset fees in amounts determined to be sufficient to reimburse the Service for the full cost of the offset procedure prescribed by this section shall be billed to, and collected from, the participating Federal agencies. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts of the Service which bore all or part of the costs involved in administering the refund offset procedures.

(j) *Review of offset of refunds.* Any reduction of a taxpayer's refund made pursuant to section 6402(c) or (d) shall not be subject to review by any court of the United States or by the Service in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. Any legal, equitable or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal agency to which the amount of the reduction was paid.

(k) *Effective date.* This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1985, and before January 1, 1988.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of

section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: September 19, 1985.

Ronald A Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-23285 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8042]

Income Tax—Taxable Years Beginning After December 31, 1953; Property Transferred in Connection With the Performance of Services; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 50 FR 31712. The regulations to which this correction applies were the subject of Treasury Decision 8042 and relate to property transferred in connection with the performance of services.

EFFECTIVE DATE: The regulations that are the subject of this correction became effective August 6, 1985. The correction is effective as of the same date.

FOR FURTHER INFORMATION CONTACT: Bruce Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attn: CC:LR:T). Telephone 202-566-3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1985, the **Federal Register** published final income tax regulations relating to property transferred in connection with the performance of services. The regulations were published at 50 FR 31712. The regulations affect taxpayers performing services and taxpayers transferring property in connection with the performance of such services. Changes were made to the applicable tax law by the Economic Recovery Tax Act of 1981.

Need for Correction

As published, Treasury Decison 8042 inadvertently contained unintended language and omitted some language that was intended to be included. These errors and omissions occurred on page 31713, in the third column, in *Example (1)* of paragraph (j)(2).

Correction of Publication

Accordingly, the publication of Treasury Decision 8042 which was the subject of FR Doc. 85-18455 is corrected as follows:

§ 1.83-3 [Corrected]

Paragraph 1. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "a principal officer of X" is removed and the language "a beneficial owner of 12% of X corporation stock" is added in its place.

Par. 2. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "as a principal officer of X" is removed and the language "as a beneficial owner of more 10% of X corporation stock" is added in its place.

Par. 3. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the conclusion of the fourth sentence, which incorrectly reads "P's per share.", is removed and the following language is added in its place: "P's rights in the 100 shares of stock purchased on January 1, 1983, are treated as subject to a substantial risk of forfeiture and as not transferable through June 29, 1983. P chooses not to make an election under section 83 (b) and therefore does not include any amount with respect to the stock purchase in gross income as compensation on the date of purchase. On June 30, 1983, the fair market value of X corporation stock is $250 per share."

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-23287 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1985, to December 31, 1985.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation (the "PBGC") published a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 12790 (April 1, 1985) and 50 FR 26707 (June 28, 1985). This amendment adds to this appendix a new interest rate of 9½ percent, which will be effective from October 1, 1985, to December 31, 1985. This rate is based on the prime rate in effect on September 16, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those in Statistical Release H.15. The appendix merely

collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PGBC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93-406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1236-1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From—	To—	Date of quotation	Rate (percent)
•	•	•	•
10/01/85	12/31/85	9/16/85	9.50

Issued at Washington, D.C., on this 23rd day of September, 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-23190 Filed 9-27-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami, Florida Regulation CCGD7-85-47]

Safety Zone Regulations in the Port Everglades Entrance Channel, Ft. Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Port Everglades Entrance Channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26-05.7 N., longitude 80-06.4 W., extending west to a line running north/south from shore to shore passing through buoy #9, position 26-05.8 N., longitude 80-06.4 W. The zone is needed to protect participants forming a human chain across the channel during a United Way fund raising event and to protect pleasure and commercial vessels transifting the area. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 10:00 am on 5 October 1985. It terminates at 11:00 am on 5 October 1985.

FOR FURTHER INFORMATION CONTACT: CWO3 P.J. MacDonald, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, Miami, Fl. 33130, Tel (305) 350-5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication.

Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to personnel and vessels involved.

Drafting Information

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a United Way fund raising event during which a human chain will be completed across the Port Everglades entrance channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26-05.7 N., longitude 80-06.4 W., extending west to a north/south line and extending from shore to shore and passing through buoy #9, position latitude 26-05.8 N., longitude 80-06.4 W. This event is being conducted by the United Way of Broward County. The Ports of Port Everglades and Port Dennison have voluntarily closed to commercial traffic for this event. The event will take place on 5 October 1985, between the hours of 10:00 am and 11:00 am. The United States Coast Guard, the Coast Guard Auxiliary and the Florida Marine Patrol will be on the scene to provide enforcement of the safety zone. Vessels transiting this area should minimize the effects of their wake.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T-07-47 is added to read as follows:

§ 165.T-07-47 Safety Zone: Port Everglades entrance channel, Ft. Lauderdale, Florida.

(a) *Location.* The following area is a Safety Zone: In the Port Everglades entrance channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26-05.7 N., longitude 80-06.4 W., extending west to a north/south line extending from shore to shore and passing through buoy #9, position latitude 26-05.8 N., longitude 80-06.4 W. The zone is needed to protect participants forming a human chain across the channel during a United Way fund raising event. The event will take place on 5 October 1985, between the hours of 10:00 am and 11:00 am. The United States Coast Guard, the Coast Guard Auxiliary and the Florida Marine Patrol will be on scene to enforce the safety zone.

Vessels transitting this area should minimize the effects of their wake.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(2) Vessels transitting this area should minimize the effects of their wake.

Dated: September 19, 1985.

R.N. Roussel,

Commander, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 85-23291 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84021; TSH FRL-2904-9]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the Federal Register, EPA is proposing to amend the Toxic Substances Control Act (TSCA), section 8(d) Health and Safety Data Reporting Rule to, among other things, lengthen the reporting period. However, EPA believes that between publication of the proposed rule and promulgation of a final rule, the section 8(d) model rule's automatic sunset provision will terminate the reporting periods on many of the substances listed in the model rule. EPA has reviewed all of these substances and has determined that for all but seven substances, EPA must keep in force the prospective reporting requirements of the section 8(d) model rule. Therefore, EPA is removing the seven substances from the model rule and is temporarily suspending the operation of the sunset provision. This action should help to prevent the occurrence of reporting period gaps.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on October 3, 1985. This rule is effective on October 3, 1985 and written comments should be submitted on or before November 29, 1985.

ADDRESS: Comments should be identified by the docket control number OPTS-82021 and be submitted to: TSCA Public Information Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

Pursuant to section 8(d) of TSCA, EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Since promulgation of the model rule, EPA has amended the rule 10 times to add approximately 125 substances.

By adding a substance to Part 716, EPA triggers the section 8(d) model rule's reporting requirements and initiates the reporting period. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance. All but 1 of these reporting requirements are terminated by the 3-year sunset provision. The only reporting requirement unaffected by the sunset provision applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date.

Elsewhere in this issue of the Federal Register, EPA is proposing to amend the section 8(d) Health and Safety Data Reporting Rule by: Increasing the reporting period on substances (either by relisting the substances or by lengthening the sunset provision), limiting three reporting exemptions, and clarifying the rule's confidentiality provisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its risk identification, assessment, and management determinations.

However, EPA also believes that between publication of the proposed rule and promulgation of the final rule the 3-year automatic sunset provision will terminate the reporting periods on the substances listed at 40 CFR 716.17(a)(1), (2), (3), and (4). The automatic sunset provision will terminate the reporting period for the substances in § 716.17(a)(1) on October 4, 1985, (a)(2) and (a)(3) will terminate on November 1 1985, and (a)(4) will terminate on May 1, 1986.

The Agency has reviewed its health and safety data needs for all of these substances and determined that continued reporting is needed for all but seven substances. If EPA allows the automatic sunset provision to terminate reporting periods and then later relists substances (a highly likely event), then reporting gaps will occur. These reporting gaps can be closed only by requiring file searches—the most burdensome reporting requirement in the section 8(d) model rule. Rather than allowing the reporting periods to terminate thereby disrupting an ongoing program and adding a larger reporting burden to this process, EPA is suspending the operation of the sunset provision. Therefore, persons who manufacture, import, or process a listed substance and initiate a study of this substance must continue to notify EPA of this event. In addition, presons who propose to manufacture, import, or process a listed substance must continue to submit copies and lists of unpublished health and safety data studies in their possession.

EPA is taking this action without having provided notice and comment as generally required by the Administrative Procedure Act (APA). EPA finds that good cause exists to exempt this rule-making from the notice and comment requirements for the following reasons:

1. EPA has reviewed all of these substances and has determined that the Agency needs continuing health and safety data reporting on all but seven of them. Elsewhere in this issue of the Federal Register, EPA is promulgating a final rule to remove the seven substances, for which the Agency no longer has a need for continuing health and safety reporting, from the section 8(d) model rule.

2. This interim final rule will have an insignificant impact on health and safety data submitters. Few persons would be required to report by reason of this interim final rule. Only those persons who, between the termination of a reporting period for a substance and promulgation of the final rule, initiate a study of the substance or propose to

manufacture, import, or process the substance would be required to report data to EPA. The major purpose of this interim final rule is to ensure that reporting gaps are not created. This assurance negates the need for EPA to require file searches.

3. This interim final rule will remain in effect for one year or until promulgation of a final amendment to the section 8(d) model rule, whichever occurs first. Elsewhere in this issue of the Federal Register, EPA has published the proposed rule to amend the section 8(d) model rule.

4. This interim final rule is framed narrowly; it suspends the operation of the sunset provision by temporarily removing it from the section 8(d) model rule and leaves in place the authority for the Assistant Administrator of the Office of Pesticides and Toxic Substances to remove listed substances and mixtures.

II. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS-84021) which is available for inspection in Rm. E-107, 401 M Street, SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. EPA anticipates that this interim final rule will have an insignificant effect on competition, costs, and prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 95-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect this interim final rule to affect this distribution.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By revising § 716.17(a)(1) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) (1) *Substances.* The following substances are subject to this subpart as of October 4, 1982.

* * * * *

3. By revising § 716.19 to read as follows:

§ 716.19 Sunset provision.

(a) Effective October 3, 1985, the reporting period for the substances listed in § 716.17(a)(1), (a)(2), and (a)(3) shall terminate on October 4, 1986.

(b) For all listed substances and mixtures other than those specified in paragraph (a) of this section, the reporting period on a substance or designated mixture will terminate no later than three years after that substance or designated mixture is added to the list in § 716.17, or October 4, 1986, whichever occurs later. The automatic termination date for the three year reporting period on a substance or mixture will be the annual sunset date (May 1 or November 1) that falls no later than three years after reporting begins, e.g., a reporting requirement taking effect on January 1, 1984 would expire not later than November 1, 1986. A notice will be published in the Federal Register announcing the termination date for reporting for the substances and designated mixtures listed in § 716.17 (a) and (b). An earlier termination date may be published for a substance or designated mixture at the discretion of the Assistant Administrator for Pesticides and Toxic Substances.

(Approved by the Office of Management and Budget under control number 2070-0004)

[FR Doc. 85-23260 Filed 9-27-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 716

[OPTS-84019; FRL-2905-1]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for seven substances by removing them from the list of substances and mixtures in the section 8(d) model Health and Safety Data Reporting rule, 40 CFR Part 716. EPA has reviewed all of the substances listed in § 716.17 and determined that the Agency no longer needs continuing health and safety data reporting on these seven substances. Removing a substance from the section 8(d) model rule eliminates most of the reporting requirements for current and prospective manufacturers, importers, and processors of the substance. Persons who believe that EPA should not remove these substances from the section 8(d) model rule may notify EPA and provide their reasons. If a reasonable justification exists for retaining the substance, EPA will withdraw the substance from the final rule prior to the final rule's effective date.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on October 15, 1985. Written comments should be submitted on or before November 29, 1985. This rule becomes effective on January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716).

The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacturer, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, and 8. Since promulgation of the model rule, EPA has amended the rule 10 times to add approximately 125 substances.

By adding a substance to Part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substances are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance. All but 1 of these reporting requirements are terminated by the 3-year sunset provision. The only reporting requirement unaffected by the sunset provision applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date.

To prevent unnecessary reporting burdens, EPA has instituted a review process to identify and remove those substances for which the Agency no longer needs continuing health and safety data reporting. Pursuant to this process, EPA has reviewed all of the substances listed in § 716.17 and determined that the Agency's health and safety data needs no longer justifies retaining seven substances on the section 8(d) model rule. Removing a substance from the section 8(d) model rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date.

Authority for this action is stated in § 716.19 of the section 8(d) model rule. This section allows the Assistant Administrator for the Office of Pesticides and Toxic Substances to terminate the reporting periods for substances listed in the model rule. This final rule terminates the reporting periods on seven substances by removing them from § 716.17 104 days following publication of this rule in the **Federal Register**. Persons are invited to comment on the determinations presented in this document. If a reasonable justification exists for retaining any of these seven substances on the section 8(d) model rule, EPA will withdraw the substance from the final rule prior to the final rule's effective data.

Elsewhere in this issue of the **Federal Register**, EPA is proposing to amend the section 8(d) Health and Safety Data Reporting Rule by: Lengthening the sunset provision, limiting three reporting exemptions, and clarifying the rule's confidentiality provisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its chemical testing, hazard/risk assessment, and risk management determinations.

II. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS–84019) which is available for inspection in Rm. E–107, 401 M Street SW., Washington, D.C. 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).

2. EPA memos to program offices requesting comments on substances listed in 40 CFR 716.17.

3. Comments from program offices.

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. This rule removes some prospective reporting burdens and therefore will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.17 by removing hexachlorocyclopentadiene from the listing under paragraph (a)(1), and removing Butyl gylcolyl butyl phthalate, Chlorendic acid, Trifluoroethene, Trifluoromethylethene, Hexachloroethane, and Tris (2-chloroethyl) phosphite from the listing under paragraph (a)(3) as follows:

§ 716.17 Substances to which this subpart applies.

(a)(1) * * *

Hexachlorocyclopentadiene, 77–47–4 [Removed].

* * * * *

(3) * * *

Butyl gylcolyl butyl phthalate, 85–70–1 [Removed]. Chlorendic acid, 115–28–6 [Removed].

* * * * *

Trifluoroethene, 359–11–5 [Removed].

* * * * *

Trifluoromethylethene, 677–21–4 [Removed].

* * * * *

Hexachloroethane, 67-72-1 [Removed].

* * * * *

Tris (2-chloroethyl) phosphite, 140-08-9 [Removed].

* * * * *

(Approved by the Office of Management and Budget under control number 2070-0004)

[FR Doc. 85-23261 Filed 9-27-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-040-F]

Medicare Program; Forms Used for Applying for Entitlement or Enrollment or Claiming Payment

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

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare regulations to include provisions pertaining to various forms used in requesting enrollment in and payment for services under the Medicare program. The rule includes an up-to-date listing of forms and procedures for providers of services and other practitioners to obtain billing forms that meet requirements for Medicare and other insurers. In addition, the rule requires hospitals, institutional providers, and physicians and suppliers to obtain certain recently developed billing forms by commercial purchase.

EFFECTIVE DATE: These regulations are effective on October 30, 1985.

SUPPLEMENTARY INFORMATION:

I. Background

On September 7, 1984, we published in the **Federal Register** (49 FR 35386) a proposed rule to update the listing of Medicare enrollment and claims payment forms and the description of procedures for providers of services and suppliers to obtain billing forms. In that proposal we noted that under Medicare, title XVIII of the Social Security Act (the Act), forms are required to establish or document entitlement and to file a claim for payment. When Medicare was enacted, the administration of the program was delegated to the Social Security Administration (SSA) which established the procedures and forms. By Reorganization Order of March 9, 1977 (42 FR 13262), the Health Care Financing Administration (HCFA) became responsible for the administration of the program.

Applications and related forms prescribed by SSA were identified using SSA form numbers (e.g., SSA-1453), and were printed free-of-charge and distributed to the public, organizations, and providers. When HCFA became responsible for the administration of the Medicare program, it substituted its identification in the form numbers (e.g., SSA-1483 became HCFA-1483) but otherwise continued use of the forms and distribution policies developed by SSA. A listing of application forms and claims payment forms appears in the SSA regulations at 20 CFR 422.510 and 442.525. A cross-reference in the HCFA regulations at 42 CFR 405.1662 states that these forms are used for claiming Medicare payment. In our September **Federal Register** document, we proposed that a listing of the pertinent forms be incorporated with other HCFA regulations in Chapter IV of Title 42 (Public Health) of the Code of Federal Regulations.

The September preamble also discussed HCFA's intention that those HCFA forms that can be used by various insurers should be made available only by purchase. Hospitals in several States have already purchased the HCFA-1450. We plan to require the HCFA-1450 for all Medicare billing by all institutional providers, in addition to all hospitals, beginning October 1, 1985, at which time forms HCFA-1453, HCFA-1453-A, HCFA-1486, and HCFA-1487 will no longer be accepted.

When the HCFA-1500 (Health Insurance Claims Form) was introduced nationally, we made a strong effort to secure the cooperation of all major third party payers in entering into local agreements for the joint use of this form by major payers. Our efforts were successful in securing local agreements in one-half of the States and local jurisdictions. Under these local agreements, provisions were made for printing the form locally and sharing the costs among the participating third party payers. Participants in these agreements are not required to provide the form free-of-charge. In States where there are no local agreements, HCFA is now supplying the HCFA-1500 to Medicare carriers who make the forms available to physicians and suppliers. Upon the effective date of this final regulation we will require that this form be obtained by commercial purchase.

II. Summary and Discussion of Public Comments

We received seven letters of comments in response to the proposed rule. The comments were from a State agency, hospitals, an insurance company, and a health care association. A summary of specific comments received and our response follows:

Comment: One commenter objected to having to purchase the form HCFA-1450 because the information requested is not requested by other insurers.

Response: The commenter is incorrect. Other insurers had input into the development of the HCFA-1450. In addition to HCFA specific fields, the form contains fields designed by and for the use of other insurers. Since all insurers are able to use the HCFA-1450, we believe that it is inappropriate to furnish these forms free-of-charge to providers because the forms may be used to bill many insurers in addition to Medicare. We do not believe that Medicare funds should be used to subsidize other insurance programs.

Comment: One commenter requested clarification of the reference in § 405.1662(d) which states that the HCFA-1450 and HCFA-1500 may be obtained only by commercial purchase. The commenter believed that the statement could be construed to preclude providers from having the form printed locally or in-house at a more reasonable rate.

Response: There are restrictions for providers in each State, but HCFA did not place these restrictions. Each State Uniform Billing Committee decided on how the providers in their State would obtain the HCFA-1450. They can obtain them from local printers, or have them printed in-house as long as the forms follow the HCFA approved specifications developed by the American Hospital Association.

Comment: One commenter questioned whether it is the intent to make all physicians and suppliers pay for the HCFA-1500, or only those in States where there are no local agreements for sharing costs among the participating third party payers.

Response: There are no restrictions on how physicians and suppliers obtain the HCFA-1500 as long as the appropriate specifications are met. The agreements between the State and Federal government for sharing printing costs will no longer apply however; carriers can have the HCFA-1500 printed, but will no longer be able to use government funds.

Comment: One commenter asked for clarification of whether there is a standard HCFA-1500 or whether providers will be permitted to have printers alter the form in any way.

Response: There is a standard HCFA-1500, and providers' claims may not be accepted if they have altered the HCFA-

1500. Prior to the U.S. Government Printing Office (GPO) supplying commercial printers with reproducible copies of the HCFA–1500, printers must agree to follow the approved specifications developed by the American Medical Association.

Comment: One commenter believed that the intent of the proposed rule was not clear for Medicare Part B as to who will or will not be required to pay for forms for billing under Medicare Part B and suggested that our rule be reissued for public comment.

Response: We believe that the provisions of the proposed rule were clear with regard to HCFA's intent that the HCFA–1500 (which is used by physicians and suppliers to request payment for medical services) be obtained by commercial purchase on or after the effective date of the final regulations. Beneficiaries request payment using the HCFA–1490S and, of course, do not have to purchase forms.

Comment: One commenter suggested that Medicare intermediaries should accept the Uniform Bill HCFA–1450 as the admission notice and not require an additional HCFA–1453 admission notice.

Response: Depending upon the pilot test now being conducted in several States, current plans are for HCFA to discontinue the admission notice as of November 1, 1985. Until it is discontinued hospitals may use the HCFA–1450 as an admission notice if the intermediary determines that this is appropriate.

Comment: One commenter recommended that HCFA work with State Medicaid agencies to adopt the Uniform Bill form.

Response: On February 1, 1985, we published in the **Federal Register** (50 FR 4800) a final notice that added three new system requirements to the Medicaid Management Information System (MMIS). One of the requirements is that State MMIS systems accept and use exclusively, the Uniform Bill (UB–82), HCFA–1450, for inpatient and outpatient services by January 1, 1986. States that do not have an MMIS are encouraged to accept the form and use it exclusively.

Comment: One commenter believed that all payers should utilize a common format and that changes be implemented in coordination with both providers and payers. The commenter recommended that payers be discouraged from modifying the Uniform Bill (UB–82) form.

Response: Modifications to the Uniform Bill (UB–82) can be made only by the National Uniform Bill Committee, which is chaired by the American Hospital Association. Neither State committees nor payers have the authority to change or modify the form. They can refer recommended changes to the National Committee for consideration.

Comment: One commenter opposed the adoption of the proposed regulations as written, expressing a concern that providers would shift the cost of the HCFA–1450 and HCFA–1500 to insurers who supply them free of charge.

Response: We do not know how the cost of the HCFA–1450 and HCFA–1500 could be shifted to insurers who supply these forms free of charge. Payers can limit their distribution of free forms to quantities related to their bill receipts.

III. Provisions of Final Regulations

These final regulations adopt without revision (except for technical changes and editorial changes) the rules proposed on September 7, 1984. They include provisions pertaining to various forms used in requesting enrollment in and payment for services under the Medicare program. They also provide an up-to-date listing and discussion of procedures for providers of services and other practitioners to obtain billing forms that meet Medicare requirements and those of other insurers. In addition, the regulations require that hospitals, other institutional providers, and physicians and suppliers obtain the billing form HCFA–1450 and form HCFA–1500 through commercial purchase.

IV. Information Collection and Reporting Requirements

Section 405.1662 of this final rule prescribes and lists forms which are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980.

The OMB has granted approval of these forms under the following OMB number:

HCFA form No.	OMB control No.
HCFA–43	0938–0080
HCFA–18–F–5	0938–0251
HCFA–4040	0938–0245
HCFA–1450	0938–0279
HCFA–1453	0938–0010
HCFA–1483	0938–0013
HCFA–1486	0938–0015
HCFA–1487	0938–0012
HCFA–1490S	0938–0008
HCFA–1490U	0938–0008
HCFA–1491	0938–0042
HCFA–1500	0938–0008
HCFA–1660	0938–0020
HCFA–2384	0938–0041

OMB approval for each of these forms is subject at any given time to a specific expiration date. This limit on approval results in ongoing HCFA efforts to maintain and renew OMB approval of the forms, but also in expiration dates which are frequently and continually changing. Therefore, we have opted not to list the current expiration dates for these forms in this document. The public may confirm the most up-to-date OMB control number expiration dates by contacting the following:

HCFA Reports Clearance Officer, G–A–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594–8650

V. Regulatory Impact Statement

A. Executive Order 12291

We have determined that these final regulations do not meet criteria for a "major rule" as defined by section (b) of Executive Order 12291; that is, these regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- 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 import markets.

As noted above, we are revising current regulations to (1) up-date a listing of forms and procedures for providers of services and other practitioners to obtain billing forms, and (2) require hospitals, institutional providers, and physicians, and suppliers to obtain certain recently developed billing forms by commercial purchasers.

Implementing the revision regarding the HCFA–1450 will generate both one-time start-up costs and certain annual costs. Specifically, in FY 1986 we anticipate hospital implementation costs of $20 million for systems related changes and $6.2 million to intermediaries, and about $2 million annual costs to hospitals for the purchase of the HCFA–1450 claims form.

We also expect certain program and provider savings from the use of the HCFA–1450. The Medicare program will realize annual savings of about $5 million ($3 million as a result of simplifying claims processing and $2 million savings from not printing the new claims forms), while hospitals will save about $8 million annually. Hospital savings will result from simplified recordkeeping and billing efficiences and savings in staff time associated with current billing procedures. These projected costs and savings are summarized in the following chart:

COSTS AND SAVINGS RESULTING FROM IMPLEMENTATION OF HCFA-1450

	Fiscal year 1986	Annually after fiscal year 1986
Medicare (costs) [1]	($6.2m)	(0)
Medicare savings	5.0m	$5.0m
Net Medicare (Costs) or Savings	(1.2m)	5.0m
Provider (costs) [1]	(20.0m)	(0)
Provider (costs) [2]	(2.0m)	(2.0)
Provider savings	6.0m	8.0m
Net provider (costs) or savings	(14.0m)	6.0m

[1] One time implementation costs.
[2] Annual costs.

Regarding the HCFA-1500 form, we estimate a negligible impact from requiring its purchase. However, we cannot estimate provider costs of purchase of the HCFA-1500 because (1) the forms can be printed and purchased from a variety of sources; (2) the volume sold to a purchaser can vary, thus influencing the purchase price; and (3) the form can be purchased in single sheet or in continuous fed format which differ in price. While those factors prohibit quantifying an estimate, our programmatic experience indicates that the providers' costs will not be significant.

As the estimated annual budget effects are significantly less than the $100 million threshold, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

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

As noted in the Executive Order analysis, we are adding to a list of existing billing, entitlement, and enrollment forms used in requesting payment for services under Medicare. These revisions will not have a significant impact on providers.

The purchase and use of the HCFA-1450 will impact providers in several ways. First, about 7,000 hospitals will experience annual costs of about $2 million for the printing of the HCFA-1450 claims form. A specific hospital's costs should vary depending on its own claims volume experience.

Second, as mentioned earlier, these annual costs would be offset by simplified recordkeeping and other billing efficiencies inherent in the use of the HCFA-1450. We estimate annual hospital savings of about $8 million from these benefits. As with the implementation costs, the savings to a particular hospital would be relative to the volume of claims generated by the hospital. As the long-term savings will offset incurred costs, thus minimizing the impact of those provisions, we believe that the purchase and use of the HCFA-1450 will not result in a significant impact on affected providers.

V. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), Cost-based reimbursement, End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Prospective payment system, Reasonable charges, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

1. The table of contents for Part 405, Subpart P is amended by revising the title of § 405.1662 to read as follows:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

* * * * *

Sec.
405.1662 Forms used for applying for entitlement or enrollment and claiming payments.

* * * * *

Authority: Secs. 1102, 1814, 1835, 1871 and 1883 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f, 1395n, 1395hh and 1395tt).

2. Section 405.1662 is revised to read as follows:

§ 405.1662 Forms used for applying for entitlement or enrollment and claiming payment.

(a) *General.* HCFA has designated specific forms to be used by the public applying for entitlement to benefits under Medicare Part A and Medicare Part B. In addition, HCFA has prescribed forms for claiming payment for services provided to enrollees. A claim for payment under Medicare Part A or Medicare Part B must be submitted by a participating provider of services (or a hospital which has elected to claim payment of emergency services or certain services outside the United States) on a form designated by HCFA and executed in accordance with instructions prescribed by HCFA. Provisions for the use of each prescribed application and payment form are described in paragraph (b) or (c) of this section.

(b) *Application forms.* The following forms are used in applying for entitlement under Medicare Part A or Part B:

HCFA-18-F-5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

HCFA-4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

HCFA-40-B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment in SMI.)

HCFA-40-D—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

HCFA-40-F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

HCFA-43—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD). (An initial application for entitlement by individuals with ESRD).

An individual who upon attainment of age 65 is entitled to monthly social security or railroad retirement benefits or has filed and established eligibility for such benefits is automatically entitled to hospital insurance protection. (For conditions of entitlement to Part A benefits, see Part 406, Subpart A, of this chapter.) Except for individuals residing in Puerto Rico or outside the United States, an individual who is entitled to Part A protection based on age 65, disability, or ESRD is automatically enrolled in Medicare Part B unless the individual refuses such enrollment. An individual who is not entitled to Part A is not subject to automatic enrollment in Part B. Also, an individual who refuses automatic enrollment must subsequently request Part B coverage to become enrolled (see Forms HCFA-4040, HCFA-40-B, HCFA-40-D, and HCFA-40-F as described in this section. (For conditions of entitlement to Part B benefits, see Part 405, Subpart B, of this chapter.)

(c) *Related forms.* The following forms are prescribed for use in requesting payment for services under Medicare Parts A and B and for other related purposes:

HCFA–1450—Uniform Institutional Provider Bill. (This form is for institutional provider billing for Medicare inpatient, outpatient and home health services.)

HCFA–1453—Inpatient Hospital and Skilled Nursing Admission and Billing. (To be completed by a hospital or skilled nursing facility for payment of hospital or skilled nursing facility expenses for treatment of a patient confined in a hospital or skilled nursing facility.)

HCFA–1483—Provider Billing for Medical and Other Health Services. (To be completed by a hospital for payment for treatment of a patient who is not confined to an institution or has no Medicare Part A benefits available during a confinement.)

HCFA–1486—Inpatient Admission and Billing—Christian Science Sanatorium. (To be completed by a Christian Science sanatorium for payments for treatment of a patient confined in the sanatorium.)

HCFA–1487—Home Health Agency Report and Billing. (For use by an organization providing home health services.)

HCFA–1490S—Request for Medicare Payment. (For use by a patient to request payment for medical expenses.)

HCFA–1490U—Request for Medicare Payment by Organization. (For use by an organization requesting payment for medical services.)

HCFA–1491—Request for Medicare Payment-Ambulance. (For use by an organization requesting payment for ambulance services.)

HCFA–1500—Health Insurance Claim Form. (For use by physicians and suppliers to request payment for medical services.)

HCFA–1660—Request for Information-Medicare Payment for Services to a Patient now Deceased. (For use in requesting amounts payable under title XVIII to a deceased beneficiary.)

HCFA–1739—Request for Enrollment Card and Information by Foreign Beneficiary. (Used to notify beneficiaries approaching age 65 who reside in foreign countries that they are eligible to enroll for SMI. They must return this form if they wish additional information and an application, HCFA–40–F.)

HCFA–1966—Health Insurance Card. (This card is issued to all individuals entitled to Part A or Part B benefits, or both, whether the entitlement is based on age, disability or end-stage renal disease.)

HCFA–2384—Third Party Premium Billing Request. (For use by an enrollee who must pay premiums by direct remittance and is having his or her premium notices sent to a third party.)

(d) *Where applications and forms are available.* Excluding forms HCFA–1450 and HCFA–1500, all applications and related forms prescribed for use in the programs administered by HCFA under the provisions of title XVII of the Social Security Act are printed under the specifications of HCFA and distributed free-of-charge to the public, institutions, or organizations for purposes described in paragraph (b) of this section. The HCFA–1450 and HFCA–1500 may be obtained only by commercial purchase. All other prescribed application forms can be obtained upon request from HCFA or any Social Security branch or district office. The HCFA–149OS is also available at local Social Security Offices. Forms, other than the HCFA–1450 and HCFA–1500, appropriate for use in requesting payment for services provided under the Medicare program can also be obtained from the intermediaries or carriers (organizations under contract with HCFA to make payment for such services). HCFA is not required to provide the HCFA–1450 and HCFA–1500 forms free-of-charge.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance and Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 24, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–23242 Filed 9–27–85; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6678]

Suspension of Community Eligibility; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
REGION III					
Maryland:					
Queen Anne's	Centreville, Town of	240056B	Aug. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	July, 26, 1974, May 21, 1976, and Sept. 27, 1985.	Sept. 27, 1985.
Wicomico	Sharptown, Town of	240081B	Aug. 15, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 9, 1974, Dec. 26, 1975, and Sept. 27, 1985.	Do.
Queen Anne's	Queen Anne's, Town of	240059B	Oct. 12, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 16, 1974, July 9, 1976, and Sept. 27, 1985.	Do.
REGION IV					
Georgia: Glynn	Brunswick, City of	130093B	March 6, 1974, Emerg.; June 19, 1985, Reg.; Oct. 1, 1985, Susp.	May 24, 1974, Jan. 19, 1976, and June 19, 1985.	Do.
REGION VI					
Texas:					
Harris	Unincorporated Areas	480287E	May 14, 1970, Emerg.; May 26, 1970, Reg.; Sept. 27, 1985, Susp.	May 26, 1970, Mar. 10, 1972, July 1, 1974, July 30, 1976, Mar. 30, 1982, and Sept. 27, 1985.	Do.
Do	Houston, City of	480296D	Sept. 14, 1973, Emerg.; Dec. 11, 1979, Reg.; Sept. 27, 1985, Susp.	May 26, 1970, Mar. 10, 1972, July 1, 1974, July 30, 1976, Dec. 11, 1979, Sept. 21, 1982, and Sept. 27, 1985.	Do.
REGION VIII					
North Dakota:					
Cass	Briarwood, Town of	380651A	Apr. 2, 1982, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Sept. 27, 1986.
Ransom	Fort Ransom, City of	380332A	Mar. 21, 1978, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Do.
REGION IX					
Arizona: Gila	Unincorporated Areas	040028B	Jan. 2, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Nov. 1, 1974, Aug. 8, 1977, and Sept. 27, 1985.	Sept. 27, 1985.
California:					
Sonoma	Cloverdale, City of	060376B	Mar. 11, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 22, 1974, Feb. 6, 1976, and Sept. 27, 1985.	Do.
Santa Barbara	Unincorporated Areas	060331C	Dec. 23, 1971, Emerg.; Mar. 15, 1979, Reg.; Sept. 27, 1985, Susp.	Dec. 20, 1974, Mar. 15, 1979, and Sept. 27, 1985.	Do.
Shasta	do	060358B	Feb. 21, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1977 and Sept. 27, 1985.	Do.
REGION X					
Washington: Pierce	Orting, City of	530143B	July 17, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 28, 1973, July 30, 1976, and Sept. 27, 1985.	Do.
REGION I—MINIMAL CONVERSIONS					
Maine:					
Franklin	Ashfield, Town of	250109B	Jan. 19, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 28, 1974, Nov. 14, 1975, and Sept. 27, 1985.	Do.
Somerset	Athens, Town of	230354B	June 20, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 17, 1975, July 30, 1976, and Sept. 27, 1985.	Do.
Waldo	Knox, Town of	230258A	July 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 17, 1975 and Sept. 27, 1985.	Do.
Do	Liberty, Town of	230259A	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 14, 1975 and Sept. 27, 1985.	Do.
Piscataquis	Monson, Town of	230411A	June 17, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 14, 1975 and Sept. 27, 1985.	Do.
Somerset	Ripley, Town of	230368B	Feb. 9, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 3, 1975, Dec. 31, 1976, and Sept. 27, 1985.	Do.
Do	St. Albans, Town of	230369A	Aug. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Apr. 11, 1975 and Sept. 27, 1985.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Waldo	Unity, Town of	230131B	July 15, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 16, 1974 and Sept. 24, 1976.	Do.
Piscataquis	Willimantic, Town of	230417B	Jan. 14, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 7, 1975, July 2, 1976, and Sept. 27, 1985.	Do.
Vermont:					
Rutland	Benson, Town of	500259B	June 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, Oct. 8, 1976, and Sept. 27, 1985.	Do.
Orange	Braintree, Town of	500235B	Nov. 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, May 8, 1979, and Sept. 27, 1985.	Do.
Orleans	Conventry, Town of	500246A	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 21, 1975 and Sept. 27, 1985.	Do.
Do	Derby, Town of	500248B	Feb. 13, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, Nov. 19, 1976, and Sept. 27, 1985.	Do.
Essex	East Haven, Town of	500209B	Mar. 16, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, May 7, 1976, and Sept. 27, 1985.	Do.
Chittenden	Hinesburg, Town of	500322B	Mar. 5, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 31, 1975, Feb. 7, 1978, and Sept. 27, 1985.	Do.
Bennington	Readsboro, Town of	500017B	July 17, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 31, 1974, Feb. 18, 1977, and Sept. 27, 1985.	Do.
Caledonia	Sheffield, Town of	500194A	July 22, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 7, 1975 and Sept. 27, 1985.	Do.
REGION IV					
Alabama: Tallapoosa	Alexander, City of	130127B	Dec. 17, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 17, 1978 and Sept. 27, 1985.	Do.
Georgia: Long	Unincorporated Areas	130127B	Jan. 7, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 17, 1978 and Sept. 27, 1985.	Do.
Kentucky:					
Breathitt	do	210023B	Apr. 20, 1977, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 3, 1975, July 15, 1977, and Sept. 27, 1985.	Do.
Lincoln	Hustonville, City of	210144B	Aug. 26, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 2, 1974, June 18, 1976, and Sept. 27, 1985.	Do.
Estill	Irvine, City of	210064B	July 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 17, 1974, June 18, 1976, and Sept. 27, 1985.	Do.
Breathitt	Jackson, City of	210024B	July 21, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 17, 1974, Jan. 2, 1976, and Sept. 27, 1985.	Do.
Marion	Lebanon, City of	210162B	May 27, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 31, 1974, June 4, 1976, and Sept. 27, 1985.	Do.
Bourbon	Millersburg, City of	210014B	Oct. 27, 1977, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 10, 1974, Feb. 20, 1976, and Sept. 27, 1985.	Do.
Powell	Unincorporated Areas	210194B	Nov. 1, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Nov. 29, 1974, Dec. 23, 1977, and Sept. 27, 1985.	Do.
Carroll	Sanders, Town of	210046B	Apr. 23, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 23, 1974, Apr. 16, 1976, and Sept. 27, 1985.	Do.
Mississippi					
Tallahatchie	Glendora, City of	280210B	Apr. 9, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 10, 1975, Dec. 8, 1978, and Sept. 27, 1985.	Do.
Bolivar	Mengold, Town of	280019C	Feb. 11, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 7, 1974, June 18, 1976, Feb. 8, 1980, and Sept. 27, 1985.	Do.
Do	Mound Bayou, City of	280020B	Sept. 12, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 7, 1974, Aug. 22, 1975, and Sept. 27, 1985.	Do.
Do	Pace, Town of	280021A	Apr. 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 25, 1974 and Sept. 27, 1985.	Do.
Leflore	Schlater, Town of	280105C	May 3, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 23, 1974, July 23, 1976, Mar. 21, 1980, and Sept. 27, 1985.	Do.
Bolivar	Shelby, City of	280024A	May 4, 1973, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 29, 1976 and Sept. 27, 1985.	Do.
Yalobusha	Water Valley, City of	280187B	Dec. 5, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 1, 1974, Oct. 24, 1975, and Sept. 27, 1985.	Do.
REGION V					
Illinois:					
Grundy	Coal City, City of	170258	Apr. 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Do.
Do	Mazon, Village of	170262B	Aug. 12, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 18, 1974, Mar. 5, 1976, and Sept. 27, 1985.	Do.
Pulaski	Ullin, Village of	170568B	May 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Apr. 12, 1974, May 14, 1976, and Sept. 27, 1985.	Do.
Minnesota:					
Hennepin	Eden Prairie, City of	270159B	May 16, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 1, 1974, Sept. 26, 1975, and Sept. 27, 1985.	Do.
Washington	Marine-on-St. Croix, City of	270509B	Sept. 12, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 15, 1974, Nov. 28, 1975, and Sept. 27, 1985.	Do.
Mille Lacs	Unincorporated Areas	270624B	Apr. 15, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 2, 1979 and Sept. 27, 1985.	Do.
Hennepin	Minnestrista, City of	270175B	Sept. 12, 1978, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 13, 1978 and Sept. 27, 1985.	Do.
Wisconsin:					
Green Lake	Green Lake, City of	550376A	May 16, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 22, 1976 and Sept. 27, 1985.	Do.
Rusk	Sheldon, Village of	550376B	July 18, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 2, 1974, May 28, 1976, and Sept. 27, 1985.	Do.
Shawano	Whittenberg, Village of	550423B	Apr. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 24, 1974, Aug. 27, 1976, and Sept. 27, 1985.	Do.
REGION VII					
Missouri: Scott	Chaffee, City of	290300B	Mar. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 15, 1974, May 7, 1976, and Sept. 27, 1985.	Do.
Nebraska:					
Buffalo	Shelton, Village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 19, 1976, Sept. 3, 1976, and Sept. 27, 1985.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Gibbon, City of	310015B	June 25, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 31, 1974, July 23, 1976, and Sept. 27, 1985.	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: September 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-23232 Filed 9-27-85; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 205

[Docket No. 205N]

Disaster Assistance; Implementation of Coastal Barrier Resources Act

Correction

In FR Doc. 85-22626, beginning on page 38525 in the issue of Monday, September 23, 1985, make the following correction:

§ 205.508 [Corrected]

On page 38528, second column, § 205.508(c)(2), the second paragraph designated as "(ii)" should be designated as "(iii)".

BILLING CODE 1505-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 74

[Gen Docket No. 82-335: FCC 85-507]

Frequency Allocation for Aural Broadcast Studio Transmitter Link and Intercity Relay Stations (STL/ICR)

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: In response to two *Petitions for Partial Reconsideration* 50 FR 10855, March 18, 1985; 50 FR 25463, June 19, 1985, the Federal Communications Commission is upholding its decision that reallocated the 944–947 MHz band for STL/ICR stations and required any such stations operating under a temporary authority in the adjoining 942–944 MHz band to vacate within five years. The latter band was reallocated for new two-way fixed service usage by Government and non-Government entities.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Office of Science and Technology, 1919 M Street NW., Washington, D.C. 20554 (202) 653-8149.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 2 and 74

Radio.

Memorandum Opinion and Order

In the Matter of Amendment of Parts 2 and 74 of the Commission's Rule's to provide additional frequencies for the use of Aural Broadcast Studio Transmitter Link and Intercity Relay Stations; Gen. Docket No. 82-335.

Adopted: September 17, 1985.
Released: September 20, 1985.

By the Commission.

1. On November 21, 1984, the Commission adopted a *Report and Order* in Gen. Docket No. 82-335, amending the Commission's Rules to reallocate to Aural Broadcast Studio Transmitter Link (STL) and Intercity Relay (ICR) stations (hereinafter STL/ICR), the 944–947 MHz band in the fifty states and the 942–947 MHz band in Puerto Rico.[1] It also provided for the grandfathering of existing STL/ICR stations in the 942–944 MHz band, which was part of the 941–944 reallocation for Government and non-Government fixed stations.[2] Approximately 56 STL/ICR stations operating under special temporary authorization (STA) in the reallocated 942–944 MHz band were not grandfathered but rather were given five years to change frequency.

2. On February 19, 1985, the Society of Broadcast Engineers (SBE) and Service Broadcasting Corporation (SBC) each filed a Petition for Partial Reconsideration. SBC's main concern was five temporary stations serving the Dallas-Ft./Worth, Texas area. The National Association of Broadcasters (NAB) filed comments supportive of the petition filed by SBC. The petitioners disagreed with the Commission's decision not to grandfather existing STL/ICR stations operating under special temporary authorizations in the 942–944 MHz band. They argued that STL/ICR channels in the existing band [3] are already congested in many major areas and that there are not sufficient alternative frequencies and propagation paths to accommodate many of the STA stations required to relocate. The petitioners also stated that the grandfathering of the additional 56 STA stations would not seriously prejudice fixed usage in the 942–944 MHz band.

3. The Commission did not find the petitioners' request to contain any information sufficient to warrant reconsideration of its decision. The issues of congestion, the relocation of stations affected by reallocation of the band, and the economic impact on stations required to relocate had all been the subject of discussion since the proceeding was initiated. The Commission's *Report and Order* responded to each of these issues and due consideration to the various interests given in an equitable manner in the 900 MHz band reallocation proceedings.

4. Regarding the issue of congestion, current band usage has demonstrated the plausibility of additional sharing that can be achieved by careful system planning and design, even in crowded metropolitan areas. Various means can be used to enhance system design in congested areas and improve the isolation between systems. These include antenna site selection and propagation path engineering employing directive antennas, cross polarization, and low power transmitters and filters. Also, the use of intermediate relay or booster stations that receive and transmit on the same channel have been used to improve path independence. Further, the Commission is presently

[1] *Report and Order*, Docket No. 82-335, released on January 18, 1985, 50 FR 4655, February 1, 1985.

[2] *First Report and Order*, Gen. Docket No. 82-243 adopted on November 21, 1984, 50 FR 4650, February 1, 1985. The action reallocated the frequencies 932-935 MHz and 941-944 MHz for two-way use by the Government and non-Government fixed services.

[3] This band now extends from 944–952 MHz. The 947–952 MHz has been allocated for broadcast auxiliary services for many years.

exploring the use of narrow channels in the 944–952 MHz band to help increase use of the channels available.[4]

5. The *Report and Order* in Gen. Docket No. 82–243 paired the 932–935 MHz and 941–944 MHz bands for the new Government and non-Government fixed services. The new services will be used for two-way operations which require transmitting and receiving on paired frequencies.[5] On the other hand, although their operation is between fixed points, STL/ICR stations operate one-way from the studio-to-transmitter, so only one channel is used. In Docket 82–243, the Commission noted the impact auxiliary broadcast stations could have on the efficiency of use of the channels available for the new fixed services, but in view of the number and licensing situation of many of the STL/ICR stations, it accommodated their continued operation. In making the reallocation, the Commission considered 121 existing STL/ICR stations, the licenses for which were granted prior to the conclusion of Docket 18262; and 56 stations, for which temporary authorizations were granted subsequent to the Docket. In this regard, Docket 18262 tasked the Commission with finding new spectrum for STL/ICR stations when the 942–947 MHz band was reallocated from fixed to land mobile. The 121 STL/ICR stations at 942–944 MHz were licensed prior to the conclusion of Docket 18262 and were allowed to continue operations pending further rulemaking. The Commission decided to grandfather the operation of this limited number of STL/ICR stations in the new Government/non-Government fixed service band. Their long history of permanent operation on these frequencies supports this conclusion. On the other hand, the 56 STA stations were authorized on a temporary basis after Docket 18262 was adopted. Under such circumstances, grandfathering of these 56 STA stations was not warranted. In Docket 82–335, the Commission, nevertheless, attempted to lessen the impact on the STA stations by providing protection from interference from new assignments for one year and by permitting operations on a secondary basis for up to four additional years. Thus, while it would have been more efficient to remove all STL use from the reallocated Government/non-Government fixed band, the Commission's decision was a compomise to accommodate as much STL/ICR operation as practical without further complicating the future usage of the band by the new users.

6. Regarding the economic question, the Commission was fully aware of the cost associated with station rechannelization, and this was considered in the reallocation decision.[6] However, to make the entire 900 MHz reallocation package work, it was unavoidable that some stations would incur some cost for modification of their operation to comply with the new spectrum allocations. Stations authorized under STA's and affected by this proceeding were effectively on notice that they might have to move.

7. The Commission therefore reiterates that the decision not to grandfather temporary stations in the 942–944 MHz band is correct. Also, we believe that most, if not all, of the temporary STL/ICR stations, along with new station growth, can be accommodated in the 944–952 MHz band if careful equipment design and local frequency coordination is employed.

8. For the reasons set forth above, it is ordered that the Petitions for Partial Reconsideration filed by The Society of Broadcast Engineers and Service Broadcasting Corporation of the Commission's *Report and Order* in Gen. Docket No. 82–335 are denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–23025 Filed 9–27–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 90 and 94

Private Land Mobile Radio Services and Operational-Fixed Microwave Services; Editorial Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends rules for the private land mobile radio services and operational-fixed microwave services to correct errors and omissions, delete obsolete and redundant material, and revise unclear wording to restore the intended meanings to various rule sections. The purpose of these editorial amendments is to reduce any confusion or doubt about the affected rules.

EFFECTIVE DATE: November 30, 1985.

FOR FURTHER INFORMATION CONTACT: Richard L. Kenney, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 90

Private land mobile radio services, Radio.

47 CFR Part 94

Private operational-fixed microwave service, Radio.

Order

Adopted: September 23, 1985.
Released: September 25, 1985.
By the Commission.

1. This Order amends several sections of Part 90 and one section of Part 94 of the Commission's rules governing the Private Land Mobile Radio Services and Private Operational-Fixed Microwave Services. These amendments correct typographical errors and omissions, delete obsolete material, and revise unclear wording to restore the intended meanings to the affected sections. None of the amendments are substantive.

2. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(d) of the Commission's rules. Provisions of 5 U.S.C. 553 concerning public notice, administrative procedure, and effective date do not apply because the amendments are strictly editorial.

3. In view of the above, it is ordered that the rule amendments set forth in the attached Appendix be adopted and made effective September 25, 1985.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Parts 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations (47 CFR) are amended as follows:

PART 90—[AMENDED]

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

1. Section 90.5 is amended by revising paragraphs (e) and (i), redesignating paragraphs (h) as (i) and (i) as (j), and adding a new paragraph (h), to read as follows:

---

[4] *Notice of Proposed Rulemaking* in MM Docket No. 85–36, 50 FR 8172 (February 28, 1985).

[5] See *First Report and Order, Gen. Docket No. 82–243, footnote 2 supra*, paragraph 14. Docket 82–243 stated that ". . . the new bands will be fully utilized by two-way services."

[6] In addition to allocating 3 MHz for STL/ICR stations, the Commission made or proposed the following allocations at 900 MHz: 6 MHz for a new Government/Non-Government Fixed Service (Gen. Docket No. 82–243), 12 MHz for cellular expansion (Gen. Docket 84–1231), 12 MHz for private land mobile expansion (Gen. Docket No. 84–1233), and 8 MHz for the establishment of a Mobile Satellite Service (Gen. Docket No. 84–1234).

§ 90.5 Other applicable rule parts.

* * * * *

(e) Part 15 provides for the operation of incidental and restricted radio frequency devices that do not require an individual license.

* * * * *

(h) Part 22 contains regulations for public (common carrier) mobile radio services.

(i) Part 68 contains technical standards for connection of private land mobile radio equipment to the public switched telephone network.

(j) Part 94 governs licensing and operation of private operational-fixed radio stations on frequencies in the microwave spectrum above 928 MHz.

2. Section 90.17 is amended by correcting errors at "154.45625," and "154.47875" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraphs (c)(4), (6), and (16) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(b) * * *

LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
154.115	do	5
154.45625	Fixed or mobile	9, 20, 21, 22
154.46375	do	7, 19, 20, 21, 22
154.47125	do	7, 20, 21, 22
154.47875	do	9, 20, 21, 22
154.965	Base or mobile	
*	*	*
851 to 866	Base or mobile	15
928 and above	Operational-fixed	16
929 to 930	Base only	26
1427 to 1435	Operational-fixed, base or mobile.	17
*	*	*

(c) * * *

* * * * *

(4) [Reserved]

* * * * *

(6) Assignment and use of frequencies in the band 72–76 MHz are governed by § 90.257 for operational-fixed stations and by § 90.241 for emergency call box operations. Specific frequencies are listed at § 90.257(a)(1).

* * * * *

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

3. Section 90.19 is amended by deleting all frequencies from "1610" through "1714" kilohertz (which were meant to be removed by action published at 46 FR 52372, Oct. 27, 1981) and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (e)(23) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(d) * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
Kilohertz:		
1722	Base or mobile	2, 3
*	*	*
851 to 866	Base or mobile	22
928 and above	Operational-fixed	23
929 to 930	Base only	27
1427 to 1435	Operational-fixed, base or mobile.	24
*	*	*

(e) * * *

(23) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

4. Section 90.21 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(11) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	15
1427 to 1435	Operational-fixed, base or mobile.	12
*	*	*

(c) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

5. Section 90.23 is amended by correcting the omission of limitation 5 at "156.180" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(11) to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(b) * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
156.165	do	5, 14
156.180	do	5, 14
156.195	do	5
*	*	*
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	16
1427 to 1435	Operational-fixed, base or mobile.	12
*	*	*

(c) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

6. Section 90.25 is amended by correcting the limitation numbers for "171.425" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(17) to read as follows:

§ 90.25 Forestry Conservation Radio Service.

* * * * *

(b) * * *

FORESTRY CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
170.575	do	4, 9, 10
171.425	do	4, 9, 11
171.475	do	4, 10, 12
*	*	*
851 to 855	Base or mobile	16
928 and above	Operational-fixed	17
929 to 930	Base only	21
1427 to 1435	Operational-fixed, base or mobile.	18
*	*	*

(c) * * *

(17) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

7. Section 90.53 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (b)(22) to read as follows:

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
851 to 866	Base or mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	32

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitation(s)
1427 to 1435	Operational-fixed, base or mobile	23

(b) * * *

(22) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

8. Section 90.55 is amended by revising the introductory text as follows:

§ 90.55 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of sections 90.53(b)(4), (25), (26), or (32). Paging operations on other frequencies authorized before August 15, 1984, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 kilometers (75 mi.) of the following urbanized areas:

9. Section 90.63 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (d)(18) to read as follows:

§90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * *	* * *	*
851 to 866	Base or mobile	17
928 and above	Operational-fixed	18
929 to 930	Base only	25
1427 to 1435	Operational-fixed, base or mobile.	13
* * *	* * *	*

(d) * * *

(18) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

10. Section 90.65 is amended by correcting errors in limitation numbers at "36.25" and between "153.050" and "153.125" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(31) to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * *	* * *	*
35.48	do	37
36.25	do	9
41.71	do	9
* * *	* * *	*
150.980	Base or mobile	6
153.035	do	12
153.050	do	4, 5, 13, 36, 40
153.065	do	13
153.080	do	4, 5, 13
153.095	do	13
153.110	do	4, 5, 13
153.125	do	13, 36, 40
153.140	do	4, 5, 13
* * *	* * *	*
806 to 821	Mobile only	30
851 to 866	Base or mobile	30
928 and above	Operational-fixed	31
929 to 930	Base only	42
1427 to 1435	Operational-fixed, base or mobile.	26
* * *	* * *	*

(c) * * *

(31) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

11. Section 90.67 is amended by deleting "47.44," correcting limitation numbers at "30.72," "157.725," and "158.355," and changing "952 and above" to "928 and above" in the frequency table; and by revising paragraph (c)(21) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * *	* * *	*
30.68	do	
30.72	do	
31.48	do	30
* * *	* * *	*
37.44	do	
37.88	do	
* * *	* * *	*
154.625	Base or mobile	5
157.725	do	29
157.740	do	5
* * *	* * *	*
158.325	do	6, 31, 33
158.355	do	2, 32
158.370	do	2
* * *	* * *	*
470 to 512	Base or mobile	19
806 to 821	Mobile only	20
851 to 866	Base or mobile	20
928 and above	Operational-fixed	21
929 to 930	Base only	35
1427 to 1435	Operational-fixed, base or mobile.	16
* * *	* * *	*

(c) * * *

(21) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

12. Section 90.69 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(6) to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(b) * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * *	* * *	*
851 to 866	Base or mobile	5
928 and above	Operational-fixed	6
929 to 930	Base only	10
1427 to 1435	Operational-fixed, base or mobile.	7
* * *	* * *	*

(c) * * *

(6) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

13. Section 90.71 is amended by changing "952 and above" to "928 and above" and changing the limitation number at "929–930" from "4" to "9" in the frequency table, and by renumbering the redundant paragraph (c)(4) as (c)(9) and revising the remaining paragraph (c)(4) to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * *	* * *	*
851 to 866	Base or mobile	3
928 and above	Operational-fixed	4
929 to 930	Base only	9
1427 to 1435	Operational-fixed, base or mobile.	5
* * *	* * *	*

(c) * * *

(4) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

(5) This band is available in this service subject to the provisions of § 90.259.

* * * * *

(9) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

* * * * *

14. Section 90.73 is amended by changing "952 and above" to "928 and above" in the frequency table and by revising paragraphs (d) (22) and (23) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
851 to 866	Base or mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	36
1427 to 1435	Operational-fixed, base or mobile.	17
*	*	*

(d) * * *

(22) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

(23) Available only on a shared basis with stations in other services and subject to no protection from interference caused by the operation of industrial, scientific, or medical (ISM) devices.

* * * * *

15. Section 90.75 is amended to correct errors in the frequency table by deleting "27.39" and "27.41," revising class of station at "463.250," "465.000," and "470 to 512," changing "952 and above" to "928 and above," and restoring the frequency band "2450 to 2500." This section is also amended to clarify the wording of paragraph (c)(3), to restore the text to (c)(24), and to revise (c)(34). Revised section should read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
Megahertz:		
27.43	Base or mobile	1, 2
27.45	do	1, 2
*	*	*
463.200	Base or mobile	1, 2, 26
463.225	do	1, 2, 26
463.250	do	1, 2, 26
*	*	*
464.975	do	1, 2, 26, 29
465.000	Base	10, 30
465.650	Mobile	2, 4, 25, 26, 31
*	*	*
469.975	do	1, 2, 26
470 to 512	Base or mobile	32
806 to 821	Mobile	33
851 to 866	Base or mobile	33
928 and above	Operational-fixed	34
929 to 930	Base only	42
1427 to 1435	Operational-fixed, base or mobile.	21
2450 to 2500	Base or mobile	24
10,550 to 10,680*	do	

* * * * *

(c) * * *

(3) This frequency will be assigned only to stations used in itinerant operations, except within 35 miles (56 km.) of Detroit, Mich., where it may be assigned for either itinerant or permanent area operations (i.e., general use).

* * * * *

(24) Frequencies in this band are available only on a shared basis with stations in other services, and without protection from interference caused by the operations of ISM devices.

* * * * *

(34) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

16. Section 90.79 is amended by correcting the frequency table and revising paragraph (d)(16) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency of band	Class of station(s)	Limitation(s)
*	*	*
467.525	do	13
470 to 512	Base or mobile	14
806 to 821	Mobile	15
851 to 866	Base or mobile	15
928 and above	Operational-fixed	16
929 to 930	Base only	24
1427 to 1435	Operational-fixed, base or mobile.	11
2450 to 2500	Base or mobile	17
*	*	*

(d) * * *

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

17. Section 90.81 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (d)(8) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
851 to 866	Base or mobile	7
928 and above	Operational-fixed	8
929 to 930	Base only	12
1427 to 1435	Operational-fixed, base or mobile.	2
*	*	*

(d) * * *

(8) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

18. Section 90.89 is amended by correcting errors at "44.20" and "457.425," changing "952 and above" to read "928 and above" in the frequency table, and revising paragraph (c)(13) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
44.18	do	5
44.20	do	5, 20
44.22	do	5
*	*	*
457.375	do	10
457.425	do	10
457.475	do	10
*	*	*
851 to 866	Base or mobile	12
928 and above	Operational-fixed	13
929 to 930	Base only	18
1427 to 1435	Operational-fixed, base or mobile.	14
*	*	*

(c) * * *

(13) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

19. Section 90.91 is amended by changing "952 and above" to read "928 and above" in the frequency table, and by revising paragraph (c)(14) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
*	*	*
851 to 866	Base or mobile	13
928 and above	Operational-fixed	14
929 to 930	Base only	19
1427 to 1435	Operational-fixed, base or mobile.	15
*	*	*

(c) * * *

(14) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

20. Section 90.93 is amended by changing "952 and above" to read "928 and above" in the frequency table, and

by revising paragraph (c)(6) to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * * * *		
851 to 866	Base or mobile	5
928 and above	Operational-fixed	6
929 to 930	Base only	13
1427 to 1435	Operational-fixed, base or mobile	7
* * * * *		

(c) * * *

(6) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

21. Section 90.95 is amended by changing "952 and above" to read "928 and above" in the frequency table, and by revising paragraph (d)(11) to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * * * *		
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	15
1427 to 1435	Operational-fixed, base or mobile	12
* * * * *		

(d) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

22. Section 90.175 is amended by revising paragraph (a)(2) to clarify the wording of the third sentence in particular, and the rest of the paragraph in general, as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) * * *

(2) A statement from a frequency coordinating committee recommending the frequency which will result in the least amount of interference to all existing stations in the particular area. The committee's recommendations may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any potential interference. Except for narrowband operations, the committee shall not recommend any frequency 15 kHz removed from an adjacent channel assigned to a base station separated by less than 10 miles (16 km.), seven miles (11 km.) in the Taxicab Radio Service. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for authorizations in the radio service and in the area served by the committee. The functions of such committees are purely advisory. Their recommendations are not binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–170 MHz band, is 17.5 kHz or less removed from a frequency available to another radio service, and is assignable only after coordination, the committee's statement shall affirm that coordination with a similar committee for the other service has been accomplished. Coordination with another service is not required, however, for narrowband assignments on frequencies more than five kilohertz removed from other narrowband assignments.

* * * * *

23. Section 90.238(e) was revised incorrectly by an editorial amendment published at 48 FR 9273, March 4, 1983. It is amended again to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(e) Frequencies separated by 12.5 kHz from regularly assignable frequencies in the 450–470 MHz band, as specified at § 90.267, except that such offset channels between 460.650 and 460.875 MHz and between 465.650 and 465.875 MHz are available in the Business Radio Service exclusively for one-way, non-voice biomedical telemetry operation in hospitals, medical centers, or convalescent centers.

* * * * *

§ 90.241 [Amended]

24. Section 90.241 is amended by correcting the reference to the rule section in paragraph (a) from "§ 90.17(b)" to "§ 90.257(a)(1)."

§ 90.243 [Amended]

25. Section 90.243 is amended by adding to paragraph (a)(1) the word "Manufacturers" between "Forest Products." and "Telephone Maintenance."

§ 90.261 [Amended]

26. Section 90.261 is amended by correcting omissions and errors in the list of frequencies in paragraph (c). The frequencies "451.250," "453.725," "458.150," and "458.975" should be added to the list and "458.460" should be corrected to read "458.450."

27. Section 90.267 is amended by deleting the last sentence of paragraph (a)(1), because of an earlier revision of § 90.233, and by correcting omissions and errors in the table of frequencies under paragraph (b), as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(1) All stations will be licensed as mobiles but they may serve the functions of base, fixed, or mobile relay stations. Such stations are limited to 2 watts output power.

* * * * *

(b) * * *

OFFSET CHANNELS AVAILABLE IN SERVICES INDICATED

Frequency	
* * * * *	
451.1625	IF, IP, IT, IW, IX
451.1875	IF, IP, IT, IW, IX
451.2125	IF, IP, IT, IW, IX
* * * * *	
452.2625	LX
452.2875	LX
452.3125	LM, LR, LX
452.3375	LM, LR, LX
* * * * *	
460.4625	PP
460.4875	PP
460.5125	PF, PP, PS
460.5375	PF, PP, PS
460.5625	PF, PP, PS
460.5875	PF
460.6125	PF
460.6375	PF
460.6625	IB
460.6875	IB
460.7125	IB
460.7375	IB
460.7625	IB
460.7875	IB
460.8125	IB
460.8375	IB
460.8625	IB
460.8875	IB
460.9125	[1] IB
* * * * *	
461.2625	IB
461.2875	IB
461.3125	IB
461.3375	IB
461.3625	IB
461.3875	IB
* * * * *	
461.8125	IB
461.8375	IB
461.8625	IB
* * * * *	

[1] Listed Central Station Protection Services. Limitations: 90.75(c) (27) and (41).

§ 90.303 [Amended]

28. Section 90.303 is amended by correcting an error in the table

"Frequency Availability for Land Mobile Use": The longitude for Boston, Mass., should be changed from "71–03–24" to "71–03–25" to be consistent with similar tables at §§ 90.55 and 90.477.

29. Section 90.362 is amended by adding to paragraph (a)(1) a sentence which should have been carried over with changes that superseded § 90.365 at 47 FR 41027, Sept. 16, 1982.

§ 90.362 Selection and assignment of frequencies.

(a) * * *

(1) All mobile and control station frequencies will be chosen from those allocated in the 816–821 MHz band. Mobile station transmitting frequencies will commence with Channel No. 1 at 820.9875 MHz, followed by Channel No. 2 at 820.9625 MHz, and proceed to the band end with uniform 25 kHz channeling. Corresponding base station transmitting frequencies will be chosen from those allocated in the 861–866 MHz band, commencing with Channel No. 1 at 865.9875 MHz, followed by Channel No. 2 at 865.9625 MHz, and proceeding to the band end with uniform 25 kHz channeling. A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

30. Section 90.425 is amended by removing the redundant paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

31. Section 90.443 is amended by revising paragraph (b) to conform with changes in other rules concerning licensed operators, as follows:

§ 90.443 Content of station records.

* * * * *

(b) For all stations, the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records.

* * * * *

32. Section 90.555 is amended to correct errors in the frequency table, as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) Combined frequency list:

Frequency	Services	Special Limitations
* * * * *		
35.02	IB, PS	Low power, Handicapped paging.
* * * * *		
462.450	IX	
462.475	IW, IP, IF, IX, IT	
462.500	IX	
462.525	IW, IP, IF, IX, IT	
* * * * *		
469.975	IB	Do.
470–512	(1)	Available in 13 urbanized areas in accordance with provisions of subpart L.
470.0125–470.2875	(2)	
806–821	All Svcs	Mobile
851–866	All Svcs	Base or mobile
929–930	All Svcs. exc. RS	Base only, one-way paging.
2450–2500	All Svcs	Base or mobile.
* * * * *		

[1] All services.
[2] Domestic public (Part 22).
[3] Remote or pickup broadcast (Part 74).
[4] General Mobile Radio Service (GMRS) (Part 95).

* * * * *

33. Section 90.621 is amended by revising paragraphs (a)(1) (i) and (ii) and paragraphs (a)(2) (i) and (ii) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) * * *

(1) * * *

(i) All mobile and control station frequencies, in the 806–821 MHz band, are listed in § 90.613. Base station frequencies, in the 851–866 MHz band, shall be uniformly 45 MHz higher than associated mobile frequencies. Channel groups will be chosen and assigned in accordance with § 90.617 or § 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

(2) * * *

(i) All mobile and control station frequencies, in the 806–821 MHz band, are listed in § 90.613. Base station frequencies, in the 851–866 MHz band, shall be uniformly 45 MHz higher than associated mobile frequencies. Channels will be chosen and assigned in accordance with § 90.615, § 90.617, or § 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

PART 94—[AMENDED]

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

34. Section 94.3 is amended by revising the definitions of "*Master station*" and "*Multiple address*" to specify the number of fixed remote stations (four or more) included in the defined systems. This clarification is necessary because similar definitions were inadvertently removed from Part 2 of this chapter by amendments published at 49 FR 2368, January 19, 1984.

§ 94.3 Definitions.

* * * * *

Master station. A station operating on frequencies in the 952–960 MHz band which controls, activates, or interrogates multiple (four or more) remote stations and/or receives from multiple remote stations.

* * * * *

Multiple address. A one-way or two-way radio system utilizing microwave frequencies listed in § 94.65(a)(1). Operation is normally from a fixed or mobile station transmitting and/or receiving (usually in an omnidirectional pattern) to or from multiple (four or more) fixed remote stations.

* * * * *

[FR Doc. 85–23107 Filed 9–27–85; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Endangered and Threatened Wildlife and Plants; Prohibitions and Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This Fish and Wildlife Service (Service) revises its regulations to implement the incidental take permit and other provisions of the 1982 amendments to the Endangered Species Act (EAS) of 1973. The final rule is not significantly different from the proposed rule. The final rule (1) provides, under limited cirumstances, for permits to take endangered and threatened species incidental to, and not the purpose of, otherwise lawful activities, and (2) adds a prohibition against removing and reducing to possession endangered and threatened plants from areas under Federal jurisdiction. An applicant for an incidental taking permit must submit a conservation plan that specifies: (1) The impacts that will likely result from such taking; (2) what steps the applicant will take to minimize and mitigate those impacts; (3) what other alternatives were analyzed that would not result in the takings; and (4) why those

alternatives were not adopted. To issue the permit, the Service must find that the taking will be incidental, that the applicant will minimize and mitigate the impact of the taking, that the applicant will ensure that there will be adequate funding for the conservation plan, and that appropriate measures will be taken by the permittee to successfully conduct the activities authorized by the permit.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry LaRochelle, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201 (703/235–1903).

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 1983 (48 FR 31417), the Service published proposed regulations to implement certain aspects of the 1982 amendments to the Endangered Species Act of 1973 (ESA). The first, an amendment to section 10(a) of the ESA, 16 U.S.C. 1539(a), allows permits for takings of endangered species incidental to, but not the purpose of, otherwise lawful activities. The second, addition of a new section 9(a)(2)(B) of the ESA, 16 U.S.C. 1538(a)(2)(B), prohibits removal and reduction to possession of protected plants from areas under Federal jurisdiction. The July 8, 1983, notice discussed the need, purpose and details of the Service's proposal and invited comments from interested parties until August 8, 1983.

The Service received comments from 13 parties: 1 port authority, 2 Federal agencies, 2 electric utility organizations, 3 conservation organizations, and 5 oil or gas corporations. Some comments were brief while others were lengthy, substantive, and analytical. All generally supported the Service's proposed rule though various clarifications were sought and alternate procedures and regulatory language were offered. Two commenters recommended that the Service's final rule be identical to the proposed rule. Each comment has been considered in preparing this final rule. In addition, the Service has relied upon its substantial experience in developing and implementing programs affecting endangered species. The significant comments pertinent to the Service's Notice of Proposed Rule are summarized and discussed below together with the Service's responses.

II. Comments

A. Incidental Take Regulations

The preamble to the proposed regulations contained an extended quotation from the Conference Report on the 1982 amendments to the ESA. This material was included in the notice of proposed rulemaking because it illuminates in detail Congress' intent in enacting the incidental take permit provisions. Unfortunately, and inadvertently, only the first paragraph of the quotation was properly typeset to show that it was a quotation, creating among many commenters the impression that the rest of the material was drafted by the Service. In fact, all of the material from the bottom of the third column of 48 FR 31417 through the top of the first column of 48 FR 31419 is a quotation from the Conference Report and therefore represents Congress' detailed views on incidental take permits. The Service apologizes for the misunderstandings that were created by this typographical error.

1. Joint Promulgation of These Regulations by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS)

Four commenters urged the Service and NMFS to coordinate their efforts so as to develop similar or identical requirements if each chose to develop its own regulations, to have NMFS adopt the Service's regulations, or to promulgate joint regulations. Certain species of fish, whales, seals, sea turtles, and other marine species listed as endangered or threatened under the ESA are under the jurisdiction of NMFS (50 CFR Parts 222 and 227). All of the ESA-listed marine mammals are subject to the Marine Mammal Protection Act (MMPA), however, which prohibits, except for scientific research, any takings of endangered or threatened species because they are considered "depleted" within the meaning of the MMPA, 16 U.S.C. 1371(a)(3)(B). ESA incidental take permits therefore may be available for only a few of the species under the jurisdicition of NMFS.

The Service agrees that coordination with NMFS on incidental take permit issues is important. The Service has consulted with NMFS throughout the process of drafting these regulations in order to ensure that the final regulations take into account the special aspects of NMFS's responsibility for regulating marine species and therefore are suitable for adoption by NMFS. The final regulations reflect this effort. NMFS will consider adopting the Service's regulations for species under its jurisdiction at a later date.

2. San Bruno Mountain Permit as a Model

The only incidental take permit that the Service has processed to date is associated with residential and commerical development on San Bruno Mountain in the San Francisco metropolitan area. The legislative history of the 1982 incidental take permit amendment states that the San Bruno Mountain plan served as the model for the amendments to section 10(a) of the ESA. H.R. Rep. No. 835, 97th Cong., 2nd Sess. 31 (1982) (hereafter "Conf. Rep. at ____"). Several commenters asserted, however, that the San Bruno plan is uncommonly complex and controversial and is therefore not a proper model for the Service's regulations. These commenters cited the difficulty of extrapolating from the San Bruno experience to other situations and activities.

Congress, not the Service, modeled the section 10(a) incidental take permit amendment on the San Bruno Mountain project. The courts that have reviewed and upheld the San Bruno incidental take permit agree that Congress intended that project to serve as a model. *See, e.g., Friends of Endangered Species* v. *Jantzen*, 76. F.2d 976 (9th Cir. 1985). The Service does, of course, have the discretion and the responsibility to implement the requirements of section 10(a) in regulations that are not only consistent with section 10(a), but which are also flexible and versatile. In drafting the regulations, the Service has naturally drawn upon its experience in processing and granting the San Bruno permit. The Service believes that the final regulations, which are largely identical to the express language of section 10(a), will accommodate projects that differ substantially from the San Bruno project in size; planned duration; the number of different local, State, and Federal agencies that have jurisdiction over some aspect of the project; or the number of listed and unlisted species that may be involved. The promise offered by the incidental take amendment—a means of reconciling conflicts which would otherwise exist between development and endangered species conservation—is available to a large variety of projects, provided they protect and conserve the affected species.

3. An all-inclusive Final Rule

Several commenters encouraged the Service to develop "cookbook" regulations that would include specific procedures, types of alternatives to be considered, detailed criteria and definitions, and a number of other items to cover the entire range of incidental take permit applications that might be filed. These commenters believed this approach would protect applicants from

arbitrary or inordinate requirements and protect listed species from exploitation. The Service recognizes that the incidental take permit provisions will have numerous and diverse applications, and that the administration of the provisions will require considerable ingenuity and flexibility. The wide-ranging experience of the Service in managing fish, wildlife, and plant resources has demonstrated, however, that it is neither possible nor practical to provide for every situation that might occur through the promulgation of detailed regulations such as the commenters suggested. Broader regulations will ensure that the Service is able to handle all incidental take situations that arise. The Service has therefore chosen to promulgate the final regulations in relatively broad terms consistent with the statutory language and Congressional intent.

It should be noted that the Service processed the complex San Bruno Mountain incidental take permit application and negotiated the implementing agreement among the involved parties without the benefit of incidental taking regulations and solely on the basis of the language of section 10(a), as amended.

4. Consideration of Unlisted Species in Conservation Plans

Several commenters addressed the issue of whether a conservation plan submitted in support of an incidental take permit application may (or should or must, depending upon the commenter) consider the impacts of the proposed activity on unlisted as well as listed species. While the proposed regulation was silent on this issue, its preamble quoted pertinent portions of the Conference Report. That language demonstrates Congressional intent that treatment of unlisted species in conservation plans be voluntary.

It also made clear however, that incidental take permit applicants will benefit in many, if not most, instances from consideration of unlisted species:

> Although the conservation plan is keyed to the permit provisions of the Act, which only apply to listed species, the Committee intends that Conservation plans may address both listed and unlisted species.
>
> The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

[Conf. Rep. at 30]. In other words, failure to consider an unlisted species in a conservation plan exposes the permit applicant to the risk that if the species is subsequently listed, the activities covered by the permit might have to be halted pending amendment of the incidental take permit to incorporate the newly listed species.

The final regulations therefore do not impose a requirement that unlisted species, whether candidate, proposed, or not be considerd in a conservation plan. The regulations do, however, refer explicity to the option of considering unlisted species in order to encourage proponents of conservation plans to do so.

5. Interaction of Sections, 7, 9, and 10 of the Endangered Species Act

Numerous commenters raised issues concerning the interaction of the section 10(a) incidental take permit provision with the requirement in section 7(a)(2) for Federal interagency consultation on actions that may affect listed species and the prohibition in section 9 on takings of listed species. These comments were engendered in large part by the fact that section 7 was also affected by the 1982 amendments to the Act.

A few commenters asserted that because incidental take permit applicants are private parties, no section 7 consultation will be required with respect to an incidental take permit and associated conservation plan. This is clearly wrong, for any action undertaken pursuant to such a permit would be an action authorized by a Federal agency, the U.S. Fish and Wildlife Service, and the permit decision would therefore be subject to the section 7(a)(2) consultation requirement. Moreover, Congress expressly linked incidental take permits with the consultation requirement by including one of the section 7(a)(2) standards as a necessary criterion for issuing an incidental take permit. [Conf. Rep. at 29–30; H.R. Rep. No. 567, 97th Cong., 2nd Sess. 31 (1982)]. The section 10(a)(2)(B)(iv) criterion, whether "the taking will . . . appreciably reduce the likelihood of the survival and recovery of the species in the wild," is identical to the Service's regulatory definition of the section 7(a)(2) "jeopardize the continued existence of" standard (See 50 CFR 402.03). Thus, section 10(a) reinforces the consultation requirement with respect to incidental take permits by requiring a non-jeopardy finding (or a jeopardy finding with reasonable and prudent alternatives that are implemented by the Federal agency or applicant) as a precondition to issuance of a permit.

Other commenters discussed the interrelationship of section 10(a) and section 7(b)(4), which refers to incidental taking identified in section 7(a)(2) consultations that have resulted in "no jeopardy" opinions, including the issue of whether section 7(b)(4) empowers the Secretary to recommend substantial alternatives to a proposed project where a no jeopardy opinion has been prepared for the project as originally planned. Section 7(b)(4) was added to the Act and section 7(o) was amended:

> To resolve the situation in which a Federal agency or a permit or license applicant has been advised that the proposed action will not violate section 7(a)(2) of the Act but the proposed action will result in the taking of some species incidental to that action—a clear violation of section 9 of the Act which prohibits any taking of a species. The Federal agency or permit or license applicant is then confronted with the dilemma of having a biological opinion which permits the activity to proceed but is, nevertheless, proscribed from incidentally taking any species even though the incidental taking was contemplated in the biological opinion and determined not to be violation of section 7(a)(2)

[H.R. Rep. No. 567, 97th Cong., 2nd Sess. 26 (1982)]. Section 7(b)(4) provides that if section 7(a)(2) consultation results in a "no jeopardy" opinion, yet the proposed action would nevertheless involve incidental taking of a listed species but at a level low enough so that it would not violate section 7(a)(2), the Secretary must provide a written statement that:

> (i) Specifies the impact of such incidental taking on the species,
>
> (ii) Specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impacts, and
>
> (iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with to implement the measures specified under (ii).

Section 7(o)(2) further provides that any incidental taking in compliance with the terms and conditions set forth in section 7(b)(4)(iii) shall not be a taking prohibited by the Act or its implementing regulations.

One commenter argued that the section 7(b)(4) "reasonable and prudent measures" specified to minimize the impact of the incidental taking can include substantial alternatives to the proposed action and that the Service

would therefore be obliged to recommend alternatives to a proposed project that would cause incidental takes even though it meets the section 7(a)(2) standard. The Service notes that if consultation demonstrates that a proposed action is likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat, the Secretary must, under section 7(b)(3)(A), suggest "reasonable and prudent alternatives" that would not violate section 7(a)(2). Section 7(b)(3)(A) *Alternatives* may involve substantial changes in the routing and design of a project so long as they can be implemented in a manner consistent with the intended purpose of the proposed action. Section 7(b)(4) reasonable and prudent *measures*, on the other hand, must be limited to minor design changes that would not substantially alter the project as proposed. The Service therefore disagrees with the commenter.

Section 10(a)(2)(A)(iii) does require that each conservation plan submitted in support of an incidental take permit application must identify and analyze alternatives to the incidental taking and discuss why they are not being utilized. This provision does not, however, authorize the Service to impose one of these alternatives on an applicant for an incidental take permit. Rather, without the concurrence of the permit applicant, the Service's only recourse upon receiving an inadequate plan is to deny the permit application. Such a denial must be in accordance with § 13.21(d) and will detail the reasons for the denial. Parties so denied may appeal the Service's decision in accordance with § 13.32, addressing the Service's reasons therefore and may provide new information or justification why the action in question should not have been taken.

One commenter urged the Service to employ not only the jeopardy standard, but also the adverse modification of critical habitat standard of section 7(a)(2) as a criterion for determining whether to grant an incidental take permit. The Service has not accepted this comment because it was not included by Congress as one of the permit issuance criteria in section 10(a)(2)(B). The Service agrees, however, that since all incidental take permit applications will be subject to section 7(a)(2) consultation, they would not be approved if they resulted in the destruction or adverse modification of the critical habitat of a listed species.

6. Interaction With Other Statutes

Several commenters expressed concern that the Service had exceeded its statutory authority under the ESA in referring to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act in the preamble to the proposed rule (48 FR 31418). As discussed previously in this notice, that language is in fact quoted from the Conference Report on the 1982 amendments to the Endangered Species Act, though it was inadvertently typeset as if it were not a quotation. The essential observation made by the Conference Committee is extremely useful: Individual species should not be viewed in isolation. Neither should the section 10(a) requirements be viewed in isolation from the other statutory and regulatory requirements that may apply to the proposed project. Section 10(a) does not itself expressly require compliance with such laws as the National Environmental Policy Act, the Clean Water Act, or the Fish and Wildlife Coordination Act, but it provides an excellent opportunity for a project proponent to prepare and implement a comprehensive, integrated plan that addresses for the present and for the future all of the various requirements that apply to the project. In the words of the Conference Committee, section 10(a) will "encourage creative partnerships between public and private sectors and among governmental agencies in the interest of species and habitat conservation." [Conf. Rep. at 30].

7. Monitoring Implementation of Conservation Plans

One commenter argued that both the applicant and the Service should monitor the implementation of a conservation plan in order to ensure that its requirements and those of section 10(a) are met. Such monitoring can also serve to identify areas in which modification of a conservation plan may be necessary, particularly with incidental take permits of long duration. The Service agrees. Sections 17.22(b)(1)(iii)(B), 17.22(b)(3), 17.32(b)(1)(iii)(B), and 17.32(b)(3) have therefore been revised to require that conservation plans specify the monitoring measures to be used and to authorize imposition of necessary monitoring as a condition of each permit.

8. Modification of Conservation Plans

The same commenter noted that the proposed regulations contained no express provisions pertaining to modifications in conservation plans required by changed or unforeseen circumstances. The Service agrees that such a provision is needed. As stated in the Conference Report:

> . . . circumstances and information may change over time and . . . the original plan might need to be revised. To address this situation, the committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforseen circumstances.

[Conf. Rep. at 31]. The Service believes that, while such provisions may be of most value for long-term permits, circumstances requiring modification of a conservation plan could arise even during the life of a permit with a relatively short term. Incorporation of modification procedures into a conservation plan at the outset should ensure both that the affected species will be conserved regardless of changed conditions and that the applicant's activities are not unduly interrupted when the new conditions take effect. Sections 17.22(b)(1)(iii)(B) and 17.32(b)(1)(iii)(B) therefore require conservation plans to include specific measures for addressing unforeseen circumstances and §§ 17.22(b)(2)(iii) and 17.32(b)(2)(iii) make the existence of these measures a precondition to permit issuance.

9. Other Elements of Conservation Plans

Several parties commented that the statement in section 10(a)(2)(A)(iv) of the Act that a conservation plan must include "such other measures that the Secretary may require" obliges the Service to include in these regulations a full list of the measures the Service may so require. Other commenters asked that examples of such measures be included in the regulations, while still others asserted that this provision must be deleted from the regulations. Still another commenter suggested that this provision will be workable only if the Service is available for pre-application consultation and advice as to measures that might be required. The Service agrees with he latter commenter while respectfully disagreeing with the other commenters.

As noted previously in this notice, the Service has declined to promulgate exhaustive, "cookbook" regulations detailing every possible element that could be required in a conservation plan. The variety of projects that might be the subject of a conservation plan is wide, and features appropriate for some conservation plans will be unworkable for others. It is unrealistic to think the Service could develop a list of conservation plan elements applicable to all potential incidental take permits.

Congress, however, modeled section 10(a), at least generally, after the San Bruno plan and was well aware that the Service and the San Bruno permit applicants engaged in extensive pre-application discussions extending well over a year. The Service believes a sensible and practical reading of section 10(a)(2)(A)(iv) is that the unique and, in most cases, fairly complex nature of an incidental take permit will require discussions between a potential applicant and the Service. Through this process, the Service will identify specific measures, in addition to those listed in section 10(a)(2)(A)(i) through (iii), that are necessary and appropriate for the proposes of the conservation plan.

10. Public Notice of and Public Comment on Incidental Take Permit Applications

Section 10(a)(2)(B) of the ESA mandates an opportunity for public comment prior to any decision on an incidental take permit application. Several commenters expressed concern that the proposed regulations did not adequately implement this requirement. They noted that section 10(c) also requires public notice and comment for any section 10 endangered species permit application.

The Service agrees that the ESA requires notice and an opportunity for comment for these permit applications and has revised the introductory paragraphs to §§ 17.22, 17.23 and 17.32(b) accordingly.

11. Permit Conditions

One commenter argued that the Service is under a duty, in imposing reporting requirements as a permit condition, to rely upon existing reporting requirements to the maximum extent practicable. This commenter relied upon legislative history indicating that reporting requirements imposed under section 7(b)(4), to allow monitoring of the impact of incidental taking identified in section 7(a)(2) consultation, should be incorporated into existing reporting requirements where possible. [H.R. Rep. No. 567, 97th Cong., 2nd Sess. 26–27 (1982)]. The Service agrees that this Congressional directive is equally applicable to reporting requirements established for incidental take permits, as reflected in §§ 17.22(b)(3) and 17.32(b)(3) of the final rule.

Another party stated that the reference in proposed §§ 17.22(b)(3) and 17.32(b)(3) to "terms and conditions . . . necessary to carry out the purposes of the permit" might convey the impression that terms and conditions designed to ensure compliance with the species conservation goal of the conservation plan would not be appropriate. In order to make clear that permit conditions relating to conservation of the affected species will be imposed where necessary, the phrase "and the conservation plan" has been added to final §§ 17.22(b)(3) and 17.32(b)(3).

12. Duration of Permits

Congress clearly intended to provide for long-term incidental take permits where needed. [Conf. Rep at 31]. One commenter was concerned, however, that the proposed regulations improperly implied that the only issue involved in deciding on a request for a long-term permit is whether the applicant needs the assurance of a long-term permit in order to obtain financing. The Service did not intend to imply that financing of the project was the only issue involved in setting the duration of the permit.

The Conference Report states:

> Significant development projects often take many years to complete and permit applicants may need long-term permits. In this situation, and in order to provide sufficient incentives for the private sector to participate in the development of such long-term conservation plans, plans which may involve the expenditure of hundreds of thousands if not millions of dollars, adequate assurances must be made to the financial and development communities that a section 10(a) permit can be made available for the life of the project.
>
> The Secretary is vested with broad discretion in carrying out the conservation plan provision to determine the appropriate length of any section 10(a) permit issued pursuant to this provision in light of all of the facts and circumstances of each individual case. Permits of 30 or more years duration may be appropriate in order to provide adequate assurances to the private sector to commit to long-term funding for conservation activities or long-term commitments to restrictions on the use of land. It is recognized that in issuing such permits, the Secretary will, by necessity, consider the possible positive and negative effects associated with permits of such duration.
>
> The Secretary, in determining whether to issue a long-term permit to carry out a conservation plan should consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem.

[Conf. Rep. at 31]. Final § 17.22(b)(4) and 17.32(b)(4) have been revised to be consistent with the Conference Report.

13. Permits for Activities of Short Duration and/or Limited Scope

A related issue concerns permits for takings of listed species incidental to activities that will be relatively short in duration and/or that will affect a limited area that comprises only a small portion of a listed species' entire range. The term of the San Bruno permit is 30 years and its conservation plan covers over 3000 acres, including the great majority of the habitats of the species. Other incidental take permit applications may, however, involve considerably shorter terms and involve activities that would affect smaller areas and only portions of a species' range. The Service believes that Congress did not intend to exclude projects from the incidental take provisions of section 10(a) merely because the projects were of more limited duration or geographical scope. Final §§ 17.22(b)(2) and 17.32(b)(2) have been revised to make this explicit. In particular, the Director will consider whether the mitigation measures in the conservation plan and the funding for implementing the plan are commensurate with the duration of the project and its geographic scope, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected. Mitigation throughout the entire range of a listed species probably would not be required for a proposed project that would affect only a small portion of that range and have a minor impact on the species as a whole. That a project might be completed within a short time and affect only a portion of a species' habitat would not, however, relieve the Director of his duty under sections 7(a)(2) and 10(a)(2)(B)(iv) of the Act and §§ 17.22(b)(2)(iv) and 17.32(b)(2)(iv) of the regulations to ensure that no jeopardy to the species would ensue from issuance of the permit.

14. Objection to Permit Issuance

Section 17.22 contains explicit provisions for objecting to the issuance of an an endangered species permit and for notification to objectors of the impending issuance of that permit. One commenter suggested that § 17.32 be revised to include an objection provision. The Service has not accepted this suggestion because threatened species are less vulnerable than are endangered species to potential adverse impacts from permitted activities. Advance notice of permit issuance is thus not necessary.

15. Appeals

Several commenters noted the need for provisions for appealing the suspension or revocation of a permit or the terms or conditions of a permit. There should be considerable contact and discussion between an applicant and the Service both prior to and during the Service's review of an application for an incidental take permit. Should a permit nonetheless be issued containing

terms or conditions unacceptable to the permittee, or should a permit be suspended or revoked during its term, the permittee may appeal the action under the provisions of 50 CFR 13.32.

B. Plant Regulations

1. Exemption for Certain Official Duties

An exemption from the § 17.61(c)(1) prohibition on removal and reduction to possession of endangered plants from areas under Federal jurisdiction has been added at § 17.61(c)(2) to allow certain designated officials to care for, dispose of, or salvage specimens without a permit when acting in the course of their official duties. Exemptions from the § 17.61(c)(1) prohibition have been added at §§ 17.61(c)(3) and 17.71(b), which allow qualified employees of State conservation agencies, party to a Cooperative Agreement with the Service in accordance with section 6(c) of the ESA, to conduct the activities specified in that Cooperative Agreement.

2. Describing Location of Removal and Reduction to Possession in Permit Application

Existing §§ 17.62(a)(1)(iii) and 17.72(a)(1)(iii) require applicants for permits to conduct otherwise prohibited activities with respect to listed plants to describe the location from which the plants were or will be taken. The Service proposed to revise these sections to require further information where removal and reduction to possession of a listed plant from an area under Federal jurisdiction would be involved. Comments received on this aspect of the proposed regulations indicate that separate treatment of the latter information requirement is needed. The final regulations therefore include new §§ 17.62(a)(1)(iv) and 17.72(a)(1)(iv) that require separate information with respect to removal and reduction from an area under Federal jurisdiction.

3. Removal and Reduction to Possession of Seeds and Cultivated Plants

A few commenters observed that the proposed regulations did not appear to apply to seeds and cultivated plants, which are treated in §§ 17.62(a)(2) and 17.72(a)(2). This was an inadvertent omission. Final §§ 17.62(a)(2)(v) and 17.72(a)(2)(v) contain the same location information requirements with respect to removal and reduction to possession of seeds and cultivated plants from an area under Federal jurisdiction that are included in §§ 17.62(a)(1)(iv) and 17.72(a)(1)(iv) for listed plants.

4. Explanation of "Remove and Reduce to Possession"

While no commenter raised the issue, the Service believes that an explanation of its interpretation of the phrase "remove and reduce to possession" will be beneficial. Based upon the legislative history of the 1982 amendments, the Service has concluded that section 9(a)(2)(B) was intended to proscribe the removal of an endangered plant when combined with a taking of possession. Accordingly, a person who removes an endangered plant from its location on an area under Federal jurisdiction and holds it as his/her own would violate section 9 of the ESA. Examples of this activity would be plant collectors, persons seeking a transplant to their own property, and those gathering seeds or cuttings. The destruction of a plant on an area under Federal jurisdiction would not, however, be a violation of section 9 of the ESA, since no taking of possession would have occurred.

Removal incident to purposes other than taking of possession is likewise not proscribed. An example of behavior not prohibited would be development activities that physically displace an endangered plant. These activities would not violate section 9 of the ESA.

A second issue is whether a violation of the ESA occurs when a person receives a plant that has been illegally reduce to possession by someone else. Section 9(a)(1) of ESA, which lists prohibited actions in regard to endangered fish or wildlife, makes it unlawful to possess such fish or wildlife after an illegal taking or importation. This prohibition applies whether or not the fish or wildlife possessed are being transported in interstate commerce or were received in intrastate commerce. Section 9(a)(2) of the ESA, which sets forth prohibited acts with regard to listed plants, does not prohibit their possession after an illegal taking or importation. It does prohibit their receipt or shipment in interstate or foreign commerce and in the course of a commercial activity, but does not cover purely intrastate commercial activities or non-commercial interstate shipment and receipt. However, the Lacey Act amendments of 1981 make it unlawful for any person "to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken or possessed in violation of any law, treaty, or regulation of the United States . . ." 16 U.S.C. 3372(a)(1). Thus, while receiving an unlawfully taken endangered plant may not violate the ESA, it would violate the Lacey Act, as amended.

III. Miscellaneous

Section 13.12(b) is amended by adding the permit for incidental taking now available at 17.22(b)(1).

Sections 17.22(c) and 17.32(c) are redesignated as 17.22(a)(3) and 17.32(a)(3), respectively, and altered slightly to make them consistent with each other and to make clear that each permit issued pursuant to these sections shall contain a condition requiring reporting of escaped wildlife covered by the permit.

New 50 CFR 17.62(a)(3)(iii) and 17.72(a)(3)(iii) are added in compliance with the Paperwork Reduction Act, 44 U.S.C. 3507.

Required Determinations

The Service has determined that these final regulations are categorically excluded for further National Environmental Policy Act (NEPA) requirements. Part 516 of the Departmental Manual, Chapter 6 Appendix I, section A(3) categorically excludes the issuance of regulatory procedures when the impacts are limited to administrative or technological effects.

The Department of the Interior has determined that this is not a major rule under Executive Order 12291, nor does it have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The potential applicants are not identified as small business in the Regulatory Flexibility Act. The Service anticipates that fewer than 10 permit applications will be received annually. The Determination of Effects on this proposed rule is available from the individual identified under the section **"FOR FURTHER INFORMATION CONTACT."**

Information Collection

The information collection requirements contained in this Part 17 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0022.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture) Regulations promulgation.

For the reasons set out in the preamble, Subchapter B, Chapter 1 of

Title 50, Code of Federal Regulations is amended as follows:

PART 13—GENERAL PERMIT PROCEDURES

The authority citation for Part 13 continues to read as follows:

Authority: 18 U.S.C. 42; sec. 4, Pub. L. 97–79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97–78, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1202), "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"; sec. 9(d), Pub. L. 93–205, 87 Stat. 893 (16 U.S.C. 1538(d)); sec. 6(a)(1), Pub. L. 96–159, 93 Stat. 1228 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; sec. 10, Pub. L. 93–205, 87 Stat. 896, as amended by secs. 2 and 3, Pub. L. 94–359, 90 Stat. 3760; sec. 7, Pub. L. 96–359, 90 Stat. 911 and 912; sec. 5, Pub. L. 95–632, 92 Stat. 3760; sec. 7, Pub. L. 96–159, 93 Stat. 1230 (16 U.S.C. 1539); sec. 11, Pub. L. 93–205, 87 Stat. 897, as amended by sec. 6(4), Pub. L. 95–632, 92 Stat. 3761 (16 U.S.C. 1504(b)(2)(f)); sec. 13(d), 86 Stat. 905, amending 85 Stat. 480 (16 U.S.C. 742j–1); Title 1, sec. 112, Pub. L. 92–522, 86 Stat. 1042, as amended by Title II, sec. 201(e), Pub. L. 96–470, 94 Stat. 2241 (16 U.S.C. 1382); 65 Stat. 290 (31 U.S.C. 483(a)).

§ 13.12 [Amended]

1. Amend § 13.12(b) by removing the language at the entry for permits under § 17.22 and inserting the following § 13.12 information requirements on permit applications.

* * * * *

(b) * * *

Scientific, enhancement of propagation or survival, incidental taking for wildlife.

* * * * *

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS—[AMENDED]

Accordingly, under the authority of 16 U.S.C. 1538–39, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359; 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*), unless otherwise noted.

§ 17.3 [Amended]

2. In § 17.3 add, in alphabetical order, the following definition:

* * * * *

"Incidental taking" means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

* * * * *

3. Section 17.22 is revised to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) The Director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following information:

(i) The common and scientific names of the species sought to the covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those person who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the

wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* Applications for permits under this paragaph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21(c). Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment all of the following information:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies: (A) The impact that will likely result from such taking; (B) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (C) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and (D) such other measures that the Director may require as being necessary or appropriate for purposes of the plan;

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under subparagraph (b)(1)(iii)(D) of this section will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(c) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the **Federal Register**, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§ 13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its reasons therefore in such written notice.

§ 17.23 [Amended]

4. The introductory paragraph of § 17.23 is revised to read as follows:

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in

accordance with the issuance criteria of this section in order to prevent undue economic hardship. The Director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

* * * * *

5. § 17.32 is revised to read as follows:

§ 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in § 17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3–200) provided by the Service, and must include, as an attachment, as much of the following information which relates to the purpose for which the applicant is requesting a permit:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.31.

(ii) The director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application

(Form 3–200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies: (*1*) The impact that will likely result from such taking; (*2*) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (*3*) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and (*4*) such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(1) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under subparagraph (b)(1)(iii)(D) will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

§ 17.61 [Amended]

6. In § 17.61, paragraph (a) is amended by replacing the phrase "paragraphs (b) through (d)" with the phrase "paragraphs (b) through (e)."

7. Section 17.61 is amended by redesignating paragraphs (c) and (d) as (d) and (e), respectively, and by adding the following new paragraph (c):

§ 17.61 Prohibitions.

* * * * *

(c) *Remove and reduce to possession.* (1) It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction.

(2) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession endangered plants from areas under Federal jurisdiction without a permit if such action is necessary to: (i) Care for a damaged or diseased specimen; (ii) dispose of a dead specimen; or (iii) salvage a dead specimen which may be useful for scientific study.

(3) Any removal and reduction to possession pursuant to paragraph (c)(2) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with written directions from the Service.

(4) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State conservation agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those endangered plants which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such removal is not reasonably anticipated to result in: (i) The death or permanent damage of the specimens; (ii) the removal of the specimen from the State where the removal occurred; or (iii) the introduction of the specimen so removed, or of any propagules derived from such a specimen, into an area beyond the historical range of the species.

* * * * *

8. In § 17.62, is amended by redesignating paragraphs (a)(1)(iv) through (a)(1)(vii) as paragraphs (a)(1)(v) through (a)(1)(viii) and by adding new paragraphs (a)(1)(iv), (a)(2)(v), and (a)(3)(iii) to read as follows:

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) * * *

(1) * * *

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area, and the name, title, address, and phone number of the person in charge of the area.

* * * * *

(2) * * *

(v) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county or

any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) * * *

(iii) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

* * * * *

9. Section 17.71 is amended by redesignating paragraph (b) as (c) and adding the following new paragraph (b):

§ 17.71 Prohibitions.

* * * * *

(b) In addition to any provisions of this Part 17, any employee or agent of the Service or of a State Conservation Agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those threatened species of plants which are covered by an approved Cooperative Agreement to carry out conservation programs.

* * * * *

10. In section 17.72, is amended by redesignating paragraphs (a)(1)(iv) through (a)(1)(vi) as paragraphs (a)(1)(v) through (a)(1)(vii) and by adding new paragraphs (a)(1)(iv), (a)(2)(iv), and (a)(3)(iii) to read as follows:

§ 17.72 Permits—general.

* * * * *

(a) * * *

(1) * * *

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

* * * * *

(2) * * *

(iv) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) * * *

(iii) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

* * * * *

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23104 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Correction

AGENCY: Fish and Wildlife Service.

ACTION: Final rule; correction.

The **Federal Register** document 85–17398, published July 24, 1985 (50 FR 30188), is corrected to add the following amendment.

§ 17.11 [Corrected]

4. Amend § 17.11(h) by amending the existing entries under FISHES for the Colorado squawfish and woundfin to read "Entire, except Salt and Verde R. drainages, AZ" (Colorado squawfish) and "Entire, except Gila R. drainage, AZ, NM" (woundfin) under the heading "Vertebrate population where endangered or threatened" instead of "Entire".

Dated: September 24, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23226 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 23

Export of American Ginseng Harvested in 1985–1987 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. In general, export of wild specimens of plants listed in Appendix II of CITES may occur only if (1) the Scientific Authority (SA) has advised the permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species and will maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs, and (2) the MA is satisfied that the plants were not obtained in violation of laws for protection of the species. Export of cultivated specimens of plants listed in Appendix II may occur only if the MA is satisfied that the plants were artificially propagated.

This final rule announces the U.S. Fish and Wildlife Service's MA and SA findings on export of American ginseng (*Panax quinquefolius*) from the United States. Until 1982 such findings were made annually on a State-by-State basis. In 1982, the Service revised guidelines and made multi-year findings covering the 1982, 1983, and 1984 harvest seasons (a season ends with the calendar year). The Service herein approves multi-year ginseng export from 16 States for the 1985, 1986, and 1987 harvest seasons. The Service continues to seek data and information on topics described in this rule as a basis for determining whether to initiate or to continue approval of export from States for subsequent seasons.

Monitoring State ginseng programs for 8 years has shown the Service that States from which ginseng export usually has been approved probably will continue to satisfy CITES requirements. To ensure that this is so, the Service plans to continue annual monitoring in accordance with the procedures described herein. This monitoring will

include the analysis of program reports available no later than May 31 each year from each State from which ginseng export is approved, to document the most recent harvest and current status of ginseng as managed in that State.

DATE: This rule is effective on September 30, 1985.

ADDRESS: Please send correspondence concerning this rule to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 620, Arlington, Virginia 22201. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Management Authority: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office (FWPO), U.S. Fish and Wildlife Service (address above), telephone (703) 235–1937;

Export Permits: Mr. Richard K. Robinson, FWPO (address above), telephone (703) 235–1903;

Ginseng Program: Mr. S. Ronald Singer, FWPO (address above), telephone (703) 235–2418;

Scientific Authority: Dr. Charles Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, (Mail Stop Room 527, Matomic Bldg.), Washington, D.C. 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION: Export from the United States of specimens of species listed in Appendix II of CITES may only occur under Federal permit or certificate issued upon approval of both the MA and SA, which functions are the responsibility of the U.S. Fish and Wildlife Service. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, is responsible for enforcing CITES for terrestrial (nonmarine) plants (see final rule of October 25, 1984, 49 FR 42907). This is the second of two publications concerning the Service's MA and SA findings on export of American ginseng taken in the 1985–1987 harvest seasons. The proposed rule was published in the **Federal Register** on June 24, 1985 (50 FR 26015), and planned to cover 1985 and subsequent seasons. However, based on the Service's detailed analysis of annual reports, export documents, and the 1985 ginseng applications from the States, indefinite multi-year findings seem premature, so again 3–year findings are made herein. The previous final rule for export of ginseng was published August 28, 1984 (49 FR 34020).

Since 1973, only root of *Panax quinquefolius* Linnaeus has been listed on Appendix II of CITES. In 1985, for reasons unrelated to the American ginseng trade, the Parties to CITES agreed to regulate not only whole specimens of most plants on Appendix II, but also most parts and derivatives of most Appendix II plants. As a consequence, the listing for ginseng needed restatement, and the Parties agreed that the listing for *Panax quinquefolius* only apply to its "roots and readily recognizable parts thereof" (see June 14, 1985, **Federal Register**, 50 FR 24918).

Comments and Information Received

The Service received comments on the proposed rule from two Federal agencies, two State agencies, and two private companies. Sixteen States reapplied for export approval under their ginseng programs (see Multi-year Findings below). Comments and information received by August 28, 1985, have been considered. The numbered items in these comments correspond with complete topics found below under SA and MA Criteria, respectively.

A. Scientific Authority

The Missouri Department of Conservation (MDC) commented that items 2, 3 and 5 respectively covering relative frequency, local abundance, and relative harvest intensity of ginseng seemed excessive, and recommended that at least items 2 and 3 be dropped. The Service has found these criteria useful in evaluating the status of this species, even if States maintain only approximate information and data on the topics. Wilcox Drug Company (WDC) suggested that the harvest season begin April 1. The Service continues to recommend that harvest only begin after fruits are ripe, so that seeds can be planted (see item 4).

The WDC also commented "We can only hope all states with populations of ginseng will eventually enact regulatory programs to protect the species" and expressed concern that ginseng with roots not destined for export might not be protected. It went on to say "It should be clarified state by state that all ginseng be protected or regulated by the state." States from which ginseng export is approved by the Service do regulate ginseng not destined for export to some extent (see Management Authority Criteria below). Although CITES only enables Federal regulation of import and export of specimens from the country (export can be denied if it would be detrimental to the survival of the species or would not maintain it at the appropriate level in its ecosystems), it does not prohibit a State from providing stricter conservation measures for American ginseng.

B. Management Authority

The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture and the Bureau of the Census of the U.S. Department of Commerce commented on the proposed requirement that exporters present a Commerce "Shippers Export Declaration" (SED) as a condition for ginseng export. Both agencies report that the SED must be filed only with U.S. Customs within 4 days after actual export. Although the Service therefore cannot require the SED to be submitted as part of the ginseng export package, the exporter must continue to submit this document to U.S. Customs.

The North Carolina Department of Agriculture (NCDA) expressed concern about the late date (June 24) of the proposed rule. The Service understands this concern and regrets the timing of the proposed and final rules. The Service initiated multi-year findings in part to alleviate this problem, and still hopes to begin long-term multi-year findings in 1988.

The MDC, Magee Natural Products (MNP), and WDC requested the MA to reconsider the following proposed requirements:

Item 3: "Dealer records required to show . . . name and address of seller/buyer of ginseng" and periodically provide such information to the State. This information may be necessary in some cases to verify the true source of roots in trade. However, periodic reporting of this information is not required by some States, and the Service will approve a program that allows names and addresses to be recorded by the dealer only on his or her own copy of the State reporting form when this information shall be made available to the State ginseng program manager upon request.

The NCDA plus the above three respondents commented that the following date was too early:

Item 4(a): "Ginseng unsold by December 31 of the harvest year must be weighed by the State" and receipted. A later date would be suitable for Federal needs and would better align with State programs. The Service, therefore, has moved the date to March 31 of the year after harvest.

The NCDA, MNP, and WDC also questioned the need for the following three items under MA Criteriá:

Item 2: "Dealers . . . report such commerce to the State . . . every 30 days." The Service has reexamined this topic and will approve State programs that require dealers to report their

ginseng commerce to the State every 90 days (each quarter of the calendar year), although the State may require shorter time periods. A dealer's commerce from a State must be reported to each State in which the dealer is licensed or registered within 15 days of the end of the quarter. However, such reporting can be accomplished by the dealer submitting to the State a signed and dated photocopy of his or her commerce as recorded on State ginseng forms used by the dealer during the 90 days; no special report is needed for this purpose.

Item 4(b): Name and address of dealer on the State certificate of origin. An original dealer's signature is required to legally certify the statements on the form; however, the address is not necessary because such information is on the State's dealer application form. The Service therefore has deleted this requirement for the address.

Item 5: "State regulations that prohibit uncertified ginseng from entering or leaving the State." CITES requires that the MA be assured of the legality and source of the ginseng before it is permitted to be exported. In the United States, the MA is assured by a certificate of origin issued by the State of harvest. This system of certifying roots before they are moved from the State of origin was developed because there is no positive way of determining once source roots are removed from the State.

MNP and WDC expressed concern that such State laws and regulations prohibit dealers from accepting uncertified ginseng mailed interstate, a common and historic practice, and limit their business. They commented that ginseng received by mail could be returned by the dealer within a specified time to the State of origin for certification. To allow States and their ginseng dealers more flexibility in conducting this commerce and certification, while still maintaining effective regulation of the resource, the Service has modified its certification criterion as follows: The State has adopted and is implementing regulations that (a) prohibit export of its ginseng from the United States without certification from this State of origin (thus the dealer must successfully prove to the State of origin where the roots were harvested), and (b) require uncertified ginseng supplies to State-registered dealers to be returned to the State of origin within 30 calendar days for certification or the roots may not be exported from the country. Because the State of harvest has the responsibility to verify the source of ginseng being presented for certification, the State may continue to require that all roots harvested in that State be certified before leaving the State and that uncertified ginseng may not enter the State.

Scientific Authority Criteria

General criteria used by the SA in advising on whether export will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977, 42 FR 35800):

(1) Whether such export has occurred in the past and has not reduced numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

(2) Whether such export is expected to increase, remain constant, or decrease; and

(3) Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the SA, in accordance with these criteria, will continue to be based on the following information for each affected State, to the extent it is available in annual reports (with sources, accuracy, and still-valid items in previous reports indicated) or from other suitable sources (slightly revised from the rule of October 4, 1982, 47 FR 43701):

(1) Historic, present, and potential distribution of wild ginseng by county, using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of the State's wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of wild seed by people and no subsequent tending of the species or habitat before harvest.);

(2) Map of the approximate number of density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

(3) Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or difference from historical population sizes;

(4) A description of the State's annual harvest practices and controls on wild ginseng, including delimitation of harvest season (45 FR 69844, October 21, 1980; States are urged not to permit local harvest until fruits are ripe and seeds thus mature), and harvest requirements such as on minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting their seeds;

(5) Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng from the State harvested and amount certified for export, in pounds (dry weight) per year;

(6) Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in root sizes or number of wild roots per pound (dry weight) over previous years;

(7) A description of the State's ongoing research program on wild ginseng and its progress, including a summary of result obtained; and

(8) State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng from the State harvested and amount certified for export, in pounds (dry weight) per year. (Cultivated ginseng is considered that artifically propagated and maintained under controlled conditions, for example in intensively or intermittently prepared or managed fields, gardens, or patches with artificial or natural shade.)

Management Authority Criteria

In addition to SA advice that ginseng exports will not be detrimental to the survival of the species, the MA must be satisfied (1) that the ginseng was not obtained in contravention of laws for its protection, and (2) whether it was of wild or of artifically propagated origin.

Criteria used by the MA in determining if a State program qualifies for export are that the State has adopted and is implementing the following regulatory measures (revised from

publication of October 21, 1980, 45 FR 69844, and July 23, 1984, 49 FR 29635):

(1) A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

(2) State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng, and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (each quarter of the calendar year). A dealer's commerce from a State shall be reported to each State in which the dealer is registered or licensed within 15 days of the end of the quarter.

(3) Dealer records required to show date of transaction, whether roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, State of origin of roots, and the identification numbers of the State certificates used to ship ginseng from the State. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

(4) Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. Experience has shown the value of an inspection and certification program by a State official who can document both the weight of the roots in question and that they were legally taken from the wild or artificially propagated in that State:

(a) ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer given a weight receipt. Future State export certification of this stock is to be issued against the State weight receipt, and

(b) the certificates of origin must remain in State control until issued at certification and contain the following information:

—State of origin,
—serial number of certificate,
—dealer's State registration number,
—dealer's shipment number for that harvest season,
—year of harvest of ginseng being certified,
—designation as wild or artificially propagated roots,
—designation as dried or green (fresh) roots,
—weight of roots, expressed both numerically and in writing,
—verified statement that the ginseng was obtained in that State in accordance with State law of that harvest year,
—name and title of State-certifying official,
—date of certification, and
—signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

(5) State regulations that (a) prohibit export of its ginseng from the United States without certification from this State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification or the roots may not be exported from the country.

Each State from which ginseng export is approved is requested to include the following information (as well as the update for the SA) in its annual report (which should be titled with the year of harvest; for example, the 1985 State Ginseng Report should reach the Service by May 31, 1986):

(1) Reaffirm State ginseng program and indicate modifications concerning:

(a) State ginseng law and regulations,

(b) season of harvest and seiling/buying operations,

(c) State dealer, digger, and/or grower license or registration rules,

(d) Sample of digger's license, if any, indicating cost of license and dates of authorized use,

(e) Cost of dealer license or registration,

(f) Dealer record-maintenance and reporting requirements,

(g) Samples of current-year dealer certificates and reporting forms,

(h) Sample of current-year State certificate of legal take and origin,

(i) Description of State-certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State, and

(j) Name, address, and telephone number of State person to contact concerning such information; and

(2) The report should also include information on the following:

(a) Pounds (dry weight) of wild and of cultivated ginseng (i) harvested and (ii) certified by the State, as well as the pounds of each (iii) sold from in-State and from out-of-State sources,

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this commerce is controlled by State law, and

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 69844), the Service announced it would approve export of artificially propagated ginseng only from States for which export of wild-collected ginseng was approved, because those States had programs that could adequately document the source of roots. The Service more recently announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

On October 4, 1982 (47 FR 43701), the Service approved multi-year export of 1982–84 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other revised criteria of both the MA and SA. Export from certain additional States was approved under these guidelines on October 7, 1983 (48 FR 45775), March 19, 1984 (49 FR 10123), and August 28, 1984 (49 FR 34020). The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved only from the States named in 50 CFR 23.51(e) (see below).

Wisconsin has developed a somewhat different ginseng regulatory program which has been approved and appears to offer the same legal assurance as the standard State certification system usually required by the Service. This program includes annual measurement of cultivated ginseng gardens (fields) by a county tax assessor, and certification to the State of all ginseng commerce by growers and dealers. The appropriate State official spot-check these procedures and examine collected records of ginseng commerce from all State growers and dealers. The State's analysis of these records of commenre are then sent to the Service for review.

Multi-year Findings

From monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which export of ginseng has been approved will continue to satisfy CITES

requirements. Each State seeking to obtain multi-year export approval for 1985 and subsequent harvest seasons applied by August 28, 1985, in accordance with the MA and SA requirements described above. (States that had not done so submitted data on their harvest and/or status of ginseng in 1982, 1983 and/or 1984 as a precondition of renewed export approval.) Suitable annual reports with program information have been received from all 16 States previously approved for ginseng export. No new States have applied for such export approval at this time. Several States are being notified of need for improvement in one or more aspects of their ginseng programs, and the Service has been advised that certain aspects will be rectified prior to the 1986 harvest. Overall, the Service believes that the status of the species and programs is such that the 1985–1987 harvests are acceptable, but that findings for no more than 3 years are warranted until these relatively new State programs mature. The export of wild and cultivated ginseng harvested in the 1985, 1986, and 1987 seasons is approved only from the States identified in 50 CFR 23.51(f) (see below). This approval is the same as in 1984, except for the addition of wild ginseng from Tennessee. Tennessee enacted suitable legislation in 1985 and has otherwise satisfied Service requirements.

This approval is subject to revision prior to the 1986 or 1987 harvest season in any particular State if a review of information reveals that MA or SA findings in favor of export must be changed. The Service does not grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(f) for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, or (3) the Service does not have current information needed for MA or SA findings.

States seeking to begin harvest in 1986 or 1987 for export of their ginseng under CITES should apply following the above procedures no later than May 31 of the year they hope to start. To ensure that the States maintain successful programs and that export is not detrimental to the survival of this species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by evaluation of annual reports from the States and of export documents returned from the ports. Notices will be published in the **Federal Register** in 1986 and 1987 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal CITES documents are necessary to export wild or artificially propagated ginseng roots. Applications for these documents should be sent to the Federal Wildlife Permit Office at the address given above.

Ginseng may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of the Interior (see 49 FR 42938; October 25, 1984). For each export, the exporter must present to the USDA, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ) port inspector the following:

(1) Ginseng roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for reexport). An exporter or dealer may split an original State certificate by striking a line through the original weight on the certificate, and identifying by numbers and writing the new (lower) weight of ginseng being exported. This change in certificate weight must be certified by the dealer or exporter with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter;

(3) Two completed Federal CITES export document (permits or certificates); and

(4) One copy of executed waybill and invoice.

The PPQ port inspector may sign and validate the CITES documents only after a satisfactory inspection of the export documentation and contents of the shipment. Once the CITES documents are validated, the inspector will forward State certificates, one CITES export document, waybill, and invoice to the Service for recordkeeping and reporting. The remaining CITES export document will authorize the international shipment of the ginseng and will be collected the importing country.

Compliance

This rule is issued under authority of the Endangered Species Act of 1873 (16 U.S.C. 1531 et seq., 87 Stat. 884, as amended), and was prepared by Mr. S Ronald Singer, Federal Wildlife Permit Office, and Dr. Bruce MacBryde, Office of Scientific Authority. The Department has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act for making these findings and rule effective immediately. This publication represents the final administrative step in authorizing the export of ginseng in accordance with CITES. This action has been delayed because of the need to gather and evaluate the best available information on the species. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the harvest season that already has begun. A delay could adversely affect the species by reducing compliance with State certification requirements. Good cause also exists for making these findings effective as soon as possible to avoid economic injury to individual diggers, dealers, or other small entities that are directly affected by the findings. Because this final rule removes a restriction of export, it can be made effective immediately upon publication under 5 U.S.C. 553(d)(1). It should be noted that making these findings and rule effective immediately will not adversely affect the species involved, in view of the findings on nondetriment contained herein.

Note.—The Department has determined that these findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347) and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1981–84 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their shipments from the ginseng harvested in a number of States. Therefore, the approval or disapproval of export of wild ginseng from any one State will not significantly affect the industry. Furthermore, because the rule treats exports on a State-by-State basis and approves export in accordance with State programs, the rule will have little effect on small entities in any of itself. For the 1985–1987 harvest seasons, the Service has analyzed the impacts and again concludes that this is not a major rule and does not have a significant economic effect on a substantial number of small entities. These findings do not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act 1980 (Pub. L. 96–511).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plant (agriculture), Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, Part 32 Subchapter B of Chapter I, Title 50, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention of International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1631–1543.

Subpart F—Export of Certain Species

2. In § 23.51, revised that part of paragraph (e) that appears before "Conditions of findings" to read as follows:

§ 23.51 American ginseng (Panax quinquefolius).

* * * * *

(e) *1982–1984 harvests* (wild and cultivated roots for each year unless noted):

Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee (wild and cultivated for 1982 and 1983, cultivated only for 1984), Vermont (cultivated only for 1982 and 1983, wild and cultivated for 1984), Virginia, West Virginia, and Wisconsin.

* * *

3. In § 23.51, add new paragraph (f) as follows:

* * * * *

(f) *1985–1985 harvests* (wild and cultivated roots for each year unless noted):

Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Conditions on export:

Roots must be documented as to State of origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots originated in that State, are wild or cultivated (artificially propagated), and were legally obtained, and such certification must be presented upon export. The State must maintain a ginseng program, as described by the Service in the 1985 rule; an annual report for the preceding harvest season should reach the Service by May 31.

Dated: September 17, 1985.

(Sgd) P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-23323 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 630, 638, 640, 642, 646, 649, 650, 651, 652, 654, 655, 658, 661, 662, 663, 671, 672, 674, 675, 680, and 681

[Docket No. 41049-5104]

Fishery Conservation and Management; Domestic Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment removes variously worded sections concerning penalties throughout the domestic fishing regulations, eliminating references to Part 620, which no longer exists, and replaces them with uniformly worded sections containing the correct references. The intent is to conform the codified regulations with current usage.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haynes (Fishery Management Specialist), 202–634–7432.

SUPPLEMENTARY INFORMATION: On January 6, 1984 (49 FR 1036), 50 CFR Part 620—Citations was removed from the Code of Federal Regulations and replaced by 15 CFR Part 904 Subpart E—Written Warnings as part of 15 CFR Part 904 (Civil Procedures) administered by NOAA and the Coast Guard. This technical amendment removes references to Part 620 in the domestic fishing regulations parts of Title 50, Chapter VI, and replaces them with uniform references to the current governing regulations.

List of Subjects in 50 CFR Parts 630–640, 642, 646–675, 680, and 681

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PARTS 630–640, 642, 646–675, 680, AND 681—[AMENDED]

For the reasons set out above, 50 CFR Parts 630–640, 642, 646–675, 680, and 681 are amended as follows:

1. The authority citation for Parts 630–640, 642, 646–675, 680, and 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Parts 640–681, sections titled Penalties are amended by removing the current text in its entirety and replacing it in the sections listed with new text as follows:

§ 630.8	§ 658.9
§ 638.7	§ 661.9
§ 640.9	§ 662.8
§ 642.9	§ 663.9
§ 646.8	§ 671.9
§ 649.9	§ 672.9
§ 650.9	§ 674.9
§ 651.9	§ 675.9
§ 652.9	§ 680.9
§ 654.9	§ 681.9
§ 655.9	

§ ___ Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

This document also corrects a paragraph designation in the Foreign Fishing; Final rule, technical amendment published August 28, 1985, 50 FR 35023.

In FR Doc. 85–20321, page 35025, column 1, the following corrections are made:

1. Under "Subpart D—Atlantic, Caribbean, and Gulf of Mexico," Paragraph 4 is corrected to read "In Subpart D, § 611.60 is amended by adding paragraph (a)(4) to read:"

Under "§ 611.60 General provisions" paragraph "(3)" is redesignated as "(4)".

[FR Doc. 85-23258 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

Personnel Records; Transfer of an Official Personnel Folder to Another Agency

Correction

In FR Doc. 85–20538 beginning on page 35505 in the issue of Friday, August 30, 1985, make the following correction on page 35505: In the third column, in the **Authority** citation, in the first line, "5 U.S.C. 522a" should read "5 U.S.C. 552a".

BILLING CODE 1505-01-M

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to adjust, where warranted, the minimum rates and rate ranges for certain occupations and grade levels for which special salary rates are in effect. This action is based on an annual review of these rates through which OPM has determined, after considering competing salary rates in private enterprise, that adjustments to the special salary rates are necessary to ensure that Federal agencies are adequately staffed by well-qualified employees. The special salary rates have been adjusted to the levels deemed necessary to achieve this outcome.

DATE: Comments are invited and must be received on or before October 30, 1985.

ADDRESSES: Send or deliver written comments to: Office of Personnel Management, Compensation Group, Allowances and Special Rates Division (AR), Room 3353, 1900 E Street, NW, Washington, DC 20415.

The data OPM used in coming to its conclusions in each case are available for public inspection in the OPM Library, Room 5H27, which is located at 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 632–7858.

SUPPLEMENTARY INFORMATION: Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes OPM to exercise the authority conferred upon the President. Section 303 of Executive Order 11721 requires OPM to conduct an annual review of the special salary rates established under 5 U.S.C. 5303. The rates proposed in this notice are a result of the 1985 review. The proposed adjustments were made in accordance with § 530.303 of Title 5, Code of Federal Regulations.

Accordingly, OPM proposes to adjust the minimum rates and rate ranges for certain occupations and grade levels for which special rates have been established under 5 U.S.C. 5303. Section 530.307 contains the tables showing the basic special salary rate information for each occupation and grade level for which special rates are authorized. (Because the rates in the tables are subject to adjustment at any time they will not appear in the Code of Federal Regulations.) Only the special minimum and maximum rates (i.e., 1st and 10th step) are shown; however, a full special rate range is authorized for each occupation and grade level specified. The full range of proposed special rates can be prepared by sucessively adding the amount of the within grade increase, as shown for each grade, beginning with the special minimum to produce a rate for each step up to the special maximum rate. Unless otherwise indicated, all agencies in the geographic area covered

by each special salary rate authorization must pay the specified rates to their employees.

In instances where the schedules are proposed to be terminated, employees' rates of basic pay will be adjusted in accordance with Part 530, Title 5, Code of Federal Regulations to ensure that no employees' pay will be reduced because of these actions.

When cited, "MSA" means the Metropolitan Statistical Area (and PMSA and CMSA refers to Primary and Consolidated MSA) as defined by the Office of Management and Budget.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

It is proposed to amend Part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C. 5303, and Chapter 54; E.O. 11721, as amended.

2. Subpart C would be amended by adding a new § 530.307 to read as follows:

Subpart C—Special Salary Rates Schedules for Recruitment and Retention

§ 530.307 Special salary rates.

This section contains the tables showing the basic special salary rate information for each occupation and grade level for which special rates are authorized.

Note:—Because the rates in the tables are subject to adjustments at any time, they will be published in the **Federal Register**, but will not appear in the Code of Federal Regulations. For changes to this section, consult the List of CFR Sections Affected (LSA).

BILLING CODE 6325-01-M

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-081, Fire Protection and Prevention Series	Clear Air Force Base, AK	GS-4	$15,436	$18,883	$383	#011	Increase
		GS-5	16,310	20,162	428		"
		GS-6	16,575	21,390	535		"
GS-083, Police Series	VA Medical Center, Northport, NY	GS-4	13,939	17,521	398	#024	No change
		GS-5	15,153	19,167	446		"
GS-083, Airport Police Officer	Washington, DC (Dulles and National Airports)	GS-4	14,578	18,286	412	#025	Increase
		GS-5	15,350	19,670	480		"
		GS-6	16,575	21,390	535		"
GS-083, Police Series	VA Medical Center Dallas, TX	GS-4	13,255	16,981	414	#021	No change
		GS-5	14,829	18,996	463		"
GS-083, Police Series	VA Medical Center Palo Alto, CA	GS-4	14,149	17,875	414	#023	Increase
		GS-5	15,350	19,517	463		"
GS-083, Police Series	Lower Colorado River Region, Boulder City, NV	GS-5	16,681	20,848	463	#026	No change
		GS-6	18,082	22,735	517		"
GS-083, Police Series	Naval Weapons Center, China Lake, CA	GS-3	14,132	17,201	341	#022	Increase
		GS-4	15,007	18,454	383		"
		GS-5	15,830	19,682	428		"
		GS-6	16,575	21,390	535		"
GS-085, Guard Series	Aberdeen Proving Ground, MD	GS-3	Regular rates would apply			#016	Terminate
GS-085, Guard Series	Umatilla Army Depot, OR	GS-4	Regular rates would apply			#019	Terminate
GS-xxx, (Typing/Stenography) (all clerical positions requiring a qualified typist or stenographer)	Hanscom Air Force Base, Bedford, MA	GS-3	12,604	16,042	382	#169	No change; not scheduled for review
		GS-4	13,720	17,581	429		
		GS-5	14,870	19,190	480		
GS-312, Clerk Stenographer and Reporter Series GS-318, Secretary Series GS-322, Clerk-Typist Series GS-356, Data Transcribing Series'	California: Los Angeles, within the area bounded by Manchester Ave. on the North, Crenshaw Blvd. on the East, Artesia Blvd. & Gould Ave. on the South, & the Pacific Ocean on the West. Included are positions in the Defense Investigative Service located at 15110 Atkinson Avenue, Gardena, CA, and Army Plant Representative Office - Hughes Helicopter, Los Angeles (Culver City), CA, and the Center for Disease Control. Excluded are positions within the Department of Health and Human Services.	GS-2	$12,114	$14,913	$311	#165	No change in dollar amounts; Center for Disease Control added to coverage
		GS-3	13,651	16,801	350		
		GS-4	14,933	18,470	393		
		GS-5	15,828	19,788	440		
		GS-6	16,661	21,071	490		
All Clerical Series and Certain Technical Series*	Juneau, AK	GS-1	10,847	13,141	286'	#159	No change
		GS-2	11,951	14,858	323		"
		GS-3	12,742	16,018	364		"
		GS-4	13,487	17,168	409		"
		GS-5	14,631	18,744	457		"

'And all other positions in grades GS-2 through GS-6 with the parenthetical title (Typing) or (Stenography) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January, 1979, or with the parenthetical title (Data Transcriber).

'The within-grade increase at GS-1 varies between steps 1, 2 and 3. The rates of basic pay payable at these steps are as follows: $10,847 (step 1); $10,860 (step 2); and $11,139 (step 3). The within-grade increase shown should be applied to construct all remaining step rates.

*THE FOLLOWING SERIES ARE INCLUDED IN THIS SPECIAL RATE AUTHORIZATION:

GS-072 Fingerprint Identification Series
GS-134 Intelligence Aid and Clerk Series
GS-203 Personnel Clerical and Assistance Series
GS-204 Military Personnel Clerical and Technician
GS-302 Messenger Series
GS-303 Miscellaneous Clerk and Assistant Series
GS-304 Information Receptionist Series
GS-305 Mail and File Series

Con't.

GS-312 Clerk-Stenographer and Reporter Series
GS-313 Work Unit Supervising Series
GS-318 Secretary Series
GS-319 Closed Microphone Reporting Series
GS-322 Clerk-Typist Series
GS-332 Computer Operation Series
GS-335 Computer Clerk and Assistant Series
GS-344 Management Clerical and Assistant Series
GS-350 Equipment Operator Series
GS-351 Printing Clerical Series
GS-354 Bookkeeping Machine Operation Series
GS-355 Calculating Machine Operation Series
GS-356 Data Transcribing Series
GS-357 Coding Series
GS-359 Electric Accounting Machine Operation
GS-361 Equal Opportunity Assistance Series
GS-382 Telephone Operating Series
GS-385 Teletypist Series
GS-394 Communications Clerical Series
GS-503 Financial Clerical and Assistance Series
GS-525 Accounting Technician Series
GS-530 Cash Processing Series
GS-540 Voucher Examining Series
GS-544 Payroll Series
GS-545 Military Pay Series
GS-561 Budget Clerical and Assistance Series
GS-590 Time and Leave Series
GS-963 Legal Instruments Examining Series
GS-986 Legal Clerk and Technician Series
GS-998 Claims Clerical Series
GS-1001 General Arts and Information Series
GS-1021 Office Drafting Series
GS-1046 Language Clerical Series
GS-1087 Editorial Assistance Series
GS-1101 General Business and Industry (one grade interval work only)
GS-1106 Procurement Clerical and Assistance Series
GS-1107 Property Disposal Clerical and Technician Series
GS-1411 Library Technician Series
GS-1421 Archives Technician Series
GS-1531 Statistical Assistant Series
GS-1802 Compliance Inspection and Support Series
GS-1897 Customs Aid Series
GS-2001 General Supply Series
GS-2005 Supply Clerical and Technician Series
GS-2091 Sales Store Clerical Series
GS-2101 Transportation Specialist Series
GS-2131 Freight Rate Series
GS-2132 Travel Series
GS-2133 Passenger Rate Series
GS-2134 Shipment Clerical Series
GS-2151 Dispatching Series

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-322, Clerk-Typist Series, limited to positions where at least 50 percent of the duties involve the operation of word processing equipment. GS-313, Work Unit Supervisors, limited to positions supervising word processing units.	Army Corps of Engineers, Federal Center South, Seattle, WA	GS-4	$14,340	$17,787	$383	#163	Increase
		GS-5	14,994	18,846	428		No change
GS-322, Clerk-Typist (Medical Transcriptionist) Series	VA Medical Center, Sepulveda, CA	GS-3	12,852	16,155	367	#166	No change
		GS-4	14,427	18,135	412		"
		GS-5	15,220	19,369	461		"
GS-303, Miscellaneous Clerk and Assistant Series GS-318, Secretary Series GS-322, Clerk-Typist Series*	Barrow, AK	GS-1	11,686	14,197	279	#167	Increase
		GS-2	13,216	16,051	315		"
		GS-3	14,896	18,091	355		"
		GS-4	16,723	20,305	398		"
		GS-5	18,710	22,724	446		"
		GS-6	20,855	25,508	517		"

*And all other positions in grades GS-1 through GS-6 with the parenthetical title (Typing) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January 1979.

GS-203, Personnel Clerical and Assistant Series GS-303, Miscellaneous Clerk and Assistant Series GS-318, Secretary Series GS-322, Clerk-Typist Series GS-382, Telephone Operating Series GS-525, Accounting Technician Series GS-540, Voucher Examining Series GS-1101, General Business and Industry Series (one grade interval work only) GS-2005, Supply Clerical and Technician Series GS-2132, Travel Series*	Bethel, AK	GS-1	10,764	13,002	279'	#168	Increase
		GS-2	12,199	15,034	315		"
		GS-3	13,750	16,945	355		"
		GS-4	15,436	19,018	398		"
		GS-5	17,270	21,284	446		"
		GS-6	18,180	22,653	497		"

'The within grade increase between steps 1, 2 and 3 varies. The rates of basic pay payable at these steps are as follows: step 1 — $10,764; step 2 — $10,777; step 3 — $11,049. The within grade increase shown should be applied to construct all remaining step rates.

*And all other positions in grades GS-1 through GS-6 with the parenthetical title (Typing) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January 1979.

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-610, Nurse Series	Washington, DC MSA	GS-4	$15,739	$19,321	$398	#304	Increase
		GS-5	16,681	20,695	446		"
		GS-7	18,537	23,883	594		"
GS-610, Nurse (Critical Care Positions Only)	Washington, DC MSA	GS-9	23,258	29,549	699	#535	Increase
GS-610, Nurse and Psychiatric Nurse	Saint Elizabeths Hospital, Washington DC	GS-4	15,133	18,715	398	#534	No change
		GS-5	16,603	20,752	461		"
		GS-7	19,422	24,561	571		"
		GS-9	22,363	28,654	699		"
GS-610, Operating Room Nurse	Fitzsimmons Army Medical Center, Aurora, CO	GS-9	22,969	29,287	702	#501	Increase
GS-610, Nurse, limited to positions titled Nurse, Clinical Nurse, and Operating Room Nurse	San Francisco and Oakland, CA PMSAs	GS-5	18,710	23,030	480	#352	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	26,795	33,113	702		Increase
		GS-10	27,868	34,825	773		"
		GS-11	28,820	36,470	850		"
*Rates at GS-5 and GS-7 were already at the highest levels allowed by law and could not be further increased.							
GS-620, Vocational Nurse	San Francisco and Oakland, CA PMSAs	GS-3	13,304	16,373	341	#394	No change
		GS-4	14,554	18,001	383		"
		GS-5	15,422	19,274	428		"
GS-620, Practical Nurse	All Alaska Area Native Health Service Facilities	GS-3	13,653	16,974	369	#536	No change
		GS-4	14,911	18,637	414		"
		GS-5	15,755	19,922	463		"
		GS-6	16,531	21,184	517		"
GS-620, Vocational Nurse	San Diego, CA	GS-3	Regular rates would apply			#480	Terminate
GS-621, Nursing Assistant	All Alaska Area Native Health Service Facilities	GS-2	$11,456	$14,399	$327	#467	No change
		GS-3	12,915	16,236	369		"
		GS-4	13,939	17,521	398		"
GS-622, Medical Supply Aid and Technician Series	All Alaska Area Native Health Service Facilities	GS-1	10,286	12,529	Varies*	#468	No change
		GS-2	11,018	13,853	315		"
		GS-3	12,065	15,260	355		"
		GS-4	13,143	16,725	398		"
*The full range of rates is as follows: $10,286; $10,572; $10,585; $10,857; $11,135; $11,414; $11,693; $11,971; $12,250; $12,529.							
GS-642, Nuclear Medicine Technician Series	Washington, DC MSA	GS-4	Regular rates would apply			#359	Terminate
GS-644, Medical Technologist Series	All IHS Facilities within the Navajo and Phoenix Indian Health Areas	GS-5	16,579	20,431	428	#494	Increase
		GS-7	18,448	23,794	594		"
GS-644, Medical Technologist Series	San Francisco-Oakland-San Jose, CA CMSA	GS-5	Regular rates would apply			#313	Terminate
GS-644, Medical Technologist Series	All Alaska Area Native Health Service Facilities	GS-5	18,070	22,237	463	#493	No change
		GS-7	20,665	25,831	574		"
		GS-9	Regular rates would apply				Terminate
GS-647, Diagnostic Radiologic Technologist Series	San Francisco-Oakland San Jose, CA CMSA	GS-4	15,531	19,113	398	#363	No change
		GS-5	16,491	20,505	446		"
		GS-6	17,386	21,859	497		"
		GS-7	18,215	23,183	552		"

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-647, Diagnostic Radiologic Technologist Series	All Alaska Area Native Health Service Facilities	GS-4	$15,325	$19,051	$414	#471	No change
		GS-5	16,218	20,385	463		"
		GS-6	17,565	22,218	517		"
		GS-7	18,943	24,109	574		"
GS-648, Therapeutic Radiologic Technologist Series	National Cancer Institute, National Institutes of Health, Bethesda, MD	GS-5	Regular rates would apply at all grades			#529	Terminate
		GS-6					"
		GS-7					"
		GS-8					"
		GS-9					"
GS-648, Therapeutic Radiologic Technologist Series	Washington, DC MSA.	GS-4	15,531	19,113	398	#360	No change
		GS-5	17,383	21,397	446		"
		GS-6	18,380	22,853	497		"
		GS-7	20,091	25,257	574		"
		GS-8	21,617	27,341	636		"
		GS-9	22,470	28,788	702		"
GS-648, Therapeutic Radiologic Technologist Series	San Francisco and Oakland, CA PMSAs	GS-5	17,383	21,397	446	#390	No change
		GS-6	18,380	22,853	497		"
		GS-7	19,871	24,839	552		"
GS-649, Heart Lung Machine Technician	Keesler, AFB, Biloxi, MS	GS-9	26,166	32,484	702	#537	Increase
GS-660, Pharmacist Series	San Francisco, CA	GS-9	23,874	29,949	675	#457	Increase
		GS-11	28,039	35,950	879		"
GS-660, Pharmacist Series	Los Angeles and San Bernardino Counties, CA	GS-9	25,980	32,055	675	#525	Increase
		GS-11	28,037	35,390	817		"
GS-661, Pharmacy Technician Series	San Francisco-Oakland San Jose, CA CMSA	GS-3	$12,281	$15,350	$341	#386	No change
		GS-4	13,405	16,852	383		"
GS-667, Orthotist and Prosthetist Series, limited to employees certified by the American Board for Certification in Orthotics and Prosthetics, Inc.	San Francisco and Oakland, CA PMSAs	GS-9	Regular rates would apply			#397	Terminate
GS-681, Dental Assistant	All Alaska Area Native Health Service Facilities	GS-2	10,585	13,223	315	#473	No change
		GS-3	12,915	16,236	369		"
		GS-4	13,669	17,395	414		"
		GS-5	14,829	18,996	463		"
*The within-grade increase varies between steps 1 and 2. The step 2 rate is $10,703. The within grade increase shown should be applied to construct all remaining step rates.							
GS-682, Dental Hygiene Series	State of California	GS-4	15,436	19,162	414	#328	Increase
		GS-5	16,790	20,957	463		"
		GS-6	18,180	22,833	517		"
		GS-7	19,012	24,178	574		"
GS-699, Ultrasound Technician	Naval Hospital, Philadelphia, PA	GS-3	14,320	17,623	367	#533	No change
		GS-4	16,075	19,783	412		"
		GS-5	17,986	22,135	461		"
		GS-6	19,021	23,647	514		"
		GS-7	20,564	25,703	571		"
GS-699, Diagnostic Ultrasound Technician	Fort Ord, CA	GS-7	20,975	25,943	552	#509	No change
GS-699, Health Aid and Technician Series	All Alaska Area Native Health Service Facilities	GS-3	12,177	15,498	369	#472	No change
		GS-4	13,255	16,981	414		"

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-986, Legal Clerk/ Technician Series	U.S. Attorney's Office, Equal Employment Opportunity Commission, Security and Exchange Commission, Commodity Futures Trading Commission, Executive Office for U.S. Trustees, Los Angeles, CA	GS-5	$16,310	$20,459	$461	#903	Increase
		GS-6	17,645	22,460	535		"
GS-986, Legal Clerk/ Technician (Typing)	U.S. Attorney's Office, Southern District of New York and Eastern District of New York; Commodity Futures Trading Commission, New York, NY	GS-4	14,576	18,302	414	#904	Increase
		GS-5	16,305	20,472	463		"
		GS-6	17,645	22,298	517		"
GS-1224, Patent Examining Series (Engineering Specializations only)	Washington, DC MSA	GS-5	17,750	22,070	480	#576	No change
		GS-7	20,794	26,140	594		"
		GS-9	23,985	30,528	727		"
GS-1310, Physicist (Optics) and GS-800 Engineer (Optics)	Air Force Weapons Laboratory (AFWL), Kirtland Air Force Base, NM	GS-9	27,384	33,702	702	#593	No change
		GS-11	31,439	39,089	850		"
		GS-12	35,639	44,801	1,018		"
		GS-13	39,960	50,859	1,211		"
GS-1311, Physical Science Technician Series (Radiation monitoring and control positions only)	Portsmouth Naval Shipyard, Portsmouth, NH	GS-6	18,552	23,142	510	#592	Increase
		GS-7	20,200	25,294	566		"
		GS-8	21,714	27,357	627		"
		GS-9	23,258	29,495	693		"
GS-1311, Physical Science Technician (Radiation monitoring and control positions only)	Mare Island Naval Shipyard, CA	GS-5	$18,230	$22,379	$461	#590	Increase
		GS-6	20,320	24,946	514		"
		GS-7	22,576	27,715	571		"
		GS-8	25,004	30,701	633		"
		GS-9	27,620	33,911	699		"
GS-1311, Physical Science Technician (Radiation monitoring and control positions only)	Pearl Harbor Naval Shipyard, Hawaii	GS-4	15,007	18,868	429	#591	No change
		GS-5	16,310	20,630	480		"
		GS-6	17,645	22,460	535		"
		GS-7	19,606	24,952	594		"
		GS-8	23,030	28,952	658		"
		GS-9	25,439	31,982	727		"
GS-1550, Computer Scientist, limited to positions within the National Aeronautics and Space Administration and the Departments of Navy, Commerce, Health and Human Services, Air Force, Army and the Defense Communications Agency	Washington, DC MSA; Annapolis, MD; Dahlgren, VA; and Patuxent River, MD	GS-5	18,710	22,823	457	#697	Increase
		GS-7	23,170	28,264	566		"
		GS-9	24,732	30,969	693		"
							Army added to coverage
GS-1550, Computer Scientist (Positions within the Department of Navy)	Newport, RI and New London, CT	GS-5	18,252	22,266	446	#698	Increase
		GS-7	22,603	27,571	552		"
		GS-9	24,103	30,178	675		"

NATIONWIDE AND WORLDWIDE AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
NOTE: For all medical officer special rate authorizations listed below (tables numbered 290, 524 and 499), excluded are physicians who have received National Health Service Corps (NHSC) scholarships and who are fulfilling a service obligation through assignment to NHSC or the Department of Justice.							
GS-602, Medical Officer, Clinical Positions, limited to positions concerned with providing primary medical care and direct service to patients involving the performance of diagnostic, preventive and therapeutic services in hospitals, clinics, and other medical facilities. Excluded are positions involved in Preventive Medicine, including Occupational Health Medicine and Aviation Medicine, where the primary emphasis is the practice of medicine as applied to the worker and in relation to the work environment.	Worldwide	GS-11	$32,687	$40,229	$838	#290	No change
		GS-12	39,183	48,228	1,005		"
		GS-13	46,593	57,348	1,195		"
		GS-14	53,646	66,354	1,412		"
		GS-15	58,120	73,069'	1,661		"
'The rate payable to employees at these rates is limited to $68,700.							
GS-602, Medical Officer, Research Positions, limited to non-clinical positions primarily involving the conduct of medical research and experimental work (or the review or evaluation of such medical research and experimental work) or the identification of causes or sources of disease or disease outbreaks. This work may include the conduct of medical work pertaining to the evaluation of food, drugs, cosmetics, and devices. Research medical officer positions providing some primary patient care may be included.	Worldwide	GS-11	31,044	38,397	817	#524	No change
		GS-12	37,206	46,017	979		"
		GS-13	45,398	56,153	1,195		"
		GS-14	50,822	63,530	1,412		"
		GS-15	54,798	69,747'	1,661		"
'The rate payable to employees at these rates is limited to $68,700.							
GS-602, Medical Officer, Other Positions, includes all medical officer positions not elsewhere covered by other special salary rate authorizations for GS-602, Medical Officers.	Worldwide	GS-11	29,854	36,928	786	#499	No change
		GS-12	36,889	45,367	942		Increase
		GS-13	43,864	53,944	1,120		"
		GS-14	48,873	60,780	1,323		"
		GS-15	54,004	69,682'	1,742		"
'The rate payable to employees at this rate is limited to $68,700.							
GS-610, Nurse Series	Indian Health Service, Nationwide*	GS-4	$15,531	$18,978	$383	#531	Increase
		GS-5	18,070	22,084	446		"
		GS-7	19,422	24,390	552		"
		GS-9	23,761	29,836	675		"
*"Nationwide" geographic coverage includes the areas specified in Section 591.202 of OPM's Regulations.							
GS-800, Professional Series in the Engineering Group (This authorization covers GS-801, 803, 804, 806, 807, 810, 830, 840, 858, 861, 871, 890, 892, 893, 894, and 896)	Worldwide	GS-5	18,710	23,030	480	#414	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	26,893	33,211	702		Increase
		GS-11	29,018	36,668	850		"
							Series GS-855 deleted
*The rates for these grades were already at the highest levels permitted by law and could not be further increased.							
NOTE: This authorization covers all engineering series except those covered by other authorizations as shown below.							
GS-808, Architecture and GS-819, Environmental Engineering Series	Worldwide	GS-5	18,710	23,030	480	#421	No change
		GS-7	23,170	28,516	594		"
		GS-9	26,893	33,436	727		"
		GS-11	29,018	36,929	879		"
GS-850, Electrical Engineering Series and GS-855, Electronics Engineering Series	Worldwide	GS-5	18,710	23,030	480	#422	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	27,834	34,377	727		Increase
		GS-11	30,034	37,945	879		"
		GS-12	34,034	43,898	1,096		"
							Series GS-855 added
*The rates for these grades were already at the highest levels permitted by law and could not be further increased.							

NATIONWIDE AND WORLDWIDE AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-880, Mining Engineering Series	Nationwide	GS-5	$16,706	$20,558	$428	#417	No change
		GS-7	20,701	25,480	531		"
		GS-9	25,318	31,159	649		"
		GS-11	29,068	36,142	786		"
		GS-12	32,955	41,433	942		"
GS-881, Petroleum Engineering Series	Nationwide	GS-5	17,383	21,397	446	#415	No change
		GS-7	21,527	26,495	552		"
		GS-9	26,331	32,406	675		"
		GS-11	30,640	37,714	786		"
		GS-12	34,839	43,317	942		"
		GS-13	39,186	49,266	1,120		"
GS-1321, Metallurgy Series	Nationwide	GS-5	17,830	21,943	457	#589	No change
		GS-7	22,084	27,178	566		"
		GS-9	24,941	31,178	693		"
		GS-11	27,659	35,201	838		"
GS-1654, Printing Management Series, limited to employees who have at least a Baccalaureate Degree with a major in Printing Management	Nationwide	GS-5	16,268	20,228	440	#725	No change

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Quality Control and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the quality control and reporting provisions in the administrative rules and regulations established under the Federal marketing order for California almonds. The changes would: (1) Require handlers to notify the Board 72 hours prior to making deliveries of inedible kernels to accepted users and (2) require handlers of California almonds to report to the Board persons or firms for whom they custom process almonds. The changes are intended to improve compliance with almond order requirements.

DATE: Comments must be received by October 15, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250; telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposal is to amend §§ 981.442(a)(5) and 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 50 FR 16451, 24174, and 30263). Section 981.442 is issued under § 981.42 of the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." Section 981.474 is issued under § 981.74 of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on two unanimous recommendations of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

In an effort to keep only high quality almonds in the marketplace, § 981.42 of the order and § 981.442(a)(4) of the administrative rules and regulations currently require handlers to have the inspection agency determine the weight of inedible kernels in each variety of almonds they receive. Sections 981.42(a) and 981.442(a)(5) provide that the weight of inedible kernels in a lot shall constitute a disposition obligation which handlers must meet by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wasted on record with the Board as accepted users. Accepted users must sign a contract with the Board providing that the Board may enter their premises at any reasonable time to observe the storage or physical disposition of almond material.

To assure that these low-quality almonds are kept out of normal markets for almonds, proposed changes in § 981.442(a)(5) would require handlers to notify the Board at least 72 hours prior to delivering such material to accepted users and allow the Board to supervise, at its option, the delivery of that material. The proposed changes would give the Board greater flexibility in controlling the disposition of inedible almonds and monitoring compliance with marketing order regulations controlling such dispositions.

Section 981.74 provides that the Board, with the approval of the Secretary of Agriculture, may request handlers to furnish such information as will enable the Board to perform its duties and exercise its powers. Section 981.474 of the administrative rules and regulations specifies what information handlers must submit pursuant to § 981.74. Section 981.474 currently requires handlers to submit periodic reports of their shipments, commitments, and export sales.

It is proposed to add a new paragraph to § 981.474 requiring handlers to report to the Board information regarding persons or firms for whom they have custom processed almonds. The new paragraph would require handlers to submit to the Board by the 15th of each month a report of all persons or firms, including growers, for whom the handler has custom processed almonds which have not been reported in the handler's report of almonds received (ABC Form 1). The report would list the name, address, number of pounds processed and returned to the owner, and the dates on which the processing was accomplished and the almonds were returned to the owner. The change would give the Board the means of tracking potential almond handlers and of assuring compliance with marketing order regulations. The Board believes that many growers are acting as handlers, often having their almonds custom processed, but not complying with program requirements.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

It is proposed to revise §§ 981.442(a)(5) and 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.474; 50 FR 16451, 24174, and 30263).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

2. Section 981.442(a)(5) is revised to read as follows:

§ 981.422 Quality control.

(a) * * *

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels, rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery, and the Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the

Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and credited to the handler's disposition obligation on ABC Form 8. Deliveries containing less than 10 percent almond meat content shall not be credited against the disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred.

* * * * *

3. In § 981.474, the heading and paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 981.474 Other reports.

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25 the following: (1) All shipments of almonds, inshell and shelled and by classification (domestic, and export by countries of destination); and (2) all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, he shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be filed with the Board within five business days after the close of each month of the crop year.

(b) *Report of export sales.* At the time of each export sale, each handler shall report it to the Board on ABC Form 18 and upon delivery into export shall report this on ABC Form 19. If any export is not made directly by the handler, he shall send the ABC Form 19 to the broker/exporter and request him to make the report to the Board. These forms shall include the number and type of container, net weight, variety and whether inshell or shelled, time of export and destination. In years of minimum export prices applicable to reserve almonds, ABC Form 19 shall include the grade and size, the inspection certificate number, the price and any terms defining the price. Whenever export shipments are included with domestic shipments in the estimated trade demand for a crop year, this paragraph shall not apply.

(c) *Custom processing report.* Handlers shall submit to the Board, by the 15th of each month, a report of all persons or firms, including growers, for whom they have custom processed almonds which have not been reported in the handler's report of almonds received, ABC Form 1. The report shall list the name, address, number of pounds processed and returned to owner, and dates on which the processing was accomplished and the almonds were returned to the owner.

Dated: September 25, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-23276 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210 and 245

National School Lunch Program and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Verification Monitoring and Aims Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Part 210, the National School Lunch Program, in two ways: (1) Each State agency would monitor School Food Authorities' compliance with the verification of eligibility requirements as part of the Assessment, Improvement, and Monitoring System (AIMS); and (2) the overall results of AIMS reviews and audits, as performed by State agencies, would be reported annually to the Food and Nutrition Service (FNS). This rule also proposes to amend Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, to require that the verification recordkeeping requirements for School Food Authorities be expanded and to require a sample of School Food Authorities to report verification information on a form designed by the Department. The Department is proposing this rule to improve accountability in the National School Lunch Program by collecting consistent national information on program status and by ensuring that verification activities are conducted to deter misreporting of household income.

DATE: To be assured of consideration, comments must be postmarked no later than November 29, 1985.

ADDRESSES: Comments should be sent to Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. [Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply).

This proposal has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of FNS has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the additional recordkeeping and reporting requirements contained in § 210.14(g)(4) and § 245.6a (e) and (f) of

this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the current AIMS recordkeeping and reporting requirement is 0584–0006. The OMB control number assigned to the current verification recordkeeping requirement is 0584–0026.

Background

Verification: On March 25, 1983, an interim rule was published in the **Federal Register** (48 FR 12505) which established requirements and timeframes for the verification of eligibility of households approved for free and reduced price benefits. On June 26, 1984, a final rule was published in the **Federal Register** (49 FR 26027) which made changes to the interim rule based on: (1) Comments received principally from State and school officials with verification experience; and (2) the results of a Congressionally mandated study which examined a variety of verification methods. Commenters who want additional background prior to responding to this proposal should also read the interim rule of March 25, 1983, and the final rule of June 26, 1984, which address the verification and certification process in schools.

AIMS: State agencies have been conducting AIMS reviews/audits for several years. AIMS consists of four performance standards against which State agencies measure compliance with program requirements. The Department believes that this review/audit system represents a significant contribution to program integrity. Each of the performance standards requires that State agencies examine a requirement so fundamental to the program that failure to comply by a School Food Authority is considered a serious deficiency. State agencies also evaluate all other aspects of program operations to determine if School Food Authorities are complying with all State and Federal requirements which ensure sound mangement. States have been evaluating verification techniques and recordkeeping through such evaluation. However, to ensure uniform monitoring of verification on a national scale and to assure uniform reporting of results, the Department proposes incorporating verification monitoring into AIMS and establishing a reporting requirement for a nationwide sample of School Food Authorities as described below.

AIMS Performance Standard 1 currently requires that, "Within the School Food Authority, each child's application for free and reduced meals is correctly approved or denied in accordance with the applicable provisions of Part 245." This standard was based on the requirements of Part 245 as they existed prior to the verification requirements. Since School Food Authorities and State agencies now have practical experience with verification, the Department believes that it is appropriate to incorporate monitoring of verification requirements into AIMS. This will also ensure that all activities performed by School Food Authorities related to the integrity of the application are examined by AIMS.

Proposed AIMS Performance Standard: Performance Standard 1 is proposed to be amended to include the verification requirements contained in Part 245 as follows: "In accordance with Part 245 of this chapter, within each School Food Authority: (1) Each child's application for free and reduced price meals is correctly approved or denied as required by § 245.6; and (2) required verification activities are conducted as required by § 245.6a."

The proposed amendment of Performance Standard 1 *does not* change the existing standard as it relates to the correct approval or denial of applications. The proposal expands the standard to include the verification requirement. To be in compliance with the proposed standard, School Food Authorities must still correctly approve or deny each child's application in accordance with the application approval process and, additionally, School Food Authorities must be in compliance with all verification requirements.

State agency assumption of the verification responsibility: If a State agency assumes responsibility for meeting the verification requirement for all or any of its School Food Authorities, as permitted under § 245.6a(a), the State is exempted from monitoring the verification process in those School Food Authorities. Instead, the State's verification efforts will be monitored by the appropriate FNS Regional Office during regularly scheduled management evaluations.

Scope of verification review/audit: The proposal requires State agencies conducting AIMS reviews/audits to determine that School Food Authorities are complying with all the verification requirements. This monitoring would include a review of School Food Authority verification records, including a review of all individual application forms that were verified to satisfy the verification requirements of § 245.6a, in the schools selected for AIMS review/audit. State agencies should ensure that schools selected for AIMS audit/review include at least one school in which verification activity was conducted. In addition, State agencies would be required to determine whether appropriate eligibility changes for free and reduced price meal benefits were made by the School Food Authority as a result of verification findings. As discussed in detail below, the Department continues to require that verification information be kept on file by the School Food Authority.

Reviews done before December 15: If the review/audit takes place prior to the deadline for completion of verification activity and the School Food Authority has not completed its verification sample, the State agency must review the School Food Authority's verification activities from the previous school year to determine if the School Food Authority complied with requirements of § 245.6a. The State must also review the progress the School Food Authority has made toward meeting the § 245.6a requirements in the current year. However, regardless of when the review is conducted, the State must review the School Food Authority's planned verification activities for the current school year to determine whether the activities planned are likely to meet the verification requirement for the year.

Error tolerance: The current required sample size for verification is considered by the Department to be a "minimum" sample size. Failure to perform the minimum number of verifications will jeopardize the deterrent effect upon which the verification requirement is based. Therefore, this proposal does not provide any leeway in the verification requirement since an error tolerance level would permit School Food Authorities to perform fewer than the minimum number of verifications considered necessary to maintain the effectiveness of verification activity.

Corrective action: On a first review or an audit, the School Food Authority will have to undertake a formal corrective action plan if: (a) The School Food Authority's files do not include information sufficient to establish compliance with the verification requirements; or (b) the School Food Authority does not have adequate documentation in a reviewable form that the minimum number of applications have been verified; or (c) the eligibility determinations made as a result of verification are incorrect.

*Proposed verification :*The Department is also proposing a clarification of the recordkeeping requirements in § 245.6a(c). The School Food Authority is currently required to have on file a description of the

verification to be accomplished which includes: (1) A summary of verification efforts including the methods used to select applications to be verified and the techniques used to verify applications; (2) the total number of applications on file by October 31; and (3) the percentage or number of applications verified as of December 15. Additionally, the proposal expands the recordkeeping requirements, beginning July 1, 1986, to include a requirement that School Food Authorities clearly document in a reviewable form their proposed schedule for completing the verification requirement, and their verification findings. Documentation of verified applications may be noted directly on the application or elsewhere. This documentation must include the source of verification information (pay stub, letter from employer, etc.), whether the income information supports eligibility, resulting changes in household eligibility, and the date and signature or initials of the verifying official. Entry spaces to easily document all of this information were included on the suggested application form that was issued by FNS in 1984. This proposal also specifies that where State agencies have assumed verification responsibilities, these State agencies must also assume the corresponding recordkeeping requirements.

Proposed verification reporting: The Department is proposing a verification reporting requirement, beginning July 1, 1986, for a sample of School Food Authorities as selected by FNS. The Department believes that it is necessary to monitor the implementation and results of verification to evaluate its effectiveness. Therefore, the Department is proposing that School Food Authorities maintain on file the results of their verification activity and, as required by FNS, report the information to State agencies on a form provided by FNS. After the State has reviewed the forms to ensure their accuracy and completeness, the data will be forwarded to FNS. The proposed reporting form would include at a minimum: (1) The method of sampling used, i.e., random, focused, or 100 percent; (2) the number of approved free and reduced price applications on file as of October 31; (3) the number of applications verified by December 15; and (4) the number of approved applications changed from: (i) Free meals to reduced price meals; (ii) free meals to denied; (iii) reduced price meals to free meals; and (iv) reduced price meals to denied. FNS will design a form to be used for the collection of this information to ensure that consistent information is compiled and evaluated nationally. The Department solicits comments on any other information which may provide needed insight into the effectiveness of the current verification requirements. Based on current data, the Department does not anticipate that the sample will exceed one-third of all School Food Authorities. It should be noted that it may prove necessary to increase or decrease the sample size in individual States to obtain valid information for that State. In addition, the Department may determine, at a later date, that a sample size larger than one-third of all School Food Authorities may ultimately be needed to obtain accurate information on a national basis.

Proposed AIMS reporting: The Department is also proposing an annual AIMS reporting requirement for State agencies. The AIMS review/audit system has been a requirement for State agencies for several years. This system requires that State agencies perform reviews or audits of all School Food Authorities on a regular cycle. Each School Food Authority is evaluated in its compliance with the AIMS performance standards. State agencies are currently required by § 210.14(g)(4) to maintain records pertaining to these AIMS requirements. Among other items, these records must "document the details of all AIMS reviews/audits and demonstrate the degree of compliance with AIMS performance standards." Additionally, records of corrective action plans developed to remedy program deficiencies must be maintained.

The Department believes that the results of AIMS reviews/audits represent a valuable profile of the status of the National School Lunch Program and should be used to evaluate national or regional trends in program operations. Although these records are subject to review by FNS during management evaluations, there has been no system to gather and summarize this information at a fixed time each school year using a consistent format. Additionally, because recordkeeping is not uniform, AIMS data is not readily retrievable. Therefore, the Department is proposing that State agencies annually report a summary of the results of AIMS reviews/audits.

The Department believes that since State agencies are currently required to maintain AIMS records, reporting the results to FNS annually on a form designed by FNS is reasonable and should not unduly burden State agencies. Providing a format and specific data to be reported may in some instances actually lessen the recordkeeping burden of some State agencies. The Department envisions that the summary will include the number of reviews/audits performed, the number of School Food Authorities requiring corrective action plans, and data by performances standard, such as the total number of School Food Authorities violating a performance standard and the number and dollar value of State overpayment assessments and collections.

Although this summary report would not be required by this proposed rule until one entire AIMS cycle has been completed, some of the data which would be reported at that time must be obtained during School Year 1985–86. The Department wishes to emphasize that State agencies are already required to maintain such records. We strongly urge State agencies to maintain all AIMS records beginning with this school year in formats designed to meet the type of reporting requirement proposed by this rule. This will facilitate compliance with the reporting requirement when it is put into effect.

Implementation: The first of these proposed annual AIMS reports will not be due until March 1, 1987. Since it is possible that a second AIMS review may not be conducted until December 31 of the school year following the first review, the Department is proposing that AIMS results for the prior school year be reported to FNS by March 1 of each school year. This will permit the results of second AIMS reviews to be included with the appropriate annual report. A similar reporting requirement is also proposed for those State agencies utilizing a compliance monitoring system which is equivalent to AIMS in scope and approved by FNS as provided in § 210.14(a)(7). FNS will design a form to be used for the collection of this information to ensure that the information obtained and the evaulation methods used are consistent.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 245

Food assistance programs, National School Lunch Program, Grant—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270 (42 U.S.C. 1751–1760, 1779), unless otherwise noted.

2. Section 210.2(b–3)(1) is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(b–3) * * *

(1) In accordance with Part 245 of this chapter, within the School Food Authority: (i) each child's application for free and reduced price meals is correctly approved or denied as required by § 245.6 and (ii) required verification activities are conducted as required by § 245.6a.

* * * * *

3. Section 210.9 is revised to read as follows:

§ 210.9 Free and reduced price lunches.

In accordance with Part 245 of this chapter, the School Food Authority shall make eligibility determinations for households applying for free and reduced price benefits for its children, serve free and reduced price lunches to children from eligible households, and conduct verification activities.

4. Section 210.14 is amended by:

a. Redesignating paragraphs (a)(3)(i)(B), (C) and (D) as paragraphs (a)(3)(i)(C), (D) and (E) respectively, and adding a new paragraph (a)(3)(i)(B);

b. Revising paragraph (a)(3)(v)(A);

c. Adding a sentence to paragraph (a)(7)(v)(B) at the end of the existing paragraph; and

d. Adding a sentence to paragraph (g)(4) just before the last sentence which begins with the word "Additionally".

The additions and revisions read as follows:

§ 210.14 Special responsibilities of State agencies.

(a) * * *

(3) * * *

(i) Scope of AIMS reviews: * * *

(B) The State agency shall determine if the verification procedures employed by each School Food Authority comply with the requirements of § 245.6a of this chapter. This shall be accomplished by reviewing the verification activities carried out by the School Food Authorities to ensure that the verification requirements of § 245.6a of this chapter have been met. This review shall include an evaluation of all individual applications verified by the School Food Authority to satisfy the verification requirements of § 245.6a, in the schools selected for AIMS audit/review. State agencies shall ensure that schools selected for AIMS audit/review include at least one school in which verification activity was conducted. In addition, State agencies shall determine if School Food Authorities made the appropriate changes in household eligibility status as a result of verification activity. If the review is conducted prior to December 15, and the School Food Authority has not yet completed its verification activities, the State agency shall review the School Food Authority's verification activities for the preceding year to determine if the verification requirements of § 245.6a were satisfied. The State agency shall also review the School Food Authority's progress toward meeting the verification requirements of the current year. Regardless of when the review is conducted, the State agency shall review the School Food Authority's description of planned verification activities for the current school year to determine if they are adequate to meet the minimum verification requirements of § 245.6a of this chapter. State agencies which have assumed responsibility for verification activities in some or all of their School Food Authorities are exempt from the requirements in this paragraph for those School Food Authorities in which the State has assumed responsibility.

* * * * *

(v) Error tolerance for AIMS review * * *

(A) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children) of the children listed on reviewed applications and attending reviewed schools in a School Food Authority are incorrectly approved or denied for free or reduced price meal benefits; or the School Food Authority has not complied with the requirements concerning verification as required by S245.6a of this chapter; and/or

* * * * *

(7) * * *

(v) * * *

(B) * * * The State agency shall report to FNS the results of such monitoring visits and activity on a form designated by FNS by March 1 of each school year, beginning July 1, 1986.

* * * * *

(g) *Records and reports:* * * *

(4) * * * Each State agency shall report to FNS the results of AIMS reviews/audits on a form designated by FNS by March 1, of each school year, beginning July 1, 1986. * * *

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (43 U.S.C. 1751–60), unless otherwise noted.

2. Section 245.6a is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 245.6a Verification requirements.

* * * * *

(c) *Verification recordkeeping.* Beginning July 1, 1986, each School Food Authority, or the State agency if it has assumed responsibility for verification, shall maintain on file for review documentation of its current plans for verification activities and the results of completed verification activities. At minimum, the following shall be available for review:

(1) A description of the methods (random, focused, or other) used to select applications;

(2) A description of the techniques used in the verification process such as: types of information required (wage stubs, etc.); the use of systems of records such as food stamp eligibility records; and follow-up procedures such as the number of contacts with non-responding households;

(3) A timetable indicating the schedule for verification;

(4) The number of approved free and reduced price applications on file by October 31;

(5) The number of applications verified by December 15; and

(6) A record, on the application or elsewhere in a reviewable form, of the source, results and date of individual verification determinations and the signature or initials of the verifying official.

(d) *Verification reporting:* (1) Each year, beginning July 1, 1986, for purposes of collecting data on verification activities, FNS shall select a nationwide sample of school food authorities and shall notify State agencies of the exact sample selection by December 31 of each year.

(2) Each State agency shall ensure that those school food authorities

included in the nationwide sample report the results of verification activity to the State agency, on a form designated by FNS, by February 28 of each year. The results to be reported shall at a minimum include:

(i) The verification sampling method used (random, focused, or description of other);

(ii) The number of approved free and reduced price applications on file as of October 31;

(iii) The number of applications verified as of December 15;

(iv) The number of approved applications changed as a result of verification from: (A) Free meals to reduced price meals; (B) free meals to denied; (C) reduced price meals to free meals; and (D) reduced price meals to denied.

(3) Each State agency shall review and forward the completed forms to FNS no later than March 30 of each year.

* * * * *

Dated: September 24, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-23256 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. AO-387]

Milk in the Hawaii Marketing Area; Rescheduling of Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rulemaking.

SUMMARY: The hearing on a proposed Federal milk marketing agreement and order for the Hawaii marketing area, originally scheduled to begin October 1, 1985, has been rescheduled to begin December 11, 1985.

DATE: The rescheduled hearing will convene at 9:00 a.m., local time, on December 11, 1985.

ADDRESS: The rescheduled hearing will be held in Room 6323 of the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on August 6, 1985 (50 FR 32426), giving notice of a public hearing to be held at the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii, beginning at 9:00 a.m., local time, on October 1, 1985, with respect to a proposed Federal marketing agreement and order regulating the handling of milk in the Hawaii marketing area.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held in Room 6323 of the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, beginning at 9:00 a.m., local time, on December 11, 1985.

Prior documents in this proceeding:

Notice of Hearing: Issued August 6, 1985; published August 12, 1985 (50 FR 32426).

List of Subjects in 7 CFR Part 1140

Milk Marketing Orders, Milk, Dairy Products.

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

Signed at Washington, D.C., on: September 24, 1985.

William T. Manley,

Deputy Administration, Marketing Programs.

[FR Doc. 85-23239 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 85-097]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle because of tuberculosis by lowering the designation of New Mexico from an accredited-free State to a modified accredited area. It has been determined that New Mexico no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited area.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATE: Written comments must be received on or before November 29, 1985.

ADDRESSES: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-097. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdicitons designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication.

Sections § 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of cattle not known to be affected with or exposed to tuberculosis:

§ 77.7 Movement from accredit-free States and modified accredited areas.[3]

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

§ 77.8 Movement from nonmodified accredited area.

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

New Mexico is included in the list of jurisdictions designated in § 77.4 of the regulations as accredited-free States. The Deputy Administrator has detemined that New Mexico no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as a modified accredited area. Therefore, it is proposed to amend the regulations to designate New Mexico as a modified accredited area.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this proposed rule, if adopted, would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. It has been determined that the adoption of the proposed rule would not cause a significant effect on marketing patterns and would not have a significant economic impact on those persons affected by this document.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, it is proposed to amend 9 CFR 77 as follows:

1. The authority citation for Part 77 would be revised to read as set forth below:

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

2. In § 77.4, paragraph (b) would be revised to read as follows:

§ 77.4 Accredited-free States.

(a) * * *

(b) The following States are hereby designated accredited-free States: Arizona, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jsery, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming, and the Virgin Islands of the United States.

Done at Washington, DC, this 24th day of September 1985.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-23277 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-82-AD]

Airworthiness Directives: Short Brothers, Ltd. Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the inspection and repair, as necessary, of the main fitting of the nose landing gear. This action is required to detect forging defects which have been reported in the wall of the fitting. Defects could lead to failure of the nose landing gear.

DATES: Comments must be received on or before November 18, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-82-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–82–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA) of the United Kingdom, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain nose landing gear main fittings on Short Brothers, Ltd. Model SD3–60 airplanes. A forging defect in the cylindrical wall of the main fitting generated a crack, which was discovered in service. If allowed to remain undetected, the crack could have resulted in the failure of the fitting and collapse of the nose landing gear. Shorts Service Bulletin SD360–32–19 dated March 1985, refers to Dowty Rotol Service Bulletin 32–26SD dated December 19, 1984, which prescribes inspections, and repairs where possible, to detect and alleviate the defeat. The CAA has mandated compliance with the Service Bulletins.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection, and rework of the fitting where possible, in accordance with the previously mentioned service bulletins.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 man-hours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Model SD3–60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers, Ltd.: Applies to certain Model SD3–60 airplanes, as described in Short Brothers, Ltd. Service Bulletin SD360–32–19, dated March 1985, certificated in any category.

To prevent the failure of the nose landing gear main fitting, accomplish the following within 90 days after the effective date of this AD, unless previously accomplished:

1. Inspect using eddy current methods and rework, as necessary, the main fitting of the nose landing gear in accordance with Dowty Rotol Service Bulletin 32–26SD dated December 19, 1984.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 19, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–23206 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR–291–84]

Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the reduction of a taxpayer's overpayment of tax by the amount of any past-due legally enforceable debt owed to a federal agency by the taxpayer and referred by the agency to the Internal Revenue Service for offset. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 29, 1985. The regulations are proposed to apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1988 and are effective upon publication.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–291–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and

Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), (202) 566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 301 of Title 26 of the Code of Federal Regulations to provide rules relating to section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code, as added by section 2653 of the Spending Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 1153). This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules. For the text of the temporary regulations, see FR Doc. 85–23285 (T.D. 8053) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. 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 that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight 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.**

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall 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 on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85–23286 Filed 9–27–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–31–85]

Tax-exempt Entity Leasing; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations regarding tax-exempt entity leasing.

DATES: The public hearing will be held on Monday, November 25, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, November 12, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal revenue, ATTN: CC:LR:T (LR–31–85), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168 (j) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, July 2, 1985 (50 FR 27297).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations whould submit, not later than Tuesday, November 12, 1985, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–23288 Filed 9–27–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Oklahoma to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and

certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on October 30, 1985 will not necessarily be considered. A public hearing on the proposal will be held on October 25, 1985 at the locations listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief, Acting Director, Tulsa Field Office by 4:00 p.m. on October 15, 1985. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

The public hearing, if requested will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Oklahoma program amendment and administrative record on the Oklahoma program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581-7923.

SUPPLEMENTARY INFORMATION: Copies of the Oklahoma program amendment, the Oklahoma program and the administrative record on the Oklahoma program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, Suite 107, 4040 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105

The Oklahoma program was approved by the Secretary of the Interior on January 19, 1981, **Federal Register** (46 FR 4910). On August 8, 1985, the State of Oklahoma submitted to OSM an amendment to its approved permanent regulatory program. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and a blaster training course outline which addresses the topics identified in the Federal regulations at 30 CFR Part 850 as published in the March 4, 1983, **Federal Register** (48 FR 9486).

In accordance with the provisions of 30 CFR 732.17, OSM is seeking comment from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 936 as part of the approved Oklahoma program.

Additional Determinations

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 sections 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 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 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Sec. 503 (30 U.S.C. 1253).

Dated: September 23, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-23245 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84014; FRL-2905-2]

Health and Safety Data Reporting; Submission of Lists and Copies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Toxic Substances Control Act (TSCA) section 8(d) Health and Safety Data Reporting Rule by: lengthening the rule's sunset provision, limiting three reporting exemptions, clarifying the rule's confidentiality provisions, and making some technical revisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its risk identification, assessment, and management activities.

DATE: Written comments should be submitted by November 29, 1985.

ADDRESS: Comments should bear the docket control number OPTS-84014 and should be submitted to: TSCA Public Information Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (544-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0004.

I. Background

Pursuant to section 8(d) of TSCA, EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with very useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Since promulgation of the model rule, EPA has amended the rule 10 times to list approximately 125 substances.

Whenever EPA lists a substance in the model rule, the model rule's reporting requirements are triggered, and a person is required to submit health and safety studies. Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions. Listed below are the general reporting requirements of the seciton 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process or had manufactured, imported, or processed the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. A person who, at the time a substance is listed, proposes to manufacture, import, or process or is manufacturing, importing, or processing the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time a substance is listed, proposes to manufacture, import, or process the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

A review of the section 8(d) model rule's reporting requirements shows that the bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, principally category 3, continue prospectively. All but 1 of these prospective reporting requirements are terminated by the 3 years sunset provision. The only reporting requirement not terminated by the sunset provision applies to those manufacturers, importers, and processors who initiated a study on a listed substance before the reporting period terminated. These studies must be submitted upon their completion regardless of the study's completion date.

The section 8(d) model rule also contains: exemptions to the above reporting requirements, and provisions that instruct submitters on asserting claims of confidentiality.

II. Summary

EPA is proposing to lengthen the sunset provision from 3 years to 10 years, thereby allowing the prospective reporting requirements to remain in effect for a longer period of time. In order to offset the potential for an increase in unnecessary reporting burden, EPA will biennially review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. The Agency is also proposing to amend the model rule by: limiting three reporting exemptions; clarifying the confidentiality claims provisions; replacing the term "designated mixture" with the term "listed mixture"; specifying importation rather than addressing it by definition; redrafting the who must report section to provide greater clarity; reordering the provisions of Part 716 so that the list of substances follows the regulatory text; and reordering the list of substances in 40 CFR 716.17 by alphabetical and Chemical Abstract Service Registry (CAS) numerical order.

Unfortunately, EPA believes that between publication of this proposed rule and promulgation of a final rule, the section 8(d) model rule's automatic sunset provision will terminate the reporting periods on many substances listed in the model rule. Allowing the reporting periods on these substances to terminate would create reporting gaps which could be closed only by requiring file searches. In order to prevent these reporting periods from terminating, the creation of reporting gaps, the need for additional file searches, and confusion for submitters; elsewhere in this issue of the **Federal Register**, EPA is suspending the operation of the sunset provision for one year or until promulgation of a final rule, whichever occurs first. EPA has reviewed these substances and determined that it has a reasonable health and safety data need for continued reporting on all but seven of them. Therefore, elsewhere in this issue of the **Federal Register**, EPA is removing these seven substances from the section 8(d) model rule.

III. Reasons for Proposing This Rule

A. Lengthening the Sunset Provision

As described in Unit I, the sunset provision terminates all but 1 of the prospective reporting requirements in the section 8(d) model rule. After a reporting period has terminated, current manufacturers, importers, and processors of a once listed substance are no longer required to notify EPA when they initiate a health and safety study on the substance, or to submit that study whenever it is completed; persons who propose to manufacture, import, or process the once listed substance would no longer be required to initiate a file search for or submit unpublished health and safety data studies on the substance. EPA believes that the sunset provision in the section 8(d) model rule provides an important function by limiting the potential for unnecessary reporting and terminating what would

otherwise be indefinite reporting requirements.

However, based on the Agency's experience with the section 8(d) model rule, EPA has determined that the 3-year sunset provision will routinely cut short the reporting period on most of the listed substances before EPA has completed its risk identification, assessment, and management activities. For instance, on October 4, 1985, the sunset provision will terminate the reporting period on the chemical substances listed at 40 CFR 716.17(a)(1). Except for hexachlorocyclopentadiene, EPA wishes to extend the reporting period on all of the chemicals listed in § 716.17(a)(1). The Agency has identified four reasons that necessitate extending the reporting period for these chemicals. One or more of these reasons is applicable to each substance:

1. EPA is actively considering the substance for a rulemaking or a rulemaking is in progress.

2. The substance is undergoing testing, the results of which may require an intermediate tier testing decision or subsequent chemical assessment.

3. A chemical evaluation/risk assessment is planned or in progress.

4. The substance is used in structure activity relationship analysis of other chemical substances.

In order to keep the health and safety data bases current and comprehensive for these substances EPA must extend the reporting period. Two major alternatives to extend the reporting period are to: relist the substances without lengthening the sunset provision, or lengthen the sunset provision thereby reducing the probability for relisting substances.

1. Relisting and the Sunset Provision

EPA believes that the sunset provision is an important part of the section 8(d) model rule. The sunset provision limits unnecessary reporting and maintains the burden on EPA to articulate a reasonable need for continuing health and safety data reporting. The sunset provision requires EPA to review those substances for which the sunset provision is about to terminate the reporting period, and then relist, by notice and comment rulemaking, those substances which EPA has a continuing need for health and safety data. Since EPA adds substances to the model rule at least twice a year and the model rule contains a 3-year sunset, EPA must annually review a limited number of the listed substances (those in their 2nd year of a reporting period) and relist those for which prospective section 8(d) reporting is needed.

However, activity has a number of drawbacks. Relisting is expensive, time consuming, and requires EPA to expend resources to keep an important health and safety data base current and comprehensive. In addition, the final rule to relist a substance must be effective prior to the reporting period termination date otherwise reporting gaps will be created. As long as there is a sunset provision in the section 8(d) model rule, there will be instances in which EPA will consider relisting substances. However, the longer the sunset provision the fewer the instances in which EPA would need to consider relisting substances, and therefore the smaller the potential for an annual rulemaking to relist substances. Lengthening the sunset provision then would reduce EPA's resource expenditures for keeping health and safety data bases current and comprehensive, and would reduce the potential for reporting gaps and subsequent file searches. On the other hand, the longer the sunset provision the greater the potential for requiring unnecessary reporting and the smaller the burden on EPA to require prospective section 8(d) reporting.

Based on EPA's review of all the listed substances, the 3 years sunset provision requires EPA to relist almost every substance at least once. This will result in, at a minimum, two notice and comment rulemakings for almost each substance and a 6 year reporting period. Clearly for the first 6 year period, this is a large resource expenditure to keep a health and safety database current, and is a heavy burden on EPA to require prospective section 8(d) data. By year 6, EPA believes that between one-third and two-thirds of the substances will again need to be relisted. This represents, for up to 66% of these substances, a high probability for a third rulemaking. In fact, EPA believes that not until year 10 will the need to relist substances fall between 0 and 10 percent of the substances.

EPA's objectives in proposing to amend the 3 year sunset are to: reduce the costs of keeping a database current and comprehensive by reducing the potential for an annual rulemaking to relist substances; leave the burden on EPA for articulating a need for continuing reporting; and minimize the potential for unncessary reporting. Four options are presented below: a 6 year sunset provision, a 10 year sunset provision, a 6 year sunset and a biennial review, and a 10 year sunset and a biennial review.

2. Options

For a small increase in the potential for requiring unnecessary reporting, EPA believes that a 6 year sunset provision will significantly reduce the need to relist substances and would reduce the burden on EPA for requiring prospective section 8)d) reporting. No longer would EPA need to list almost each substance at least twice. However after year 6, EPA would still need to relist at least one-third and as much two-thirds of these substances. Therefore this option would result in an annual review of a limited number of substances (those in their 5th year of a reporting period), a potential for up to 6 years of unnecessary reporting (either when first listed or whenever subsequently relisted), and a high probability for an annual rulemaking to relist substances.

For an even greater increase in the potential for requiring unnecessary reporting burden, EPA believes that a 10 year sunset provision would provide the Agency with enough time to complete its risk identification, assessment, and management activities for almost all substances. With a 10 year sunset provision only in a few instances would EPA need to relist a substance. This would substantially reduce EPA's costs to maintain a current and comprehensive database. However, a 10 year sunset provision would also substantially reduce EPA's burden for justifying prospective section 8(d) reporting and increase the potential for requiring unnecessary reporting. Therefore this option would result in an annual review of a limited number of substances (those in their 9th year of a reporting period), a potential for up to 10 years of unnecessary reporting (either when first listed or whenever subsequently relisted), and a low probability for an annual rulemaking to relist substances.

Comparing the 6 and 10 year options on cost savings alone, the 10 year sunset provision is the preferred option. Although both options entail an annual review of a limited number of substances, the 10 year sunset is unlikely to result in an annual relisting and therefore would dramatically reduce EPA's database costs. However, the 10 year sunset would also increase the potential for unnecessary reporting and reduce the burden on EPA for requiring prospective section 8(d) reporting.

To reduce the potential for unnecessary reporting and to reshoulder the burden for requiring prospective section 8(d) reporting, EPA considered combining the 6 and 10 year sunset

provisions with a biennial reivew of all the listed substances. Every 2 years, EPA would review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. The authority for terminating a reporting period on a substance listed in the section 8(d) model rule already resides with the Assistant Administrator of the Office of Pesticides and Toxic Substances, 40 CFR 716.19. EPA would use this authority to remove substances from the section 8(d) model rule following each biennial review.

EPA has established an internal procedure to review each substance on the section 8(d) model rule, and to elicit all reasonable justifications for retaining each substance on or removing each substance from the model rule. Following the review a final rule would be published. The rule would inform the public and regulated community that the review was complete, and would remove those substances for which EPA's health and safety data needs cannot reasonably justify continued reporting. The rule would be effective 90 days following its promulgation, thereby allowing persons to comment on the determinations presented in the final rule. If a reasonable justification exists for retaining a substance on the section 8(d) model rule, EPA will withdraw the substance from the final rule prior to the final rule's effective date. EPA has already used this internal process and has reviewed the substances listed in 40 CFR 716.17(a) (1) through (10). Pursuant to this review, EPA has elsewhere in this issue of the **Federal Register**, promulgated a final rule that removes hexachlorocyclopentadiene and six other substances from the section 8(d) model rule.

Combining the 6 year sunset provision with a biennial review is only slightly preferable to the current 3 year sunset provision, and it is less desirable than the simple 6 year sunset provision. Compared with the simple 6 year sunset provision, this option would: reduce the potential for unnecessary reporting (from up to 6 years to 2 years); substantially increase EPA's burden for requiring prospective reporting (the burden would exist every 2 rather than 6 years); and increase EPA's costs of keeping the section 8(d) data base current and comprehensive (not only would EPA face the same high probability for relisting substances, but EPA would also be expending resources to remove substances).

Combining the 10 year sunset provision with the biennial review is the most preferred option. Compared to the 6 year sunset and biennial review this option provides: the same potential for unnecessary reporting (up to 2 years), the same burden for requiring prospective reporting (every 2 years), but since it is unlikely that EPA would need to relist a substance, a substantial reduction in the cost of keeping the database current and comprehenaive. Therefore, EPA is proposing to replace the 3 year sunset provision with a 10 year sunset and a biennial review of all listed substances.

B. Limiting Three Reporting Exemptions

Section 716.11 of the section 8(d) model rule exempts certain health and safety studies from the submission and listing requirements of the model rule. EPA has determined that exemptions (c) and (b) are too broad and should be limited. The third exemption EPA proposes to amend is a listing exemption for newly initiated studies.

Exemption (c) provides that a non-confidential study previously submitted to any Federal agency is exempt from the submission and listing requirements of the section 8(d) model rule. This exemption allows a manufacturer, importer, or processor of a listed substance, who has previously submitted a non-confidential study to a Federal agency, to refrain from submitting the study to EPA and notifying EPA that a study was submitted to the Federal Government. Since the Federal Government does not have a central depository from which a federal employee can ascertain or catalog the receipt of a health and safety study, potentially critical information may be omitted from EPA's risk assessment and management determinations. In order that EPA may consider all relevant information, while avoiding duplicative submissions, EPA wishs to be informed of only the study's identity, the name and address to whom the study was sent, and the month and year in which the study was submitted. Therefore, EPA proposes to subject non-confidential studies previously submitted to Federal agencies to the listing requirements of the model rule.

Exemption (b) provides that a study (non-confidential or confidential) previously submitted to EPA is exempt from the submission and listing requirements of the section 8(d) model rules. This exemption is tempered with examples of the studies EPA wishes to exempt; "studies voluntarily submitted during section 4 proceedings or under the previous section 8(d) rule." These are examples of the types of studies submitted to EPA under TSCA proceedings. Such studies are readily identifiable as to the subject chemical and are readily accessible to EPA staff evaluating the risks of that substance. However, the same is not the case for all studies previously submitted to EPA.

Since EPA does not have an information management system that centrally catalogs data submissions to all of its program regional, and field offices, and because such submissions may be identified in terms of specific sites or processes rather than by a chemical substance, potentially critical information could be omitted from the Agency's risk assessment and management determinations. Therefore, EPA proposes to limit this exemption by specifying in § 716.11(b) those type of submissions that can be readily identified with respect to the subject chemical and retrieved for risk assessment and management determinations on that substance. EPA's proposal would exempt from the submission and list requirements those studies previously submitted to the EPA Office of Toxic Substances. These studies are limited to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices, and studies submitted "for your information" (FYI submissions).

All other studies which were previously submitted to EPA would be subject to either the submission or listing requirements. Nonconfidential studies would fall under exemption (c) (i.e. a study previously submitted to a Federal Agency without claims of confidentiality) and therefore would be subject only to the listing requirements of the section 8(d) model rule. Whereas, confidential studies would need to be resubmitted.

EPA proposes to require the resubmission of confidential studies rather than simply requiring notification because of the different confidentiality provisions in EPA's statutory authorities. Section 14 of TSCA states generally that health and safety studies *"submitted under this Act"* are not protected as confidential information. Therefore, studies submittted under other statutes (i.e. the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) without a resubmission requirement would keep their claims of confidentialty made under that environmental statue. For instance, TSCA does not provide confidential treatment for testing methods and certain chemcial identities, whereas FIRA does. These differences in confidentiality treatment for health and safety data hinders EPA's use of the data and limits EPA's support to regional and State offices on toxic

chemical substances. Once this proposed modification is promulgated it will only affect manufacturers, importers, and processors of substances subsequently added to the section 8(d) model rule.

EPA is also proposing to add a sentence to § 716.11(c) which would allow EPA to treat any non-confidential study which was perviously submitted to another Federal Agency or EPA office other than OTS as if the study was submitted in response to the section 8(d) model rule. This would make it clear than any non-confidential study obtain under the section 8(d) model rule, whether directly from a company, a Federal Agency, or EPA office, would be equally available to the public under section 14 of TSCA.

The last exemption EPA proposes to amend is section 716.7(a)(2). This section exempts from the listing requirements all newly initiated studies except chronic tests; long- and short-term tests for mutagenicity, carcinogenicity, or teratogenicity; and the biological and environmental fate tests listed in § 716.10 (h) through (j). Therefore, non-chronic, newly initiated studies on neurotoxicity, metabolism, reproductive effects, and ecotoxicity are excluded from the listing requirement. Also excluded are the biological and environmental fate tests listed in § 716.7(a)(2).

C. Clarifying the Confidentiality Provisions.

Section 716.16(a) provides that a person who submits a health and safety study as required by the section 8(d) model rule may assert a claim of confidentiality covering all or part of the study. However, because this statement conflicts with EPA's interpretation of section 14(b) of TSCA and may promote the abuse of confidentiality claims, EPA proposes to delete § 716.16(a) and to reorder the remaining sections. EPA's interpretation of secton 14(b) is codified at 40 CFR 2.306(g) and states that "health and safety data are not eligible for confidential treatment." Read alone, § 716.16(a) conflicts with EPA's interpretation of section 14(b), and persons have imporperly invoked § 716.16(a) to claim all of a health and safety study as confidential. This broad and improper use of confidentiality claims has hindered EPA's hazard/risk assessment and risk management determinations. Only in certain instances is the use of a broad confidentiality claim on a health and safety study submission permitted. However the guidance for this designation is found in 40 CFR 2.306 and not § 716 16(a).

Section 14(b) does protect certain types of information from disclosure that may be part of a health and safety study. This type of information is specified in § 716.16(c). However, this paragraph also allows submitters to claim "irrelevant information" as confidential, a term not found in section 14(b) of TSCA or § 2.306. Examples of what constitues irrelevant information are given in § 716.16(c)(2), "such as company name or address, financial statistics, or product codes used by a company." Submitters have excessively used and abused the irrelevant information exception. They have claimed the species of animals tested and the chemical identity of the tested substance as irrelevant information.

In order to properly implement section 14(b) of TSCA and to continue to allow submitters to claim the type of information specified in § 716.16(c)(2) as confidential EPA proposes to remove the irrelevant information exception and to permit confidentiality claims for company name or address, financial statistics, and product codes used by a company. The remaining paragraphs in § 716.16 properly describe the information which is eligible for confidentiality treatment and the manner to claim such treatment.

D. Technical Amendments

1. *Renaming the term designated mixture* Section 716.9 of the model rule uses the term "designated mixture." A designated mixture is a mixture that EPA lists in the model rule. Persons subject to the reporting requirements must submit health and safety data on the listed mixture and on any mixture known to contain the listed mixture. Unfortunately, some potential shbmitters are confused by the term. They are confusing section 8(d) designated mixtures with those substances and mixtures designated by the Interagnecy Testing Committee to EPA for priority consideration in the promulgation of a test rule. Therefore, EPA is proposing to change the term "designated mixture" to "listed mixture."

2. *Specifying import* Following Congress's lead, EPA in the section 8(d) model rule regulated importers by definition. Both in TSCA and the section 8(d) model rule importation is included in the definition of manufacture. Therefore, whenever EPA uses the terms "manufacture," "manufacturing," and "manufacturer", EPA is including by definition importation, importing, and importer. EPA believes that for purposes of clarity and to assist compliance efforts it would be better to set out the terms import, importation, importing, and importer where these terms are now included by definition.

3. *Revising the who must report section* EPA believes that the current who must report section, § 716.4(b) is difficult to understand. Therefore this section has been revised to set out in detail the reporting requirements of the section 8(d) model rule.

4. *Reordering sections and substances* EPA believes that a reordering of some of the sections in Part 716 and the list of substances would assist regulatees in understanding and complying with the section 8(d) model rule. Currently, the reporting provisions in Part 716 are separated by the list of substances in 716.17. EPA proposes to join the reporting provisions by placing the list of substances at the end of the section 8(d) model rule.

EPA also proposes to reorder the list of substances. In the past EPA has listed substances in the section 8(d) model rule by order of amendment rather than alphabetically or by CAS number. This has created some difficulty for potential regulatees in determining whether a substance is listed in the section 8(d) model rule. In order to assist potential section 8(d) submitters, EPA is proposing to revise the list by reordering the substances alphabetically and by CAS number.

IV. Economic Analysis

The economic analysis details only the expected reporting burden changes caused by lengthening the sunset provision in the section 8(d) model rule. The remaining proposed revisions are expected to result in negligible reporting burden increases. The greatest portion of the reporting burden occurs within the first 3 year reporting period following the listing of a substance in the model rule. Only a few of the reporting requirements continue prospectively and all but one of these are terminated by the sunset provision. This rule proposes to extend the reporting period on all of the substances listed in the model rule by lengthening the sunset provision from 3 to 10 years.

If EPA lengthens the sunset provision, the potential reporting burden would consist of two reporting requirements on current manufacturers, importers, and processors of listed substances and all of the reporting requirements on prospective manufacturers, importers, and processors. For an additional 7 years, current manufacturers, importers, and processors of listed substances would be under a continuing obligation to notify EPA when they initiate a health and safety study and to submit that study whenever it is completed.

Prospective manufacturers, importers, and processors of listed substances would be required to submit health and safety studies at the time they propose to commence such an activity.

The alternative to lengthening the sunset provision is to relist the substances in the model rule. By relisting, EPA keeps all of the reporting requirements in effect. Based on EPA's experience with the section 8(d) model rule and the biennial review, the Agency believes that almost every substance will need to be relisted once and most substances twice. Although it is not possible to draw direct comparisons between the alternatives in terms of total costs, a qualitative comparison illustrates that a 10 year sunset provision has a small potential for increasing reporting burden.

A 10 year sunset provision may result in additional reporting costs. These costs are a function of the number of firms that will initiate a study of a listed substance or commence the manufacture, import, or processing of a listed substance after the 3 year sunset provision would have terminated a reporting period. However, these costs would also be incurred if the substance is relisted.

Therefore, the potential increase in reporting burden is a function of the probability that EPA will relist a substance and the probability that firms will initiate a study or commence the manufacture, import, or processing of a listed substance after the sunset provision has termianted the reporting period (either the initial reporting period or a subsequent reporting period). As the probability for relisting up to or beyond 10 years increases, the potential for an increase in burden decreases. Further the potentially increased burden is reduced by a low probability of persons commencing the manufacture, importation, or processing of a substance or the initiation of a study of the substance.

Although it is not possible to estimate the probability of the latter events, the probability associated with relisting appears high. If EPA does not lengthen the sunset provision, EPA will relist all (in excess of 100) but 1 of the substances listed in 40 CFR 716.17(a)(1). Secondly, EPA has reviewed all of the substances listed in 40 CFR 716.17(a) (2) through (10) and, at the present time, would relist all but six of these substances in the model rule. Therefore, lengthening the sunset provision is not likely to result in a reporting burden greater than the reporting burden caused by relisting substances.

V. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS–84014) which is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).

2. Economic analysis.

3. Final Report on Information Rules and Design Support Services (August 17, 1983).

4. Final Report on Information Rules and Design Support Services (January 23, 1984).

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 milion or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect these proposed amendments to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S. 3501 *et seq.* and has assigned OMB control number 2070–0004. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, it is proposed that 40 CFR Part 716 be amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.3 by revising the definitions in paragraphs (h), (i), and (1) to read as follows:

§ 716.3 Definitions.

* * * * *

(h) "Manufacture," "import," and "process" mean to manufacture, import, or process for commercial purposes.

(i) "Manufacture or import for commercial purposes" means:

(1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things, such "manufacture" or "import" of any amount of a substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer or importer including use for product research and development, or as an intermediate.

(2) The term applies to substances that are produced coincidentally during the manufacture, importation, processing, or disposal of another substance or mixture, including both byproducts and coproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities may not in themselves have commercial value. They are nonetheless products for the purpose of obtaining commercial advantage since they are part of the manufacture or importation of a chemical product for a commercial purpose.

* * * * *

(l) "Propose to manufacture, import, process, or distribute" means that a person has made a management decision to commit financial resources toward the manufacture, importation

processing, or distribution of a substance or mixture.

3. In § 716.4 by revising paragraphs (b) and (c) to read as follows:

§ 716.4 Overview of subpart requirements.

* * * * *

(b) *Persons who must report.* (1) A person who, in the 10 years preceding the effective date that a substance or mixture is added to § 716.17, either had proposed to manufacture, import, or process; or had manufactured, imported, or processed the substance or listed mixture must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance or mixture is listed, § 716.6(a)(1).

(2) A person who, at the time a substance or mixture is added to § 716.17, proposes to manufacture, import, or process; or is manufacturing, importing, or processing the substance or listed mixture must submit to EPA:

(i) A copy of each health and safety study which is in their possession at the time the substance or mixture is listed, § 716.6(a)(1).

(ii) A list of health and safety studies that are ongoing at the time the substance or mixture is listed and are being conducted by or for them, § 716.7(a)(1).

(iii) A list of health and safety studies that are initiated after the date the substance or mixture is listed and are conducted by or for them, § 716.7(a)(2).

(iv) A list of health and safety studies known to them but not in their possession at the time the substance or mixture is listed, § 716.7(a)(3).

(v) A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date, § 716.6(a)(1).

(3) A person who, after the time a substance or mixture is added to § 716.17, proposes to manufacture, import, or process the substance or listed mixture must submit:

(i) A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the substance or listed mixture, § 716.6(a)(1).

(ii) A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the substance or listed mixture and are being conducted by or for them, § 716.7(a)(1).

(iii) A list of health and safety studies that are initiated after the time they propose to manufacture, import, or process the substance or listed mixture, and are conducted by or for them, § 716.7(a)(2).

(iv) A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the substance or listed mixture, § 716.7(a)(3).

(v) A copy of each health and safety study that was previously listed as ongoing or subsequently initaited and is now complete—regardless of completion date, § 716.6(a)(1).

(c) *Studies to be reported.* In general, studies, as defined at § 716.3(e), that are unpublished are reportable, i.e., must be submitted or listed, for any substance or listed mixture listed in § 716.17. However, this requirement has limitations according to the nature of the material studied, so that:

(1) All studies of substances and listed mixtures are reportable. However, in the case of physical and chemical properties, only those studies listed in § 716.10 must be submitted.

(2) Studies of mixtures known to contain substances or listed mixtures listed in § 716.17 are reportable except for studies of physical and chemical properties and the studies exempted at § 716.11(f) (1) through (6).

(3) Studies of substances or listed mixtures that a person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as impurities are not generally reportable under § 716.11(i).

* * * * *

4. In § 716.6 by revising paragraphs (a)(1) and (b) to read as follows:

§ 716.6 Submission of copies of studies.

(a)(1) Except as provided in §§ 716.10 and 716.11, persons must send to EPA copies of any health and safety studies in their possession for the substances or listed mixtures listed in § 716.17. Persons are responsible for submitting copies on only the substances or listed mixtures which they: have manufactured, imported, or processed or proposed to manufacture, import, or process (including as known byproducts) within the 10 years preceding the effective date for reporting on the substances or listed mixtures; manufacture, import, or process on the effective date for reporting on the substances or listed mixtures; and propose to manufacture, import, or process following the effective date for reporting on the substances or listed mixtures. Persons who list studies as ongoing or initiated under § 716.7(a) (1) and (2) must submit them when they are completed.

* * * * *

(b) Submissions under paragraph (a) of this section must be indexed by chemical name, including Chemical Abstract Service Registry number if known, and must be accompanied by a cover letter containing the name, job title, address, and telephone number of the submitting official and the name and address of the manufacturing, importing, or processing establishment on whose behalf the submission is made. In the cover letter, submitters must identify any impurity or additive known to have been present in the substance as studied unless its presence is specifically noted in the study itself.

* * * * *

5. In § 716.7 by revising paragraph (a), to read as follows:

§ 716.7 Submission of lists of studies.

(a) Except as provided in §§ 716.4(c) and 716.11, persons must send the lists described in paragraphs (a) (1), (2), and (3) of this section to EPA for each of the substances or listed mixtures in § 716.17 which they have manufactured, imported, or processed; are manufacturing, importing, or processing; or propose to manufacture, import, or process (including as known byproducts).

(1) As of the date a person becomes subject to this Part, a list of ongoing health and safety studies being conducted by or initiated for them, noting for each entry: the purpose of the study, type of data collected, and progress and anticipated date of completion.

(2) After the date a person becomes subject to this Part, a list of studies initiated by or for them, noting for each entry: the purpose of the study, type of data to be collected, and anticipated date of completion.

(3) A list of unpublished studies known to them of which they do not have copies. The name and address of any person known to them to possess a copy of the unpublished study must accompany each entry on the list. For purposes of this section only, an unpublished study will be considered to be "known to" a person, if the study can be discovered by a file search in accordance with § 716.12.

(4) A list of unpublished studies which have been sent to a Federal Agency. The submission must for each study: identify the study by title, state the name and address to whom the study was sent, and the month and year in which the study was submitted.

* * * * *

6. In § 716.9 by changing the term "designated mixture" to "listed mixture" wherever it appears in the introductory text and paragraph (b), which are revised to read as follows:

§ 716.9 How to report on substances and mixtures.

Section 716.17 contains two lists, one of substances and one of listed mixtures. Studies of listed substances and listed mixtures shall be reported as follows:

* * * * *

(b) When two or more substances are listed as a mixture under § 716.17(b), studies of the listed mixture and studies of any mixture known to contain the listed mixture must be reported as studies of the listed mixture.

* * * * *

7. In § 716.11 by revising the introductory text and paragraphs (b) and (c), and changing the term "designated mixture" to "listed mixture" in paragraphs (f), (g), (h), and (i), which are revised to read as follows:

§ 716.11 Exemptions to reporting requirements.

Excluding paragraph (c) of this section, the following are exempt from the copy and list submission requirements of §§ 716.6 and 716.7.

* * * * *

(b) Studies previously submitted to the EPA Office of Toxic Substances. These studies are limited to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices, and studies submitted "for your information" (FYI submissions).

(c) Studies previously submitted to any Federal Agency with no claims of confidentiality are exempt only from the copy submission requirements of § 716.6. However, any such study identified in a list under § 716.7 will be treated as if it were submitted under section 8(d) and will be available for public disclosure under section 14(b) of TSCA.

* * * * *

(f) The following types of studies when the subject of the study is a mixture known to contain a substance or listed mixture listed in § 716.17.

(1) Acute oral toxicity studies.

(2) Acute dermal toxicity studies.

(3) Acute inhalation toxicity studies.

(4) Primary eye irritation studies.

(5) Primary dermal irritation studies.

(6) Dermal sensitization studies.

(7) Physical and chemical properties.

If the substance or listed mixture is an impurity, no reporting is required (see paragraph (i) of this section).

(g) Analyzed aggregations of monitoring data based on monitoring data acquired more than 5 years preceding the date the substance or listed mixture was added to the list in § 716.17.

(h) Analyzed aggregations of monitoring data on mixtures known to contain one or more substances or listed mixtures listed in § 716.17, when the monitoring data are not analyzed to determine the exposure or concentration levels of the substances or listed mixture listed in § 716.17.

(i) Studies on a substance or listed mixture listed in § 716.17 that the person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as an impurity. When reporting of such studies is to be required, that reporting will be separately proposed in the **Federal Register.**

8. In § 716.14 by changing the term "designated mixture" to "listed mixture" in paragraph (a) which is revised, and by revising paragraph (b) to read as follows:

§ 716.14 Reporting schedule.

(a) Except as provided in paragraphs (b) and (c) of this section, submissions under §§ 716.6 and 716.7 must be postmarked on or before 60 days after the effective date of the listing of a substance or listed mixture in § 716.17 or within 60 days of proposing to manufacture, import, or process a substance or listed mixture if first done after the effective date of the substance's or listed mixture's listing in § 716.17.

(b)(i) Persons subject to the listing requirements of § 716.7(a)(2) must inform EPA of the initiated study within the initial 60 days reporting period or 30 days of its initiation whichever is later.

(ii) Persons must submit copies of studies listed as ongoing or initiated under § 716.7(a)(1) and (2) within 30 days of their completion.

* * * * *

9. By revising § 716.16 to read as follows:

§ 716.16 Confidentiality claims.

(a)(1) Section 14(b) of TSCA states that EPA may not withhold from disclosure, on the grounds that they are confidential business information, health and safety studies of any substance that has been offered for commercial distribution (including for test marketing purposes and for use in research and development), any substance included on the inventory of chemical substances under TSCA section 8, or any substance for which testing is required under TSCA section 4, or for which notice is required under TSCA section 5, except to the extent that disclosure of data from such studies would reveal: (i) processes used in the manufacturing, importing, or processing of the substance or mixture, or (ii) the portion of a mixture comprised by any of the substances in the mixture.

(2) Any respondent who wishes to assert a claim that part of a study should be withheld from disclosure because disclosure would reveal a confidential process or quantitative mixture composition or other confidential information, should briefly state the basis of the claim, i.e., by saying "reveals confidential mixture proportion data," and clearly identify the material subject to the claim. Certain information may be claimed confidential and will not be subject to the disclosure requirements of section 14(b) of TSCA. This information is limited to company name or address, financial statistics, and product codes used by a company. Other information contained in a study, the disclosure of which would clearly be an unwarranted invasion of personal privacy (such as individual medical records), will be considered confidential by EPA as provided in Title 5, United States Code, section 552(b)(6).

(b) To assert a claim of confidentiality for data contained in a submitted document, the respondent must submit two copies of the document.

(1) One copy must be complete. In that copy, the respondent must indicate what data, if any, are claimed as confidential by bracketing or underlining the specific information. Each page containing data claimed as confidential must also contain a brief statement for the basis of the claim and a label such as "confidential," "proprietary," or "trade secret."

(2) If some data are claimed as confidential, the respondent must submit a second copy. The second copy must be complete, except that all information claimed as confidential in the first copy must be deleted.

(3) EPA will use the first copy and the second copy will be placed in an open file accessible to the public.

(4) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of receipt of notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the public file.

(c) If no claim of confidentiality accompanies a document at the time it is submitted to EPA, the document will be placed in an open file available to the

public without further notice to the respondent.

10. By revising § 716.17 to read as follows:

§ 716.17 Substances and Listed Mixtures to which this subpart applies.

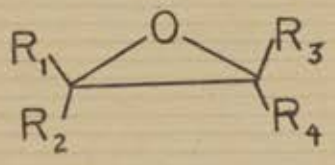
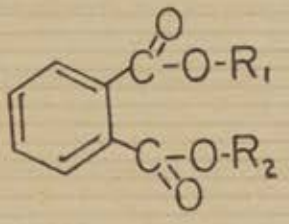
(a) *List of Substances.* (1) By Chemical Abstract Service (CAS) Registry Number.

CAS No.	Substance	Sunset date
71-55-6	Ethane, 1,1,1-trichloro- (Methyl chloroform)	10/04/92
74-87-3	Methane, chloro- (Methyl chloride)	10/04/92
75-02-5	Ethene, fluoro- (Vinyl fluoride)	10/04/92
75-05-8	Acentonitrile	10/04/92
75-09-2	Methane, dichloro- (Methylene chloride)	10/04/92
75-12-7	Formamide	04/29/93
75-38-7	Ethene, 1,1-difluoro- (Vinylidene fluoride)	10/04/92
78-59-1	3,5,5-Trimethyl-2-cyclohexenone (Isophorone)	10/04/92
78-87-5	Propane, 1,2-dichloro-	10/04/92
78-93-3	2-Butanone (Methyl ethyl ketone)	10/04/92
79-06-1	2-Propenamide (Acrylamide)	10/04/92
79-94-7	Tetrabromobisphenol A	06/20/95
80-05-7	Phenol, 4,4'-(1-methylethylidene)bis- (Bisphenol A)	06/28/94
84-65-1	Anthraquinone	12/28/94
85-22-3	Benzene, pentabromoethyl-	12/28/94
85-68-7	1,2-Benzenedicarboxylic acid, benzylbutyl ester	04/29/93
87-68-3	1,3,-Butadiene, 1,1,2,3,4,4-hexachloro-	10/04/92
92-52-4	1,1-Biphenyl	04/29/93
95-47-6	Benzene, 1,2-dimethyl- (o-Xylene)	10/04/92
95-48-7	Phenol, 2-methyl- (o-Cresol)	10/04/92
95-49-8	Benezene, 1-chloro-2-methyl-	04/29/93
95-63-6	Benzene, 1,2,4-trimethyl-	04/29/93
96-37-7	Methylcyclopentane	06/20/95
98-56-6	Benezene, 1-chloro-4-(trifluoromethyl)-	04/29/93
98-82-8	Benzene, 1-methylethyl- (Cumene)	10/28/94
98-95-3	Nitrobenzene	10/04/92
101-77-9	Benzenamine, 4,4'-methylenebis-	10/04/92
106-42-3	Benzene, 1,4-dimethyl- (p-Xylene)	10/04/92
106-44-5	Phenol, 4-methyl- (p-Cresol)	10/04/92
106-50-3	1,4-Benzenediamine (p-Phenylenediamine)	10/04/92
106-51-4	Quinone	10/04/92
108-10-1	2-Pentanone, 4-methyl- (Methyl isobutyl ketone)	10/04/92
108-31-6	Maleic anhydride	09/10/94
108-38-3	Benzene, 1,3-dimethyl- (m-Xylene)	10/04/92
108-39-4	Phenol, 3-methyl- (m-Cresol)	10/04/92
108-67-8	Benzene, 1,3,5-trimethyl-	02/13/94
108-88-3	Benzene, methyl- (Toluene)	10/04/92
108-89-4	Pyridine, 4-methyl-	09/10/94
108-94-1	Cyclohexanone	10/04/92
108-99-6	Pyridine, 3-methyl-	09/10/94
109-06-8	Pyridine, 2-methyl-	09/10/94
110-86-1	Pyridine	10/04/92
111-21-7	Ethylene bisoxyethylene diacetate	01/13/94
111-40-0	Diethylenetriamine	04/29/93
112-35-6	Triethyleneglycol monomethyl ether	06/20/95
112-50-6	Triethyleneglycol monoethyl ether	06/20/95
112-90-3	Z-9-Octadecen-1-amine (Oleylamine)	01/13/94
122-99-6	2-Phenoxyethanol	07/01/93
123-31-9	Hydroquinone	10/04/94
124-17-4	2-(2-Butoxyethoxy)ethyl acetate	01/13/94
126-99-8	1,3-Butadiene, 2-chloro- (Chloroprene)	12/28/94
137-20-2	Sodium N-methyl-N-oleoyltaurine	12/28/94
140-66-9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	01/03/93
141-79-7	Mesityl oxide	10/04/92
143-22-6	Triethyleneglycol monobutyl ether	06/20/95
149-30-4	Mercaptobenzothiazole	12/28/94
149-57-5	Hexanoic acid, 2-ethyl-	06/28/94
328-84-7	Benzene, 1,2-dichloro-4-(trifluoromethyl)-	05/08/95
526-73-8	Benzene, 1,2,3-trimethyl-	02/13/94
556-67-2	Octamethylcyclotetrasiloxane	12/28/94
646-06-0	1,3-Dioxolane	01/03/93
1000-82-4	Methylolurea (Hydroxymethyl urea)	07/01/93
1309-64-4	Antimony trioxide	10/04/92
1333-41-1	Pyridine, methyl-	09/10/94
1345-04-6	Antimony sulfide	10/04/92
3319-31-1	1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl)ester	01/03/93
3322-93-8	Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-	06/28/94
3389-71-7	Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-	01/13/94
6422-86-2	1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	01/03/93
7440-36-0	Antimony	10/04/92
9011-05-6	Urea, polymer with formaldehyde	06/03/95
11126-42-4	Polychlorinated p-terphenyl	10/04/92
12642-23-8	Polychlorinated m-terphenyl	10/04/92
13414-54-5	Methallyl 2-nitrophenyl ether	02/13/94
13414-55-6	7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	02/13/94
25551-13-7	Trimethylbenzene (mixed isomers)	02/13/94
25640-78-2	Isopropyl biphenyl	06/28/94
61788-33-8	Polychlorinated p-terphenyl	10/04/92
61789-36-4	Calcium naphthenate	07/01/93
61789-51-3	Cobalt naphthenate	07/01/93
61790-14-5	Lead naphthenate	07/01/93
68298-46-4	7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	02/13/94
68611-64-3	Urea, reaction product with formaldehyde	06/03/95
69009-90-1	Diisopropyl biphenyl	06/28/93

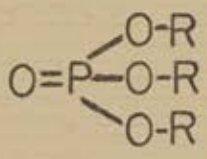
(2) By Alphabetical Order.

Substance	CAS No.	Sunset date
Acetonitrile	75-05-8	10/04/92
7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	68296-46-4	02/13/94
Anthraquinone	84-65-1	12/28/94
Antimony	7440-36-0	10/04/92
Antimony sulfide	1345-04-6	10/04/92
Antimony trioxide	1309-64-4	10/04/92
Benzenamine, 4,4'-methylenebis-	101-77-9	10/04/92
Benzene, methyl- (Toluene)	108-88-3	10/04/92
Benzene, pentrabromoethyl-	85-22-3	12/28/94
Benzene, 1-chloro-2-methyl-	95-49-8	04/29/93
Benzene, 1-chloro-4-(trifluoromethyl)-	98-56-6	04/29/93
Benzene, 1,2-dichloro-4-(trifluoromethyl)-	328-84-7	05/08/95
Benzene, 1,2-dimethyl- (o-Xylene)	95-47-6	10/04/92
Benzene, 1-methylethyl- (Cumene)	98-82-8	10/28/94
Benzene, 1,2,3-trimethyl-	526-73-8	02/13/94
Benzene, 1,2,4-trimethyl-	95-63-6	04/29/93
Benzene, 1,3-dimethyl- (m-Xylene)	108-38-3	10/04/92
Benzene, 1,3,5-trimethyl-	108-67-8	02/13/94
Benzene, 1,4-dimethyl- (p-Xylene)	106-42-3	10/04/92
1,4-Benzenediamine (p-Phenylenediamine)	106-50-3	10/04/92
1,2-Benzenedicarboxylic acid, benzylbutylester	85-68-7	04/29/93
1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	6422-86-2	01/03/93
1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl) ester	3319-31-1	01/03/93
Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-	87-68-3	10/04/92
1,1-Bipheny	95-52-4	01/13/94
1,3-Butadiene, 1,1,2,3,4,4-hexchloro-	92-52-4	04/29/93
1,3-Butadiene, 2-chloro- (Chloroprene)	126-99-8	12/28/94
2-Butanone (Methyl ethyl ketone)	78-93-3	10/04/92
2-(2-Butoxyethoxy)ethyl acetate	124-17-4	01/13/94
Calcium naphthenate	61789-36-4	07/01/93
Cobalt naphthenate	61789-51-3	07/01/93
Cyclohexanone	108-94-1	10/04/92
Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-	3322-93-8	06/28/94
2-cyclohexenone, 3,5,5-trimethyl- (Isophorone)	78-59-1	10/04/92
Diethylenetriamine	111-40-0	04/29/93
Diisopropyl biphenyl	69009-90-1	06/28/93
1,3-Dioxolane	646-06-0	01/03/93
Ethane, 1,1,1-trichloro- (Methyl cholorform)	71-55-6	10/04/92
Ethene, fluoro-	75-02-5	10/04/92
Ethene, 1,1-difluoro- (Vinylidene Fluoride)	75-38-7	10/04/92
Ethylene bisoxyethylene diacetate	111-21-7	01/13/94
Formamide	75-12-7	10/04/92
Hexanoic acid, 2-ethyl-	149-57-5	06/28/94
Hydroquinone	123-31-9	10/04/94
Isopropyl biphenyl	25640-78-2	06/28/94
Lead naphthenate	61790-14-5	07/01/93
Maleic anhydride	108-31-6	09/10/94
Mercaptobenzothiazole	149-30-4	12/28/94
Mesityl oxide	141-79-7	10/04/92
Methallyl 2-nitrophenyl ether	13414-54-5	02/13/94
Methane, chloro- (Methyl chloride)	74-87-3	10/04/92
Methane, dichloro- (Methylene chloride)	75-09-2	10/04/92
Methylcyclopentane	96-37-7	06/20/95
Methylolurea (Hydroxymethyl urea)	1000-82-4	07/01/93
Nitrobenzene	98-95-3	10/04/92
7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	13414-55-6	02/13/94
Octamethylcyclotetrasiloxane	556-67-2	12/28/94
2-Pentanone, 4-methyl- (Methyl isobutyl ketone)	108-10-1	10/04/92
Phenol, 2-methyl- (o-Cresol)	95-48-7	10/04/92
Phenol, 3-methyl- (m-Cresol)	108-39-4	10/04/92
Phenol, 4-methyl- (p-Cresol)	106-44-5	10/04/92
Phenol, 4-(1,1,3,3-tetramethylbutyl)-	140-66-9	01/03/93
Phenol, 4,4'-(methylethylidine)bis- (Bisphenol A)	80-05-7	06/28/94
2-Phenoxyethanol	122-99-6	07/01/93
Polychlorinated o-terphenyl	11126-42-4	10/04/92
Polychlorinated m-terphenyl	12642-23-8	10/04/92
Polychlorinated p-terphenyl	61788-33-8	10/04/92
Propane, 1,2-dichloro-	78-87-5	10/04/92
2-Propenamide (Acrylamide)	79-06-1	10/04/92
Pyridine	110-86-1	10/04/92
Pyridine, methyl-	1333-41-1	09/10/94
Pyridine, 2-methyl-	109-06-8	09/10/94
Pyridine, 3-methyl-	108-99-6	09/10/94
Pyridine, 4-methyl-	108-89-4	09/10/94
Quinone	106-51-4	10/04/92
Sodium N-methyl-N-oleoyltaurine	137-20-2	12/28/94
Tetrabromobisphenol A	79-94-7	06/20/95
Triethyleneglycol monobutyl ether	143-22-6	06/20/95
Triethyleneglycol monoethyl ether	112-50-5	06/20/95
Triethyleneglycol monomethyl ether	112-35-6	06/20/95
Trimethylbenzene (mixed isomers)	25551-13-7	02/13/94
Urea, polymer with formaldehyde	9011-05-6	06/03/95
Urea, reaction product with formaldehyde	68611-64-3	06/03/95
Z-9-Octadecen-1-amine (Oleylamine)	112-90-3	01/13/94

(b) *List of categories.*

Category	CAS No. (examples for category)	Sunset date
Alkyl epoxides—including all noncyclic aliphatic hydrocarbons with one or more epoxy functional groups		10/04/92
		
$R_1 = R_2 = R_3 = R_4 = H$ or alkyl.		
Groups $R_1 - R_4$ may contain one or more epoxide functions:		
2,2'-Bioxirane	1464-53-5	10/04/92
Oxirane	75-21-8	10/04/92
Oxirane, decyl-	2855-19-8	10/04/92
Oxirane, ethenyl-	930-22-3	10/04/92
Oxirane, ethyl-	106-88-7	10/04/92
Oxirane, heptadecyl-	7390-81-0	10/04/92
Oxirane, hexadecyl-	7390-81-0	10/04/92
Oxirane, methyl-	75-56-9	10/04/92
Oxirane, octyl-	2404-44-6	10/04/92
Oxirane, pentadecyl-	22092-38-2	10/04/92
Oxirane, tridecyl-	18633-25-5	10/04/92
Oxirane, 2,2-dimethyl-	558-30-5	10/04/92
Oxirane, 2,3-dimethyl-	3266-23-7	10/04/92
Phenol, 2-methyl- (*o*-Cresol)	95-48-7	10/04/92
Phenol, 3-methyl- (*m*-Cresol)	108-39-4	10/04/92
Alkyl phthalates—all alkyl esters of 1,2-benzene dicarboxylic acid (ortho-phthalic acid)		10/04/92
		
R_1-R_6 = alkyl.		
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	10/04/92
1,2-Benzenedicarboxylic acid, bis(1-methylheptyl) ester	131-15-7	10/04/92
1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester	84-69-5	10/04/92
1,2-Benzenedicarboxylic acid, butyl cyclohexyl ester	84-64-0	10/04/92
1,2-Benzenedicarboxylic acid, butyl octyl ester	84-78-6	10/04/92
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	10/04/92
1,2-Benzenedicarboxylic acid, decyl hexyl ester	25724-58-7	10/04/92
1,2-Benzenedicarboxylic acid, decyl octyl ester	119-07-3	10/04/92
1,2-Benzenedicarboxylic acid, dicyclohexyl ester	84-61-7	10/04/92
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	10/04/92
1,2-Benzenedicarboxylic acid, dihexyl ester	84-75-3	10/04/92
1,2-Benzenedicarboxylic acid, diisodecyl ester	26761-40-0	10/04/92
1,2-Benzenedicarboxylic acid, diisononyl ester	28553-12-0	10/04/92
1,2-Benzenedicarboxylic acid, diisooctyl ester	27554-26-3	10/04/92
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	10/04/92
1,2-Benzenedicarboxylic acid, dinonyl ester	84-76-4	10/04/92
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	10/04/92
1,2-Benzenedicarboxylic acid, ditridecyl ester	119-06-2	10/04/92
1,2-Benzenedicarboxylic acid, diundecyl ester	3648-20-2	10/04/92
1,2-Benzenedicarboxylic acid, hexyl isodecyl ester	61702-81-6	10/04/92
1,2-Benzenedicarboxylic acid, isodecyl tridecyl ester	61886-60-0	10/04/92
1,2-Benzenedicarboxylic acid, 2-ethylhexyl ester	85-69-8	10/04/92
1,2-Benzenedicarboxylic acid, 2-ethylhexyl-8-methylnonyl ester	89-13-4	10/04/92
Alkyltin compounds		1/03/93
Dibutyltin bis(isooctyl maleate)	25168-21-2	1/03/93
Dibutyltin bis(lauryl mercaptide)	1185-81-5	1/03/93
Dibutyltin dilaurate	77-58-7	1/03/93
Dibutyltin S,S'-bis(isooctyl) mercaptoacetate	25168-24-5	1/03/93
Dibutyltin S,S'-bis(isooctyl) mercaptoacetate	26636-01-1	1/03/93
Monobutyltin tris(isooctyl) mercaptoacetate	25852-70-4	1/03/93
Monomethyltin tris(isooctyl) mercaptoacetate	54849-38-6	1/03/93
Aniline and chloro-, bromo-, and/or nitroanilines		10/04/92
Benzenamine	62-53-3	10/04/92
Benzenamine, 2-bromo-, 4,6-dinitro-	1817-73-8	10/04/92
Benzenamine, 2-bromo-6-chloro-4-nitro-	99-29-6	10/04/92
Benzenamine, 2-chloro-	95-51-2	10/04/92
Benzenamine, 2-nitro-	88-74-4	10/04/92

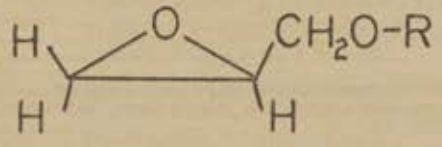
Category	CAS No. (examples for category)	Sunset date
Benzenamine, 2-chloro-4-nitro-	121-87-9	10/04/92
Benzenamine, 2-chloro-4,6,-dinitro-	3531-19-9	10/04/92
Benzenamine, 2-choloro-5-nitro-	6283-25-6	10/04/92
Benzenamine, 2,3-dichloro-	608-27-5	10/04/92
Benzenamine, 2,4-dichloro-	554-00-7	10/04/92
Benzenamine, 2,4-dinitro-	97-02-9	10/04/92
Benzenamine, 2,4,6-tribromo-	147-82-0	10/04/92
Benzenamine, 2,4,6-trichloro-	634-93-5	10/04/92
Benzenamine, 2,5-dichloro-	95-82-9	10/04/92
Benzenamine, 2,6-dibromo-4-nitro-	827-94-1	10/04/92
Benzenamine, 2,6-dichloro-4-nitro-	99-30-9	10/04/92
Benzenamine, 3-chloro-	108-42-9	10/04/92
Benzenamine, 3-chloro-, hydrochloride	141-85-5	10/04/92
Benzenamine, 3-nitro-	99-09-2	10/04/92
Benzenamine, 3,4-dichloro-	95-76-1	10/04/92
Benzenamine, 3,5-dichloro-	626-43-7	10/04/92
Benzenamine, 4-bromo-	106-40-1	10/04/92
Benzenamine, 4-chloro-	106-47-8	10/04/92
Benzenamine, 4-chloro-2-nitro-	89-63-4	10/04/92
Benzenamine, 4-chloro-2,6-dinitro-	5388-62-5	10/04/92
Benzenamine, 4-chloro-3-nitro-	635-22-3	10/02/92
Benzenamine, 4-nitro-	100-01-6	10/04/92
Aryl phosphates—phosphate esters of phenol or of alkyl-substituted phenols. Tri-aryl and mixed alkyl and aryl esters are included but trialkyl esters are excluded.		10/04/92



R_1 = phenyl, either unsubstituted or substituted with one or more alkyl or aralykl groups
$R_2 = R_3$ = alkyl; or phenyl, either unsubstituted or substituted with one or more alkyl or aralkyl groups

Phenol, dimethyl-, phosphate (3:1)	25155-23-1	10/04/92
Phenol, 4-(1,1-dimethylethyl)-, phosphate	78-33-1	10/04/92
Phosphoric acid, dibutyl phenyl ester	2528-36-1	10/04/92
Phosphoric acid, diisodecyl phenyl ester	51363-64-5	10/04/92
Phosphoric acid, isodecyl diphenyl ester	29761-21-5	10/04/92
Phosphoric acid, methylphenyl diphenyl ester	26444-49-5	10/04/92
Phosphoric acid, triphenyl ester	115-86-6	10/04/92
Phosphoric acid, tris (methylphenyl) ester	1330-78-5	10/04/92
Phosphoric acid, tris (2-methylphenyl) ester	78-30-8	10/04/92
Phosphoric acid, tris (3-methylphenyl) ester	563-04-2	10/04/92
Phosphoric acid, tris (4-methylphenyl) ester	78-32-0	10/04/92
Phosphoric acid, (1-methyl-1-phenylethyl)-phenyl diphenyl ester	34364-42-6	10/04/92
Phosphoric acid, (1-methyethyl) phenyl diphenyl ester	28108-99-8	10/04/92
Phosphoric acid, 2-ethylhexyl diphenyl ester	1241-94-7	10/04/92
Phosphoric acid, (1,1-dimethylethyl) phenyl diphenyl ester	56803-37-3	10/04/92
Asbestos—asbestiform varieties of chrysolite (serpentine); crocidolite (riebeckite); amosite (cummingtonite—grunerite); anthophyllite; tremolite; and actinolite		10/04/92
Asbestiform minerals(s)	12001-29-5	10/04/92
Asbestiform minerals(s)	12172-73	10/04/92
Asbestiform minerals(s)	17068-78-9	10/04/92
Asbestiform minerals(s)	1332-21-4	10/04/92
Bisazobiphenyl dyes derived from benzidine and its congeners, ortho-toluidine (dimethylbenzidine) and dianisidine (dimethoxybenzidine)		10/04/92
Benzoic acid, 2-[[2-amino-6-[[4'-[(3-carboxy-4-hydroxyphenyl) azo]-3,3'-dimethoxy [1,1'-biphenyl]-4-yl] azo]-5-hydroxy-7-sulfo-1-naphthalenyl] azo]-5-nitro-, trisodium salt	6739-62-4	10/04/92
Benzoic acid, 3,3'-[3,7-disulfo-1,5-naphthalenediyl)-bis[azo (6-hydroxy-3,1-phenylene) azo [6(or 7)-sulfo-4,1-naphthalenediyl] azo [1,1'-biphenyl]-4,4'-diylazo] bis] 6-hydroxy-, hexasodium salt	8014-91-3	10/04/92
Benzoic acid, 5[[4'-[(1-amino-4-sulfo-2-naphthalenyl) azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-79-0	10/04/92
Benzoic acid, 5-[[4'-[2-amino-8-hydroxy-6-sulfo-1-naphthalenyl) azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-84-7	10/04/92
Benzoic acid, 5-[[4'[2,4-dihydroxy-3-[(4-sulfophenyl) azo] phenyl] azo] [1,1'-biphenyl]-4-yl] azo] 2-hydroxy-, disodium salt	2893-80-3	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-[[8-hydroxy-3,6-disulfo-7-(4-sulfo-1-naphthalenyl)azo]-2-naphthalenyl]azo]-5-methylphenyl]azo-2-naphthalenyl]azo-5-methylphenyl]azo[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, tetrasodium salt	2429-81-4	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-methyl-5[(sulfophenyl)azo]phenyl]azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	258658-5	10/04/92
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5-sulfophenyl)azo]-3,3'-dimethyl[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	6837-88-3	10/04/92
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo]phenyl]azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-3-methyl-, disodium salt	6360-54-9	10/04/92
Benzoic acid, 5-[[4'-[7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-3-methyl-, disodium salt	2429-82-5	10/04/92
[1,1'-Biphenyl]-4,4'-bis(diazonium), 3,3'-dimethoxy-	20282-70-6	10/04/92
Butanamide, N,N'-(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis[3.oxo-	91-96-3	10/04/92
C.I. Direct Blue 218	10401-50-0	10/04/92
Cuprate(2-), [5-[4'-[[2,6-dihydroxy-3-[2-hydroxy-5-sulfophenyl)azo]phenyl] [1,1'-biphenyl]-4-yl]azo]-2-hydroxybenzoato(4-)]-, disodium	16071-86-6	10/04/92
Cuprate(3-), [-[7-[[3,3'-dihydroxy-4'-[[1-hydroxy-6-(phenylamino)-3-sulfo-2-naphthalenyl]azo] [1,1'-biphenyl]-4-yl]azo]-8-hydroxy-1,6-naphthalene disulfonato(7-)]di-, trisodium	6656-03-7	10/04/92
Cuprate(4-), [-[6,6'-[3,3'-dihydroxy [1,1'-biphenyl]-4-4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-1,3-naphthalenedisulfonato]] (8-)]]di-, tetrasodium	16143-79-6	10/04/92
2-Naphthalenecarboxamide, N,N'-(2,2'-dimethoxy [1,1'-biphenyl]-4,4'-diyl)bis[3-hydroxy-	91-92-9	10/04/92
1-Naphthalenesulfonic acid, 3-[[4'-[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-3,3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-4-hydroxy-, disodium salt	6449-35-0	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[[1,1'-biphenyl]-4,4'-diylbis(azo)]bis[4-amino-, disodium salt	573-58-0	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[3,3'-dimethoxy-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-hydroxy-, disodium salt	2429-71-2	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-amino-, disodium salt	992-59-6	10/04/92
1,3-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6[[4'-[(2-hydroxy-1-naphthalenyl)azo]-3,3'-dimethoxy-[1,1'-biphenyl]-4-yl]azo]-, disodium salt	2586-57-4	10/04/92
1,3-Naphthalenedisulfonic acid, 6,6'-[(3,3'-dimethoxy-[1,1'-biphenyl]-4-4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-, tetrasodium salt	2610-05-1	10/04/92
1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[[4'-[[4-methylphenyl)sulfonyl]oxy]phenyl]-azo][1,1'-biphenyl]-4-yl]azo]-, disodium salt	3567-65-5	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[(4-ethoxy-phenyl)azo] [1,1'-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt	3530-19-6	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[(4-ethoxyphenyl)azo] [3,3'-dimethyl-[1,1'-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt	6358-29-8	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[[1,1'-biphenyl]-4,4'-,diylbis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2602-46-2	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethoxy[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2429-74-5	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'diyl)bis(azo)]bis[5-amino-4-hydroxy; tetrasodium salt	72-57-1	10/04/92
2,7-Naphthalenesulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'diyl)bis(azo)]bis[4,5-dihydroxy-, tetrasodium salt	2150-54-1	10/04/92

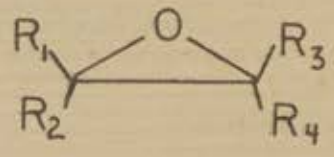
Category	CAS No. (examples for category)	Sunset date
2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4'-diamino-5-methylphenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	2429-83-6	10/04/92
2,7-Naphthalenesulfonic acid, 4-amino-3-[(4'-[2,4-diaminophenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	1937-37-7	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6[[4'[4-hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-3-[(4-nitrophenyl)azo[-, disodium salt	4335-09-5	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[[4'-[(hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-6-(phenylazo)-, disodium salt	3626-28-6	10/04/92
2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4'-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)-azo] [1,1'-biphenyl]-4-yl]-azo]-4-hydroxy-, trisodium salt	2429-73-4	10/04/92
Oxirane, tetradecyl-	7320-37-8	10/04/92
Chlorinated benzenes, mono-, di-, tri-, tetra- and penta-		10/04/92
Benzene, chloro-	108-90-7	10/04/92
Benzene, pentachloro-	608-93-5	10/04/92
Benzene, 1,2-dichloro-	95-50-1	10/04/92
Benzene, 1,2,3-trichloro-	87-61-6	10/04/92
Benzene, 1,2,3,4-tetrachloro-	634-66-2	10/04/92
Benzene, 1,2,3,5-tetrachloro-	634-90-2	10/04/92
Benzene, 1,2,4-trichloro-	120-82-1	10/04/92
Benzene, 1,2,4,5-tetrachloro-	95-94-3	10/04/92
Benzene, 1,3-dichloro-	541-73-1	10/04/92
Benzene, 1,3,5-trichloro-	108-70-3	10/04/92
Benzene, 1,4-dichloro-	106-46-7	10/04/92
Chlorinated naphthalenes—chlorinated derivatives of naphthalene (empirical formula) $C_{10}H_xCl_y$ where $x+y=8$		10/04/92
Naphthalene, chloro derivatives	70776-03-3	10/04/92
Naphthalene, chloro-	25586-43-0	10/04/92
Naphthalene, heptachloro-	32241-08-0	10/04/92
Naphthalene, hexachloro-	1335-87-4	10/04/92
Naphthalene, pentachloro-	1321-64-8	10/04/92
Naphthalene, octachloro-	2234-13-1	10/04/92
Naphthalene, tetrachloro-	1335-88-2	10/04/92
Naphthalene, trichloro-	1321-65-9	10/04/92
Naphthalene, 1-chloro-	90-13-1	10/04/92
Naphthalene, 1,2-dichloro-	2050-69-3	10/04/92
Naphthalene, 1,3-dichloro-	2196-75-6	10/04/92
Naphthalene, 1,5-dichloro-	1825-30-5	10/04/92
Naphthalene, 1,6-dichloro-	2050-72-8	10/04/92
Naphthalene, 1,7-dichloro-	2050-73-9	10/04/92
Naphthalene, 1,8-dichloro-	2050-74-0	10/04/92
Naphthalene, 2,3-dichloro-	2050-75-1	10/04/92
Naphthalene, 2,6-dichloro	2065-70-5	10/04/92
Naphthalene, 2,7-dichloro-	2198-77-8	10/04/92
Chlorinated paraffins—chlorinated paraffin oils and chlorinated paraffin waxes, with chlorine content of 35 percent through 70 percent by weight		10/04/92
Alkanes, chloro-	61788-76-9	10/04/92
Alkanes, C_{14-17}, chloro-	68920-70-7	10/04/92
Paraffin waxes and hydrocarbon waxes, chlorinated	63449-39-8	10/04/92
Ethyltoluenes—This category consists of ethyltoluene (mixed isomers) and the *ortho-*, *meta-* and *para*-isomers		04/29/93
Ethylmethyltoluene (mixed isomers)	25550-14-5	04/29/93
o-Ethyltoluene	611-14-3	04/29/93
m-Ethyltoluene	620-14-4	04/29/93
p-Ethyltoluene	622-96-8	04/29/93
Fluoroalkenes—This category is defined as fluoroalkenes of the general formula: $C_nH_{2n-x}F_x$ where n equals 2 to 3 and X equals 1 to 6		04/29/93
Ethene, tetrafluoro-	116-14-3	04/29/93
1-Propene, hexafluoro-	116-15-4	04/29/93
Trifluoroethene	359-11-5	04/29/93
Glycidol (oxiranementhanol) and its derivatives		10/04/92



R = H; alkyl, alkenyl or alkynyl; aryl; acyl. where R = alkyl, alkenyl, alkynyl, aryl, or acyl; any substituents of functional groups may be present with the alkyl, etc., groups:

Cyclohexane, 1,4-bis [(2,3-epoxypropoxy)methyl]-	14228-73-0	10/04/92
1,2-Cyclohexanedicarboxylic acid, bis(oxiranyl-methyl) ester	5493-45-8	10/04/92
Disiloxane, 1,1,3,3-tetramethyl-1,3-bis-[3-oxiranylmethoxy)propyl]-	126-80-7	10/04/92
2,4-Imidazolidenedione, 3,3'-[2-oxiranylemthoxy)-1,3-propanediyl] bis [5,5-dimethyl-1-(oxiranyl-methyl)-	38304-52-8	10/04/92
2,4-Imidazolidinedione, 5,5'-dimethyl-3-[2-(oxiranylmethoxy) propyl]-1-(oxiranylmethyl-	32568-89-1	10/04/92
2,2'-[Methylenebis(phenyleneoxymethyl)]bisoxirane	39817-09-9	10/04/92
Neodecanoic acid, 2,3-epoxypropyl ester	26761-45-5	10/04/92
Oxirane, butoxymethyl-	2426-08-6	10/04/92
Oxirane, [(dodecyloxy)methyl]-	2461-18-9	10/04/92
Oxirane, ethoxymethyl-	4016-11-9	10/04/92
Oxirane, [(Hexadecyloxy)methyl]-	15965-99-8	10/04/92
Oxirane, methoxymethyl-	930-37-0	10/04/92
Oxirane, [(methylphenoxy)methyl]-	26447-14-3	10/04/92
Oxirane, mono[C_{8-12}-alkyloxy)methyl] derivatives	68987-80-4	10/04/92
Oxirane, mono[C_{8-10}-alkyloxy)methyl] derivatives	68609-96-1	10/04/92
Oxirane, mono[C_{10-16}-alkyloxy)methyl] derivatives	68081-84-5	10/04/92
Oxirane, mono[C_{12-14}-alkyloxy)methyl] derivatives	68609-97-2	10/04/92
Oxirane, [(octadecyloxy)methyl]-	16245-97-9	10/04/92
Oxirane, phenoxymethyl]-	122-60-1	10/04/92
Oxirane, [tetra decyloxy)methyl]-	38954-75-5	10/04/92
Oxirane, [(1-methylethoxy)methyl]-	4016-14-2	10/04/92
Oxirane, [(1,1-dimethylethoxy)methyl]-	7665-72-7	10/04/92
Oxirane, [(1,2-dibromopropoxy)methyl]-	35243-89-1	10/04/92
Oxirane, [[(2-ethylhexyl)oxy]methyl]-	2461-15-6	10/04/92
Oxirane, [(2-methylphenoxy)methyl]-	2210-79-9	10/04/92
Oxirane, [(2-propenyloxy)methyl]-	106-92-3	10/04/92
Oxirane, [(2-4-dibromophenoxy)methyl]-	20217-01-0	10/04/92

Category	CAS No. (examples for category)	Sunset date
Oxirane, [(4-nitrophenoxy)methyl]-	5255-75-4	10/04/92
Oxirane, [[4-(1-methyl-1-phenylethyl)phenoxy]-methyl]-	61578-04-9	10/04/92
Oxirane, [[4-(1, 1-dimethylethyl)phenoxy]methyl]-	3101-60-8	10/04/92
Oxirane, [(9-Octadecenyloxy)methyl]-(Z)-	60501-41-9	10/04/92
Oxirane, 2,2'-[methylenebis(2,1-phenyleneoxy-methylene)]bis-	54208-63-8	10/04/92
Oxirane, 2,2'-[(methylethylidene)bis[4,1-phenyl-eneoxy [1-butoxymethyl)-2,1-ethanediyl]oxymethyl-ene,]]bis-	71033-08-4	10/04/92
Oxirane, 2,2'-(oxiranylmethoxy)-1,3-phenylene]bis-(methylene)]bis-	13561-08-5	10/04/92
Oxirane, 2,2'-[oxybis(methylene)]bis-	2238-07-5	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy-3,1-propanediyloxy-4,1-phenyleneoxy-methylene]]bis-	72319-24-5	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-	1675-54-3	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-, homopolymer	25085-99-8	10/04/92
Oxirane, 2,2'-[1,2-ethanediylbis(oxymethylene)]-bis-	2224-15-9	10/04/92
Oxirane, 2,2'-[1,3-phenylenebis(oxymethylene)]bis-	101-90-6	10/04/92
Oxirane, 2,2'-[1,4-butanediylbis(oxymethylene)]-bis-	2425-79-8	10/04/92
Oxirane, 2,2'-[1,4-phenylenebis(oxymethylene)]bis-	2425-01-6	10/04/92
Oxirane, 2,2'-[[[2-oxiranylmethoxy)phenyl]methyl-ene]bis(4,1-phenyleneoxymethylene)]bis-	67786-03-2	10/04/92
Oxirane, 2,2'-[(2,2-dimethyl-1,3-propanediyl)bis-(oxymethylene)]bis-	17557-23-2	10/04/92
Oxirane, 2,2',2''-[propylidynetris(4,1-phenyleneoxy-methylene)]tris-	68517-02-2	10/04/92
Oxirane, 2,2',2''-[1,2,3-propanetriyltris-(oxymethylene)]tris-	13236-02-7	10/04/92
Oxirane, 2,2',2''-[1,2,6-hexanetriyltris-(oxymethylene)]tris-	68959-23-9	10/04/92
Oxirane, 2,2',2'',2''' -[1,2-ethanediylidenetetrakis-(4,1-phenylene oxymethylene)]tetrakis-	7328-97-4	10/04/92
Oxiranecarboxylic acid, 3-methyl-3-phenyl-, ethyl ester	77-83-8	10/04/92
Poly(oxy-1,2-ethanediyl), -octadecyl- -hydroxy-, phosphate, sodium salt	69943-75-5	10/04/92
Propane, 1,2-epoxy-3-(p-nonylphenoxy)-	6178-32-1	10/04/92
2-Propenoic acid, oxiranylmethyl ester	106-90-1	10/04/92
2-Propenoic acid, 2-methyl-, oxiranylmethyl ester	106-91-2	10/04/92
Silane, diethoxymethyl[3-(oxiranylmethoxy)propyl]-	2897-60-1	10/04/92
Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-	2530-83-8	10/04/92
Silane, [(3-chloropropyl)(dimethoxy)-3-(oxiranyl-methoxy)propyl]-	71808-64-5	10/04/92
Silane, [3-(2,3-epoxypropoxy)propyl]ethoxy-dimethyl-	17963-04-1	10/04/92
Tetrasiloxane, 1,1,1,3,5,7,7,7-octamethyl-3,5-bis-[3-(oxiranylmethoxy)propyl]-	69155-42-6	10/04/92
Trisiloxane, 1,1,1,3,5,5,5-heptamethyl-3-[3-(oxiranylmethoxy)propyl]-	7422-52-8	10/04/92
Halogenated alkyl epoxides—halogenated noncyclic aliphatic hydrocarbons with one or more epoxy functional groups		10/04/92



R_1=X or $C_nH_{n+1-y}X_y$(y=1 to 2n+1)
R_3=H or X or $C_nH_{n+1-y}X_y$(y=0 to 2n+1)
R_2=H or X or $C_nH_{n+1-y}X_y$(y=0 to 2n+1)
R_4=H or X or $C_nH_{n+1-y}X_y$(y=0 to 2n+1)
x=halogen. Groups R_1-R_4 may contain one or more expoxide functions:

Haloalkyl epoxide	428-25-8	10/04/92
Oxirane, bromomethyl-	3132-64-7	10/04/92
Oxirane, chloromethyl-	106-89-8	10/04/92
Oxirane, dodecyl-	3234-28-4	10/04/92
Oxirane, trifluoro(trifluoromethyl)-	428-59-1	10/04/92
Oxirane, 2,2,2-trichloroethyl-	3083-25-8	10/04/92
Oxirane, (2,2,3,3,4,4,5,5,6,6,7,7,7-trideca-fluoroheptyl)-	38565-52-6	10/04/92
Phenylenediamines (Benzenediamines). This category is defined as all nitrogen unsubstituted phenylenediamines and their salts with zero to two substituents on the ring selected from the same or different members of the group of halo, nitro, hydroxy, hydroxy-lower alkoxy, lower-alkyl, and lower alkoxy. For this purpose, the term "lower" is defined as a group oontaining between one and four carbons		4/29/93
1,2-Benzenediamine	95-54-5	4/29/93
1,2-Benzenediamine, dihydrochloride	615-28-1	4/29/93
1,2-Benzenediamine, 3-methyl-	2687-25-4	4/29/93
1,2-Benzenediamine, 4-butyl-	3663-23-8	4/29/93
1,2-Benzenediamine, 4-chloro-	95-83-0	4/29/93
1,2-Benzenediamine, 4-chloro-, sulfate (1:1)	68459-98-3	4/29/93
1,2-Benzenediamine, 4-ethoxy-	1197-37-1	4/29/93
1,2-Benzenediamine, 4-methyl-	496-72-0	4/29/93
1,2-Benzenediamine, 4-nitro-, dihydrochloride	6219-77-8	4/29/93
1,2-Benzenediamine, 4-nitro-, sulfate (1:1)	68239-82-7	4/29/93
1,2-Benzenediamine, 5-chloro-3-nitro-	42389-30-0	4/29/93
1,3-Benzenediamine	108-45-2	4/29/93
1,3-Benzenediamine, sulfate (1:1)	541-70-8	4/29/93
1,3-Benzenediamine, ar-ethyl-ar-methyl-	68966-84-7	4/29/93
1,3-Benzenediamine, 2-methyl-	823-22-40	4/29/93
1,3-Benzenediamine, 4-methyl-	95-80-7	4/29/93
1,3-Benzenediamine, 4-chloro-	5131-60-2	4/29/93
1,3-Benzenediamine, 4-chloro-, sulfate	66239-80-5	4/29/93
1,3-Benzenediamine, 4-ethoxy-, dihydrochloride	67801-06-3	4/29/93
1,3-Benzenediamine, 4-ethoxy-, sulfate (1:1)	68015-98-5	4/29/93
1,3-Benzenediamine, 4-methoxy-	615-05-4	4/29/93
1,3-Benzenediamine, 4-methoxy-, dihydrochloride	614-94-8	4/29/93
1,3-Benzenediamine, 4-methoxy-, sulfate	6219-67-6	4/29/93
1,3-Benzenediamine, 4-nitro-	5131-58-8	4/29/93
1,3-Benzenediamine, 5-methyl-	108-71-4	4/29/93
1,3-Benzenediamine, 5-nitro-	5042-55-7	4/29/93
1,4-Benzenediamine	106-50-3	10/04/92
1,4-Benzenediamine dihydrochloride	624-18-0	4/29/93
1,4-Benzenediamine sulfate	16245-77-5	4/29/93
1,4-Benzenediamine, ethanedioate (1:1)	62654-17-4	4/29/93
1,4-Benzenediamine, 2-chloro-, sulfate	6219-71-2	4/29/93
1,4-Benzenediamine, 2-chloro, dihydrochloride	615-45-3	4/29/93

Category	CAS No. (examples for category)	Sunset date
1,4-Benzenediamine, 2-methoxy-	5307-02-8	4/29/93
1,4-Benzenediamine, 2-methyl-	95-70-5	4/29/93
1,4-Benzenediamine, 2-methyl-, dihydrochloride	615-45-2	4/29/93
1,4-Benzenediamine, 2-methyl-, sulfate (1:1)	615-50-9	4/29/93
1,4-Benzenediamine, 2-methyl-, sulfate	6369-59-1	4/29/93
1,4-Benzenediamine, 2-nitro-	5307-14-2	4/29/93
1,4-Benzenediamine, 2-nitro-, dihydrochloride	18266-52-9	4/29/93
1,4-Benzenediamine, 2-nitro-, sulfate (1:1)	68239-83-8	4/29/93
1,4-Benzenediamine, 2,5-dichloro-	20103-09-7	4/29/93
1,3-Benzenediammonium dihydrochloride	541-69-5	4/29/93
2,4-Diaminoanisole sulfate	39156-41-7	4/29/93
4,6-Diamino-o-cresol (Phenol, 2,4-diamino-6-methyl-)	15872-73-8	4/29/93
Diaminotoluene	25376-45-8	4/29/93
Ethanol, 2-(2,4-diaminophenoxy)-, dihydrochloride	66422-95-5	4/29/93
Phenol, 2,4-diamino-, dihydrochloride	137-09-7	4/29/93
Phenol, 4,6-diamino-2-methyl-, hydrochloride	65879-44-9	4/29/93

(c) *Listed Mixtures.*

Mixture	CAS No.	Sunset date
Aromatic C_9 fraction from petroleum refining: The C_9 fraction is primarily composed of		2/13/94
1,2,3-trimethylbenzene	526-73-8	2/13/94
1,2,4-trimethylbenzene	95-63-6	2/13/94
1,3,5-trimethylbenzene	8-67-8D2/ 13/94	
mixed trimethylbenzenes	25551-13-7	2/13/94
ortho-ethyltoluene	611-14-3	2/13/94
meta-ethyltoluene	620-14-4	2/13/94
para-ethyltoluene	622-96-8	2/13/94
and mixed ethyltoluenes	25550-14-5	2/13/94

11. In § 716.18 by changing the term "designated mixtures" to read "listed mixtures", and redesignating § 716.18 as § 716.13 and to read as follows:

§ 716.13 Additions of substances and mixtures to which this subpart applies.

The requirements of this subpart will periodically be extended to cover additional substances and mixtures. Two procedures will be used to add substances and mixtures.

(a) Except as provided in paragraph (b) of this section, substances and mixtures will be added to § 716.17 after publication in the **Federal Register** of a notice of proposed amendment to this subpart. There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the added substances and listed mixtures.

(b) Except as provided in paragraph (c) of this section, chemical substances, mixtures, and categories of chemicals that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA, will be added to § 716.17 30 days after publication of a notice to that effect in the **Federal Register.**

* * * * *

12. By revising and redesignating § 716.19 as § 716.15 to read as follows:

§ 716.15 Reporting Period.

(a) The reporting period on a substance or listed mixture will terminate no later than: 10 years after the effective date on which a substance or listed mixture is added to § 716.17; or on the removal of the substance or listed mixture from § 716.17. The Assistant Administrator for the Office of Pesticides and Toxic Substances has the authority to remove a substance or listed mixture from § 716.17.

(b) Removing a substance or listed mixture from § 716.17 eliminates all of the reporting requirements for prospective manufacturers, importers, and processors of the substance or listed mixture, must notify EPA whenever they initiate a study of the substance or listed mixture. Only one reporting requirement would remain in effect. Persons who are manufacturing, importing, or processing, or who propose to manufacture, import, or process a substance or listed mixture at the time it is removed from § 716.17 and who initiate a study of the substance or listed mixture prior to its removal from § 716.17, must notify EPA of the study and submit the study study regardless of the study's completion date. The Assistant Administrator may remove a substance or listed mixture from § 716.17 by publishing, without notice and comment, a final rule to that effect in the **Federal Register.** However, the rule shall not be effective any earlier than 90 days after its publication.

[FR Doc. 85-23259 Filed 9-27-85; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 32, 77, 92, 96, 190, and 195

[CGD 84-073]

Miscellaneous Changes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations for accommodations, rails and guards, and anchors for tank vessels to provide uniformity among the various subchapters. The Coast Guard is also proposing to delete the requirements for radiotelegraph, radiotelephone, and radio direction finder in 46 CFR Subchapters D, H, I, and U because these requirements are in the Federal Communications Commission (FCC) regulations in 47 CFR. The structural fire protection requirements in Subchapters I and U are proposed to be revised to clarify the location where noncombustible materials must be used. The proposed change will clarify the

requirements and bring them into conformity with current marine practice.

DATE: Comments must be received on or before November 29, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 84-073), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593. Comments will be available for inspection and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Edward F. Murphy, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 84-073) and the specific section of the proposal to which each comment applies, and the reasons for comments. No public hearing is anticipated at this time but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Office of Chief Counsel.

Discussion

DOT Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations", dated May 22, 1980, instructs the Coast Guard to establish a program for reviewing existing regulations that are not achieving their intended purpose. The accommodations, rails and guards, anchors, radiotelegraph, radiotelephone, radio direction finder, and structural fire protection subparts of 46 CFR Subchapters D, H, I, and U have been reviewed and certain portions of these regulations have been identified for revision or deletion. The proposed regulations would not impose any substantial change on current marine practice. A grandfather provision has been proposed to accept current arrangements.

On September 10, 1952, the President proclaimed that the International Convention for the Safety of Life at Sea, 1948, (SOLAS 48) would take effect November 19, 1952. The **Federal Register** of October 18, 1952, amended the regulations that were in effect by: (1) Providing new or revised requirements to implement or complement SOLAS 48; (2) reviewing and updating the requirements for vessel inspection; (3) revising the style or format of the regulations to have a better presentation of the requirements; and (4) describing present practices and procedures more fully in order to provide a better arrangement and understanding of the requirements. The regulations were revised and rearranged by general subject and by types of vessels. It was not necessary to amend or revise all of the existing regulations; therefore, those regulations not affected by SOLAS 48 were not changed. This latter group included the present Subchapter D—Tank Vessels, and accounts for the lack of uniformity in the depth of treatment and language found between Subchapter D and Subchapters H, I, and U. A revision to the accommodations, anchors and rails sections of Subchapter D would result in a uniform application among the various classes of vessels.

The proposed accommodation regulations for 46 CFR Subchapter D were drafted using 46 CFR Subchapters I and I-A as a guide. These proposed regulations contain some additional requirements for tankships which do not currently exist in Subchapter D; however, they would provide uniformity with 46 CFR Subchapters H, I, I-A, and U. The following are the proposed increased requirements: (1) The size of the sleeping quarters is increased from 120 cubic feet and 16 square feet of deck area for each member of the crew to 210 cubic feet and 30 square feet of deck area; (2) a clear head room of 6 feet 3 inches is specified; (3) clothes locker size is increased from 252 square inches to 300 square inches; (4) berths must have a framework of metal or other hard material; (5) the overall size of the berth is specified as a minimum 30 inches wide by 76 inches long; (6) adjoining berths must have a partition at least 18 inches high; (7) requirements for the entrance to the hospital space are given; and (8) the location and construction requirements of accommodation spaces are more clearly defined. There is no indication that these requirements, nor the remainder of the proposal, exceed current tank vessel construction and arrangement practices.

The rails subpart of Subchapter D (§ 32.01-10) does not contain a provision for storm rails such as are required for other classes of vessels; however, modern tank vessels have storm rails normally installed during construction. The proposed regulation adds this requirement to tankships and manned tank barges in ocean and coastwise service.

Under current regulations, tankships are not required to have anchors, chains, and hawsers such as are required for other classes of vessels. Today tankships have anchors on board to satisfy classification society requirements or safety and operational needs. The proposed regulations correct this oversight.

The radiotelegraph, radiotelephone, and radio direction finder requirements found in 46 CFR Subchapters D, H, I, and U merely direct one to the statutes and regulations of the Federal Communications Commission. Since these regulations do not contain specific requirements it is proposed that these regulations be deleted.

The Coast Guard has construed the regulation in Subchapters D, H, I, and U to require noncombustible materials in accommodations, service areas, and control spaces (i.e. spaces containing emergency sources of power, and those spaces in which a continuous watch is maintained and in which navigating, radio, or fire-control equipment is located). However, a review of the regulations for cargo and miscellaneous vessels and oceanographic vessels (Subchapters I and U respectively) shows that control spaces are not specifically included as an area of a vessel that must be constructed with noncombustile materials. To maintain the fire integrity on all vessels inspected under these Subchapters, control spaces need to be constructed with noncombustible materials. In addition, the first set of amendments to the International Conference of Safety of Life at Sea, 1974 (SOLAS 74), which have been in effect since September 1, 1984, require that control spaces on new cargo vessels on an international voyage be constructed with noncombustible materials. This proposal would, in addition to conforming 46 CFR Subchapters I and U to the requirements of SOLAS 74, specifically include requirements to utilize noncombustible materials in control spaces on all vessels inspected under these Subchapters. This proposal confirms the current Coast Guard interpretation and is compatible with current marine practice.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and

nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The proposed regulations contain minor changes that in some cases appear to be adding requirements for new vessels with a corresponding increase in cost. However, vessels being constructed today meet and often exceed the proposed regulations. There will be no economic impact on existing vessels because the proposal provides for acceptance of current arrangements and equipment on these vessels. Thus, this proposed change to 46 CFR Subchapters D, H, I, and U represents no real cost increase to industry or government. Since the economic impact is expected to be minimal, the Coast Guard has determined that no further evaluation is necessary.

Regulatory Flexibility Act

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains no information collection or record keeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary.

List of Subjects

46 CFR Part 32

Cargo vessels, Marine safety, Fire protection, Tank vessels, Barges.

46 CFR Part 77

Marine safety, Passenger vessels, Navigation (water).

46 CFR Part 92

Cargo vessels, Fire protection, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 190

Fire prevention, Marine safety, Oceanographic vessels.

46 CFR Part 195

Marine safety, Oceanographic vessels, Navigation (water).

In consideration of the foregoing Parts 32, 77, 92, 96, 190, and 195 of Chapter 1 of Title 46, Code of Federal Regulations, are amended as follows:

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for Part 32 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306, 3703; 50 U.S.C. 198; 49 CFR 1.46 (b) and (n).

2. By revising the Subpart 32.40 portion of table of contents for Part 32 to read as follows:

Subpart 32.40—Accommodations For Officers and Crew

Sec.

32.40-1 Application—TB/ALL.
32.40-5 Purpose and definitions—T/ALL.
32.40-10 Restrictions—T/ALL.
32.40-15 Location of crew spaces—T/ALL.
32.40-20 Construction—T/ALL.
32.40-25 Arrangement of sleeping spaces—T/ALL.
32.40-30 Size of sleeping spaces—T/ALL.
32.40-35 Berths and lockers—T/ALL.
32.40-40 Wash spaces; toilet spaces; and shower spaces—T/ALL.
32.40-45 Messrooms—T/ALL.
32.40-50 Hospital space—T/ALL.
32.40-55 Miscellaneous accommodation spaces—T/ALL.
32.40-60 Heating requirements—T/ALL.
32.40-65 Insect Screens—T/ALL.
32.40-70 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.
32.40-90 Crew accommodations on tankships constructed before December 31, 1985—T/ALL.

3. By adding a new paragraph (d) to § 32.01-10 to read as follows:

§ 32.01-10 Rails—TB/ALL.

* * * * *

(d) All tank vessels in ocean and coastwise service, except unmanned tank barges, constructed on or after December 31, 1985, must have suitable storm rails installed in all passageways and at the deckhouse sides where persons on board might have normal access. Storm rails must be installed on both sides of passageways which are six feet or more in width. Tank vessels to which this paragraph applies constructed prior to December 31, 1985 may retain previously accepted or approved installations so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

4. By revising § 32.15-15 to read as follows:

§ 32.15-15 Anchors, Chains, and Hawsers—TB/ALL.

(a) Application. The provisions of this section, with the exception of § 32.15-15(d), apply to every tankship and manned seagoing barge constructed on or after December 31, 1985. Tankships and manned seagoing barges constructed prior to December 31, 1985, must meet the requirements of § 32.15-15(d).

(b) Ocean, Coastwise, or Great Lakes Service. Tankships in ocean, coastwise, or Great Lakes service and manned seagoing barges must be fitted with anchors, chains and hawsers in general agreement with the standards established by the American Bureau of Shipping. The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

(c) Lakes, Bays, and Sounds, or River Service. Tankships in lakes, bays, and sounds, or river service must be fitted with such ground tackle and hawsers as deemed necessary by the Officer in Charge, Marine Inspection, depending upon the size of the tankship and the waters on which it operates.

(d) Tankships and Barges Constructed Prior to December 31, 1985. For tankships and manned seagoing barges constructed prior to December 31, 1985, the installations previously accepted or approved will be considered satisfactory for the same service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the service of the tank vessel is changed, the suitabilty of the equipment will be established by the Officer in Charge, Marine Inspection.

§ 32.15-20 [Removed]

5. By removing § 32.15-20.

§ 32.15-25 [Removed]

6. By removing § 32.15-25.

7. By revising Subpart 32.40 to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

§ 32.40-1 Application—TB/ALL.

(a) The provisions of this subpart, with the exception of § 32.40-70 and § 32.40-90, apply to all tankships of 100 gross tons and over constructed on or after December 31, 1985.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of §32.40-70.

(c) Tankships of 100 gross tons and over constructed prior to December 31, 1985, must meet the requirements of §32.40-90.

§ 32.40-5 Purpose and definitions—T/ALL.

(a) The accommodations provided for officers and crew on all tankships must be securely constructed, properly

lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise and odors.

(b) The crew includes all persons, except the licensed officers, regularly employed on board any tankship. Where the requirements for the accommodation of licensed officers are not otherwise specified, they must be at least equivalent to that specified for the crew.

(c) Crew spaces includes sleeping rooms, messrooms, recreational rooms, toilet and shower spaces, etc., which are intended for the exclusive use of the crew.

§ 32.40-10 Restrictions—T/ALL.

(a) There must be no direct communication between the accommodation spaces and any chainlocker, stowage, or machinery space, except through solid, close-fitted doors or hatches.

(b) No access, vent, or sounding tube from a fuel or oil tank may open into any accommodation space, except that accesses and sounding tubes may open into corridors.

§ 32.40-15 Location of crew spaces—T/ALL.

(a) Crew quarters must not be located forward of a vertical plane located at five percent of the tankship's length aft of the stem at the designed summer load line. However, for tankships in other than ocean or coastwise service, this distance does not need to exceed 28 feet. For the purpose of this paragraph, the length defined in § 42.13-15 of Subchapter E (Load Lines) of this chapter is to be used. No section of the deckhead of the crew spaces may be below the deepest load line.

§ 32.40-20 Construction—T/ALL.

(a) Each sleeping, mess, recreational, or hospital space that is adjacent to or immediately above a galley, machinery space, paint locker, drying room, washroom, toilet space, or other odor source must be made odorproof.

(b) Each accommodation space that is adjacent to or immediately above a galley, machinery space, machinery casing, boiler room, or other noise or heat source, must be protected from heat and noise.

(c) Where the shell of an unsheathed weather deck forms a boundary of an accommodation space, the shell of the deck must have a covering that prevents the formation of moisture.

(d) The deckheads of each accommodation space must be light in color.

(e) Each accommodation space in which water may accumulate must have a drain scupper located in the lowest part of the space, considering the average trim of the tankship.

(f) Each public toilet space must be constructed and located so that its odors do not readily enter any sleeping, mess, recreational, or hospital space.

§ 32.40-25 Arrangement of sleeping spaces—T/ALL.

(a) To the extent practicable, each crew department must be berthed together in sleeping spaces arranged to minimize disturbance created by personnel leaving for or arriving from a working period.

(b) Each licensed officer is to be provided with a separate stateroom where practicable.

§ 32.40-30 Size of sleeping spaces—T/ALL.

(a) No sleeping space may berth more than four persons.

(b) Without deducting any equipment used by the occupants, each sleeping space must have for each occupant—

(1) 30 square feet of deck area; and

(2) 210 cubic feet of volume.

(c) Each sleeping space must have at least six feet three inches of headroom over clear deck areas.

§ 32.40-35 Berths and lockers—T/ALL.

(a) Each sleeping space must have a separate berth for each occupant.

(b) No more than one berth may be placed over another.

(c) Each berth must have a framework of hard, smooth material that is not likely to corrode or harbor vermin.

(d) Each berth must be arranged to provide ample room for easy occupancy.

(e) Each berth must be at least 30 inches wide by 76 inches long.

(f) Adjacent berths must be separated by a partition that extends at least 18 inches above the sleeping surface.

(g) The bottom of the lower berth must be at least 12 inches above the deck.

(h) The bottom of an upper berth must be at least 30 inches from the bottom of the berth below it and from the deck or any pipe, ventilating duct, or other overhead installation.

(i) Each berth must have a berth light.

(j) Each sleeping space must have a readily accessible locker of hard, smooth material for each occupant.

(k) Each locker must be at least 300 square inches in cross section and 60 inches high.

§ 32.40-40 Wash spaces; toilet spaces; and shower spaces—T/ALL.

(a) For the purpose of this section—

(1) "Private facility" means a toilet, washing, or shower space that is accessible only from one single or double occupancy sleeping space;

(2) "Semi-private facility" means a toilet, washing, or shower space is accessible from either of two one-to-four person occupancy sleeping spaces; and

(3) "Public facility" means a toilet, washing, or shower space that is not private or semi-private.

(b) Each private facility must have one toilet, one shower, and one washbasin, all of which may be in a single space.

(c) Each semi-private facility must have at least one toilet and one shower, which may be in a single space.

(d) Each room adjoining a semi-private facility must have a washbasin if a washbasin is not installed in a semi-private facility.

(e) Each tankship must have enough public facilities to provide at least one toilet, one shower, and one washbasin for each eight persons who occupy sleeping spaces that do not have private or semi-private facilities.

(f) Urinals may be installed in toilet rooms, but no toilet required in this section may be replaced by a urinal.

(g) Each public toilet space and washing space must be convenient to the sleeping space that is serves.

(h) No public facility may open into any sleeping space.

(i) Each washbasin, shower, and bathtub must have hot and cold running water.

(j) Adjacent toilets must be separated by a partition that is open at the top and bottom for ventilation and cleaning.

(k) Public toilet facilities and shower facilities must be separated.

(l) Each public facility that is a toilet space must have at least one washbasin unless the only access to the toilet space is through a washing space.

(m) Each toilet must have an open front seat.

(n) Each washing space and toilet space must be so constructed and arranged that it can be kept in a clean and sanitary condition and the plumbing and mechanical appliances kept in good working order.

(o) Washbasins may be located in sleeping spaces.

§ 32.40-45 Messrooms—T/ALL.

(a) Each messroom that is not adjacent to the galley that serves it must be equipped with a steamtable.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40-50 Hospital space—T/ALL.

(a) Except as specifically modified by paragraph (j) of this section, each tankship, which in the ordinary course of its trade makes voyages of more than

three days duration between ports and which carries a crew of twelve or more, must have a hospital space. This space is to be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and used only for the care of the sick and for no other purpose.

(c) The entrance to each hospital space must be wide enough and arranged to readily admit a person on a stretcher.

(d) Each berth in a hospital space must be made of metal.

(e) Berths may be in double tier, provided the upper berth is hinged and arranged to be secured clear of the lower berth when not in use.

(f) Each hospital space must have at least one berth that is accessible from both sides.

(g) Each hospital space must have one berth for every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(h) Each hospital space must have a toilet, washbasin, and bathtub or shower accessible from the hospital space.

(i) Each hosptial space must have a clothes locker, a table, and seats.

(j) On tankships in which the crew is berthed in single occupancy rooms, a hospital space is not required if one room is designated and fitted for use as a treatment and/or isolation room, and meets the following standards:

(1) The room must be available for immediate medical use;

(2) The room must be accessible to stretcher cases;

(3) The room must have a single berth or examination table that is accessible from both sides; and

(4) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 32.40-55 Miscellaneous accommodation spaces—T/ALL.

(a) Each tankship must have enough facilities for the crew to wash their own clothes, including at least one tub or sink that has hot and cold running water.

(b) Each tankship must have enough equipment for the crew to dry their own clothes.

(c) Each tankship must have an accommodation space that can be used for recreation.

§ 32.40-60 Heating requirements—T/ALL.

(a) Each accommodation space must be heated by a heating system that can maintain at least 68°F.

(b) Radiators and other heating apparatus must be constructed, located or shielded so as to avoid risk of fire or danger and discomfort to the occupants of each accommodation space.

(c) Each exposed pipe in an accommodation space leading to a radiator or other heating apparatus must be insulated.

§ 32.40-65 Insect Screens—T/ALL.

(a) Accommodation spaces must be protected against the admission of insects.

(b) Insect screens must be installed when natural ventilation is provided.

§ 32.40-7 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in a manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accomodations must be consistent with the principles underlying the requirements for crew accommodations on tankships of 100 gross tons or more.

§ 32.40-90 Crew accommodations on tankships constructed before December 31, 1985—T/ALL.

(a) All tankships of 100 gross tons and over constructed before December 31, 1985, may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

8. The authority citation for Part 77 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 77.13 [Removed]

9. By removing § 77.13.

§ 77.15 [Removed]

10. By removing §77.15.

PART 92—CONSTRUCTION AND ARRANGEMENT

11.The authority citation for Part 92 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

12. By adding a new paragraph (g) to § 92.07-10 to read as follows:

§ 92.07-10 Construction

* * * * *

(g) The provisions of subparagraphs (1) through (9) of paragraph § 92.07-10(d) apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after December 31, 1985.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

13. The authority citation for Part 96 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 96.13 [Removed]

14. By removing § 96.13.

§ 96.15 [Removed]

15. By removing § 96.15.

PART 190—CONSTRUCTION AND ARRANGEMENT

16. The authority citation for Part 190 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

17. By adding a new paragraph (f) to § 190.07-10 to read as follows:

§ 190.07-10 Construction

* * * * *

(f) The provisions of subparagraphs (1) through (9) of paragraph § 190.07-10(d) apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after December 31, 1985.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

18. the authority citation for Part 195 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 195.13 [Removed]

19. By removing § 195.13.

§ 195.15 [Removed]

20. By removing § 195.15.

Dated: September 25, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-23283 Filed 9-27-85; 8:45 am]

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46 CFR Parts 109, 170, and 174

[CGD 83-071]

Mobile Offshore Drilling Unit Operating Manual Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations listing the information required to be addressed in a mobile offshore drilling unit (MODU) operating manual. Investigation reports on the sinking of the MODU OCEAN RANGER recommend that the operating manual requirements be revised to make them more easily understood by MODU operating personnel. The proposed amendments also contain the information required by the International Maritime Organization (IMO) Code of Safety for MODUs. The overall effect of this change will be to enable the operating manual to become more useful to operating personnel and will ensure that an operating manual developed to comply with U.S. regulations will meet the requirements of the IMO MODU Code.

DATE: Comments must be received on or before November 29, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 83-071), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593. Comments will be available for inspection and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking proceeding by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 83-071) and the specific section of the proposal to which each comment applies, and the reasons for comments. No public hearing is anticipated at this time but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Office of Chief Counsel.

Background

The Mobile Offshore Drilling Unit (MODU) regulations (46 CFR Chapter 1, Subchapter 1-A) were published in final form on December 4, 1978 and became effective January 3, 1979. On December 5, 1983, the MODU operating manual requirements were transferred from 46 CFR 109.121 to 46 CFR 170.110 and 170.130 when a new Subchapter S (Subdivision and Stability) was created. Since 1979, the occurrence of a number of events, such as the sinking of the MODUs Ocean Ranger and Glomar Java Sea, the United States recognition of the International Maritime Organization Code of Safety for Mobile Offshore Drilling Units, and the receipt of comments from industry and other interested parties have caused the Coast Guard to reconsider its operating manual requirements. On June 1, 1984, the Coast Guard published an Advance Notice of Proposed Rulemaking (48 FR 22836) asking for suggestions on how the operating manual requirements might be clarified and improved.

Discussion of Comments on the Advance Notice

Eight sets of comments were received on the Advance Notice from interested parties, including MODU owners, operators, and personnel, trade organizations, and other government agencies.

Several comments suggest that the regulations conform to the operating manual provision in the International Maritime Organization Code for the Construction and Equipment of Mobile Offshore Drilling Units (IMO MODU Code). Some comments, however, suggest that certain items in the IMO MODU Code (fire control plan, evacuation plan, and schematics of vital systems) should not be included because they are already required to be on board or their inclusion would not be useful. U.S. regulations, however, require only the fire control plan and in some instances a diagram of the fuel oil transfer system to be on board. The Coast Guard believes the operating manual should include all of the IMO MODU Code items for consideration because this information is of the type that needs to be readily available to operating personnel.

Other comments suggest that the operating manual become a maintenance manual, emergency drill manual, or a safety/training manual. The Coast Guard does not believe that such information should be included in the operating manual because this information would cause the operating manual to become unnecessarily burdensome.

Some items mentioned in the ANPRM for possible inclusion in the operating manual received generally negative comments. These items included a cold start plan and action to be taken for loss of power. As a result of the comments, it is questionable whether this information is necessary or readily adaptable to the operating manual. A cold start plan is unnecessary because the evolution of restoring power after an abandonment or repair period is well within the capabilities of operating personnel. There are many potential causes for a loss of power with two immediate results—the emergency generator fails to start and the emergency power system is energized. To require instructions on actions to be taken if power is lost would make use of the operating manual unnecessarily burdensome by attempting to address all possible actions for loss of power. Therefore, these items have not been included in this proposal.

The ANPRM also cited the possible inclusion of a towing plan in the operating manual. This item received negative comments, however, the comments primarily objected to the operational aspect of towing. Several casualties resulting in structural damage have occurred on self-elevating units in the transit mode during heavy weather. These casualties were related to the improper positioning of the legs or cantilever or stowage of cargo and equipment. The Coast Guard believes the operating manual should contain information for preparing the unit to avoid these problems during heavy weather.

Certain comments state that operating manuals have become difficult to use; information can not be readily located and is often not easily understood. The Coast Guard agrees with this observation. The operating manual is intended to provide operating personnel with readily available and useful

information to evaluate stability and loading and otherwise assist during emergency as well as normal situations. The Coast Guard proposes that the operating manual be written without technical jargon and be divided into sections with a table of contents for each section and a general index for the manual. The sections would be entitled "Stability and Loading", "Emergency Procedures", and "Other Information". This arrangement would benefit operating personnel by gathering the information that is pertinent to stability, for example, into a single section. The "Other Information" section would provide a great deal of latitude for the inclusion of information which, though not required for survivability, is desired by an owner to be in the operating manual.

Discussion of Proposed Regulation

The proposed regulations apply to all MODUs certificated under 46 CFR Subchapter 1–A and any other MODU engaged in activities on the Outer Continental Shelf (OCS) of the United States. At this time, there are about 310 certificated MODUs. In addition, there are approximately 20 noncertificated and 25 foreign MODUs currently operating on the OCS. There are approximately five new U.S. flag MODUs being built annually. For existing MODUs, proposed § 109.121(b) would require that the operating manual conform to the new requirements and be submitted to the Coast Guard for review and approval within a two year period.

The items proposed for coverage in the manual include those incorporated from the existing regulations (46 CFR 170.110 and 170.130) without substantive change. They also include the IMO MODU Code items not already specified in the existing regulations and certain other items not found in either the existing regulations or the IMO MODU Code.

The following proposed provisions are IMO MODU Code items not found in the present regulations: § 109.121(f)(2), (f)(4), (f)(6), (f)(7), (f)(9), (g)(1), (g)(2), (g)(3), and (g)(4). The inclusion of the fire control plan and fuel oil transfer plans in the operating manual is in addition to other U.S. regulations that require them to be on board the unit.

The proposed items that are not found in either the present regulations or the IMO MODU Code are § 109.121 (c), (e)(14), (f)(3), (f)(5), (f)(8), and (g)(5). These items are discussed below.

Proposed § 109.121(c) on the three section format would make it easier for operating personnel to locate and use the information provided for the unit.

As previously noted in the Discussion of Comments on the Advance Notice section, information on preparing a self-elevating unit for transit needs to be provided to reduce the risk of damage during heavy weather. Proposed § 109.121(e)(14) would meet this need.

Proposed § 109.121(f)(3) on the bilge system would require the inclusion of information with regard to the dewatering of any compartment and all alternate means of dewatering in the event of main bilge pump failure.

The fire control plan generally does not provide details of the fixed fire extinguishing and the firemain systems. Instructions for the fixed fire extinguishing system are in addition to the posting requirement of § 108.163(b). Instructions for operation of the firemain are often not readily available. However, proper operation of these systems is vital for survivability. Proposed § 109.121(f)(5) would require information on the operation of these systems, as well as on the operation of all fire pumps.

Proposed § 109.121(f)(8) on emergency shutdowns of various systems is necessary for the safety of the unit and its personnel. During an emergency, personnel must be able to locate and operate these devices. Placing this information in the operating manual would make it readily available at all times. Information also needs to be available to personnel for restarting these systems after a shutdown.

Proposed § 109.121(g)(5) would allow MODU owners to include related information which they feel is necessary for operating personnel. However, this information would be included in a section of the manual separate from the emergency and stability sections.

In addition to the above, there are certain proposed amendments of an editorial nature. The original provisions for MODU operating manuals were in Subchapter 1–A (46 CFR 109.121) dealing exclusively with MODUs. On December 5, 1983, the provisions were deleted and reference was made to the operating manual provision in the newly created Subchapter S dealing with vessel subdivision and stability. However, because this proposal expands the manual to include matters other than those relating to stability, the Coast Guard proposes to return the operating manual provisions to the MODU subchapter (1–A). See the proposed amendments to §§ 170.110 ad 170.130.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Executive Order 12498 (50 FR 1036; January 8, 1985) and the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26,1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593 from 8 a.m. to 4 p.m.

The costs of an operating manual may vary due to the complexity of the MODU, the amount of information included that is not required by the regulations and the experience of the preparer in drafting operating manuals. Much of the required information is already available and is customarily provided to operating personnel; however, some information not previously required would have to be compiled.

The cost of preparing a manual which meets the requirements of the existing regulations is estimated to be between $12,000 and $17,000. Rearranging and incorporating the proposed additional information would increase the cost by approximately 17 per cent or by $2,000 to $3,000. For a manual already conforming to the IMO MODU Code, the cost of rearranging and incorporating the remaining proposed provisions would be $1,000 to $1,400. Assuming that the operating manuals of all of the 355 existing MODUs do not meet the IMO MODU Code, the total cost would be $710,000 to $1,065,000 for the existing MODUs. Manuals for new MODUs would cost $14,000 to $20,000 for each unit, assuming each unit is different.

The total cost to the Coast Guard for the review and approval of each manual is estimated to be $530. The additional cost to the Coast Guard for the proposed regulations is estimated to be $170/manual.

The investigation reports of recent MODU sinkings resulting in the loss of 165 lives recommended that operating manuals contain additional information and be clearer and better organized to facilitate their use in emergency situations. The primary objective of these proposals is to address these needs, thereby enhancing the safety of life and property at sea. It is, however, difficult, if not impossible, to quantify the benefits of the proposed regulations because of the unpredictable occurreance and limitless variety of emergency situations in which the manuals would be of assistance. Though the manuals do not replace a well trained crew, they can be of significant benefit.

Regulatory Flexibility Act

These proposals would apply to the owners and operators of MODUs. Few of these, if any, would be considered small entities. The economic impact of these proposed rules on individual owners and operators is expected to be minimal. Current operating manuals will only need to be modified by MODU owners to comply with the proposed requirements. For new MODUs, the operating manuals are normally developed as a standard business practice by designers and builders of MODUs. Cost information may be found in the evaluation section above. Therefore, it is certified, in accordance with seciton 605(d) of the Regulatory Flexibility Act (94 Stat. 1164; 5 U.S.C. 601), that these rules will not have a significant economic impact on a substanstial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in § 109.121. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "**ADDRESSES**".

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary.

List of Subjects

46 CFR Part 109

Reporting and recordkeeping requirements, Vessels, Continental shelf, Oil and gas exploration, Marine safety, Marine resources.

46 CFR Part 170

Marine safety, Subdivision, Stability, Vessels, Tank vessels, Cargo vessels, Nuclear vessels, Passenger vessels, Oceanographic vessels, Sailing vessels, Nautical schools, Tugboats, Towboats, Mobile offshore drilling units, Barges, Grain, Oil and gas exploration, hazardous materials transportation, Gases, Natural gas, Incorporation by reference.

46 CFR Part 174

Marine safety, Subdivision, Stability, Vessels, Cargo vessels, Nuclear vessels, Tugboats, Towboats, Mobile offshore drilling units, Barges, Oil and gas exploration.

In consideration of the foregoing, Parts 109, 170 and 174 of Chapter 1 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 109—OPERATIONS

1. The authority citation for Part 109 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d), 1347(c); 50 U.S.C. 196; §§ 109.411 and 109.413 also issued under 46 U.S.C. 6101; § 109.431 also issued under 46 U.S.C. 10104; 49 CFR 1.46.

2. By revising § 109.121 to read as follows:

§109.121 Operating manual.

(a) Each unit must have on board an operating manual approved by the Coast Guard as meeting the requirements of this section. The operating manual must be available to, and written in a manner that is easily understood by, the unit's operating personnel.

(b) Each unit that has a manual approved before [the effective date of this rulemaking] must have a manual that meets the requirements of this section by January 1, 1988.

(c) The operating manual must be divided into three sections entitled "Stability and Loading", "Emergency Procedures", and "Other information".

(d) Each operating manual must have a table of contents for each section and a general index for the manual.

(e) *Stability and Loading.* This section of the operating manual must include—

(1) A general description of the unit including dimensions, tonnages, basic capacities, maximum operating depth, maximum drilling depth, and the damage stability standard to which it is designated;

(2) Limiting design data for each mode of operation, including wave height, wave period, wind, current, draft, temperature, seabed conditions, and over environmental factors;

(3) Instructions on the use of the stability data contained in this section of the manual in determining stability;

(4) Lightweight data with a comprehensive listing of the inclusions and exclusions of semi-permanent equipment;

(5) Type, location, and quantities of permanent ballast;

(6) Hydrostatic curves or tables;

(7) The maximum allowable deck loadings either listed or shown on a plan;

(8) A capacity plan showing the capacities and the vertical, longitudinal, and transverse centers of gravity of each storage space, and tank;

(9) Tank sounding tables showing the capacities, the vertical, longitudinal, and transverse centers of gravity in graduated intervals, and the free surface data of each tank;

(10) Stability information setting forth the allowable maximum height of the center of gravity in relation to draft data or other parameters based upon compliance with the intact and damage stability criteria;

(11) Examples of loading conditions for each mode of operation and instructions for developing other acceptable loading conditions;

(12) Information concerning the use of any special crossflooding fitting for each operating condition which, if damage occurs, may require crossflooding for survival (surface units only) and the position of any valve that may require closure to prevent progressive flooding (all units);

(13) Instructions for preparing the unit for the passage of a severe storm and the specific actions and approximate length of time necessary to attain each level of preparedness;

(14) For self-elevating units in the transit mode, information for preparing the unit to avoid structural damage during heavy weather, including the positioning and securing of legs, cantilever structures, and heavy cargo or large equipment which might shift position.

(15) Instructions for operating the unit while changing its mode of operation and for preparing the unit to make a move; and

(16) A description of any inherent operational limitations for each mode of operation and for each change in mode of operation.

(f) *Emergency Procedures.* This section of the operating manual must include—

(1) General guidance for the person in charge to determine the cause of unexpected list or trim before taking corrective action;

(2) Description, plans, instructions for the operation, and limitations (such as pump capacities at various angles of heel and trim) of the ballast system and of alternate means of operation;

(3) Description, plans, instructions for the operation, and limitations (such as spaces not connected to the bildge system) of the bilge system and of alternate means of operation;

(4) Schematic diagrams of main and emergency power supplies and electrical installations;

(5) Description and instructions for the operation of each fixed fire extinguishing system including the fire main system;

(6) Fire control plan on a general arrangement type plan showing clearly for each deck, the control stations, the fire sections enclosed by A-Class or B-Class divisions, details of the fire and gas detection and fire alarm systems, the sprinkler installation, the fire extinguishers, the fire doors, the means of access to different compartments and decks, and the ventilation system (including the fan control positions, the position of dampers, and the identification numbers of the ventilation fans serving each section);

(7) General arrangement plans showing watertight and weathertight compartments, closures, vents, and all flooding alarms;

(8) Operation and location of all mechanical, ventilating, and electrical emergency shutdowns and instructions on restarting the systems; and

(9) Safety provisions, including location and operation of life-saving appliances and procedures for evacuation of personnel from the unit.

(g) *Other Information.* This section of the operating manual must include—

(1) Schematic diagrams and instructions for the main fuel oil transfer and storage systems;

(2) A plan showing the hazardous locations described in § 111.105–33;

(3) The rated capacity for each reeving of the drilling derrick;

(4) The maximum helicopter weight and rotor size allowed for the helicopter platform; and

(5) Other plans, equipment descriptions, and safe operating procedures determined to be desirable by the owner.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

3. The authority citation for Part 170 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d), 1356(a); 50 U.S.C. 198; 49 CFR 1.46.

4. By revising paragraph (a) of § 170.110 to read as follows:

§ 170.110 Stability booklet.

(a) Except as provided in paragraph (e) of this section, a stability booklet must be prepared for each vessel, except for mobile offshore drilling units subject to the operating manual requirements of § 109.121 of this chapter.

* * * * *

§ 170.130. [Removed]

5. By removing § 170.1300, Operating information for a mobile offshore drilling unit.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

6. The authority citation for Part 174 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306, 3316, 3703; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d), 1356(a); 50 U.S.C. 198; §§ 174.150 through 174.170 also issued under 42 U.S.C. 9118, 9119(c), 9153(a), (b); 49 CFR 1.46.

7. By revising paragraph (d) of § 174.045 to read as follows:

§ 174.045 Intact stability requirements.

* * * * *

(d) Each unit must be designed so that it can be changed from each of its normal operating conditions to a severe storm condition within a minimum period of time consistent with the operating manual required in §109.121 of this chapter.

Dated: September 25, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–23290 Filed 9–27–85; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 221

Documentation, Transfer or Charter of Vessels; Blanket Approval for; Bareboat Charters of Recreational Vessels to Noncitizens; Sales to Noncitizens and Transfers to Foreign Registry or Flag of Vessels Under 200 Gross Tons

AGENCY: Maritime Administration, DOT.

ACTION: Proposed Rule.

SUMMARY: A provision of the Shipping Act, 1916, (Act) makes it unlawful, without the approval of the Secretary of Transportation, to transfer vessels or specified interests in a vessel to noncitizens under certain conditions. Sales and charters of these vessels require approval, and the Secretary has delegated approval authority to the Maritime Administration (MARAD). MARAD has issued a regulation at 46 CFR 221.7 that grants a general approval, not to exceed six months, of vessel charters to noncitizens. The proposed rulemaking would extend the scope of this general approval to include bareboat charters and subcharters to noncitizens of United States vessels that are documented to be operated only for recreation. It would also grant general MARAD approval of the sale to noncitizens and the transfer to foreign registry or flag of vessels under 200 gross tons. These amendments to 46 CFR 221.7 would eliminate delays in accomplishing vessel charters and sales to noncitizens that have often resulted in the loss of business, and would also eliminate the cost of application fees and incidental expenses to the applicants. These amendments would also relieve the administrative burden on MARAD in reviewing and processing requests for approval of vessel sales and charters to noncitizens.

DATE: The Maritime Administration will consider all written comments by the public received on or before November 29, 1985.

ADDRESS: Send the orginal and one copy of comments to the Secretary, Maritime Administration, Department of Transportation, NASSIF Building, Room 7300, 400 Seventh St. S.W., Washington, D.C. 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional nine (9) copies of the comments. Anyone submitting comments who wishes acknowledgment of their receipt by the Maritime Administration should include a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mrs. Jessie Fernanders, Ship Disposals and Foreign Transfers Officer, Maritime Administration, Washington, D.C. 20590, Telephone: (202) 426–5821.

SUPPLEMENTARY INFORMATION: Section 9 of the Act as amended (46 U.S.C. 808), specifically requires MARAD approval of the sale, charter or other specified transfers to a noncitizen, with respect to any vessel or interest therein, owned in whole or in part by a United States citizen and presently documented or last documented under the laws of the United States. A noncitizen is a person who fails to qualify as a citizen under section 2 of the Act (46 U.S.C. 802). Pertinent regulations are at 46 CFR Part 221. MARAD now gives blanket approval for charters, other than bareboat charters, e.g., time, voyage or space charters (46 CFR 221.7) to noncitizens for periods not in excess of six months. A bareboat charter is one where the charterer takes possessions of the vessel and exerises direct control over the actual operation of the vessel.

Background—Recreational Vessel Charter Approvals

The amendment for bareboat charter approvals is being proposed at the request of certain vessel owners who are in the business of chartering vessels documented recreational under United States law.

Owners and operators of recreational vessels receive many charter requests from noncitizens. These requiests for recreational vessel charters are usually for immediate use, and in many cases, for very brief periods of time. This has made it impossible for charterers to obtain the prior MARAD approval required under section 9 of the Act. Actual MARAD approval typically has taken anywhere from 30 to 90 days. Since a majority of the potential charter opportunities arise on short notice, the vessel owners and operators have incurred financial injury by not being able to comply with this law. As a result, owners of vessels documented recreational often reject offers by noncitizens to charter their vessels.

The alternative to rejecting a profitable business opportunity is to charter without prior MARAD approval. Such action places the owner in violation of the Act, subjects the owner to a fine of not more than $5,000, or to imprisonment for not more than five years, or both, and subjects the vessel to forfeiture to the United States. Many of the recreational vessel charterers are force to choose between loss of customers and the risk or loss of the vessels which are their principal assets. In view of the drastic penalty for not complying with the Act, the sizable number of persons in the business of bareboat chartering recreational vessels and thee difficulty in enforcing section 9, MARAD believes that it is appropriate to propose extending blanket approval to these types of charters.[1]

Proposed Amendment for Charter Approvals

The proposed amendment to paragraph (a) of 221.7 would expand the scope of the general blanket approval to include bareboat charters and bareboat subcharters to noncitizens of vessels documented recreational and that will be operated by the charterer or subcharterer only for recreation. Specifically, it would allow charter to noncitizens, for a period not in excess of six (6) months, of a recreational vessel that is to be under the direct control of the charterer.[2]

According to United States Coast Guard statistics on recreational vessels there are approximately 73,000 vessels that are documented recreational under the laws of the United States. MARAD is unable to determine the exact number of these vessels that may be available for bareboat chartering purposes. Nor are we able to determine precisely what percentage of those vessels might be bareboat chartered to noncitizens. However, a review of advertisements of 76 operators of recreational vessels available for charter indicated that they manage or own a total of 1,674 vessels that are available for charter for periods ranging from one day to one week. The rates for such charter vary from $70–$460 per day and from $176 to $2,730 per week, depending on the size of the vessel and time of year (prime season, nonprime season.).

For the purpose of this proposed amendment, MARAD proposes the following hypothetical analysis of losses incurred by charterers due to the prior approval requirement, and projected increases in business due to the assumed effect of this proposed amendment. Since this analysis is based entirely on assumptions, MARAD requests that charterers provide comments on the projected financial impact of this proposed amendment on their ability to charter to noncitizens. Also, MARAD would appreciate comments on the extent to which the prior approval requirement has hindered charters to noncitizens.

MARAD makes the assumption that at least 15 percent (10,950) of the 73,000 vessels documented recreational are available for chartering by individual owners or charter operators, including rental agents for the owners. We estimate the prime season to have approximately 120 chartering days per year, and the average charter period to be three (3) days. This estimate factors in lost time due to bad weather and maintenance. Therefore, we estimate that a vessel would be bareboat chartered out 40 times during the season. We assume further that up to 20 percent (or eight) of these charters would be to noncitizens. Using these hypothetical figures the total number of applications required to be approved pursuant to section 9 of the Act would be 87,600 (10,950) vessels × 8 = 87,600).

In order to estimate the potential loss of revenue because of the existing approval requirements in section 9 of the Act and at 46 CFR 221.14(a), MARAD has assumed that a typical bareboat charter to a noncitizen would be for a period of three (3) days, at the rate of $125 per day, or $375. After deducting the $250 filing fee for the required approval, plus the clerical, reproduction and postage costs for submitting the required application, amounting to $9.58 per application, the net income from the charter would be only $115.42. Based on a minimum of 30 days from the time of application for MARAD to grant an approval, a vessel owner or charterer could lose as many as ten (10) charters during that period, a net loss of $1,154.

The significant expense of obtaining acutal prior approval from MARAD for charters to noncitizens, along with the time constraints presented by potential charterers who wish to bareboat charter the vessel on the spot, has discouraged charter boat operators from chartering recreational vessesl to noncitizens.

In fact, a number of charter boat operators have advised MARAD informally that they no longer consider chartering their vessels to noncitizens and have ceased advertising and otherwise expending money to develop the foreign charter market, which could be reasonably profitable. By not chartering to noncitizens, charterers, using our assumed figures, could lose as many as 87,600 opportunities for charters annually. At the rate of $125 per day for 24 days (20% of the 120 charter days), the annual loss of income under the existing regulation could be as much as $10.1 million, i.e., total estimated lost revenues ($125 per day × 24 days chartered to noncitizens per year × 10,950 pleasure vessels for charter) less estimated total filing costs ($259.58 filing cost/application × 87,600 applications).

Elimination of the filing fee could save charter boat operators as much as $22.7 million. This figure could be much lower, and we invite commenters to submit figures reflecting their lost opportunities for chartering to noncitizens. These calculations are based on a theoretical maximum and assume that the charterer would file an application, as required under the existing regulation at 46 CFR § 221.14, for each of these hypothetical chartering opportunities.

Using this same hypothetical figure to determine the cost savings to MARAD, eliminating review of 87,600 applications, requiring 6.16 hours per

[1] In that regard, MARAD has no enforcement staff. In discharging their responsibilities under various legal authorities, the United States Customs Service and the United States Coast Guard occasionally have assisted MARAD in enforcing the provisions of the Act by seizing vessels that are bareboat chartered to noncitizens without having obtained MARAD approval. However, neither of these agencies has the resources to perform such assistance routinely.

[2] A recreational vessel is one that is eligible for documentation under the United States law, i.e., a vessel of at least five (5) net tons, not registered under the laws of a foreign country, that is to be operated only for recreation (46 U.S.C. 12102, 12109).

application at an average hourly cost of $13.59, would be over $7.3 million (87,600×6.16×$13.59). Again, this savings assumes that everyone required to file an application does so, and could be much lower. Recreational boat owners that charter would also be exempt from the existing requirement, at 46 CFR 221.7(b), imposed with respect to other than bareboat charters, of filing a copy of the vessel charter that received blanket approval. Instead, the proposed amendment to that provision would require only that the vessel owner, or the bareboat charterer, retain a copy of the charter for a period of one year after the charter expiration date and make it available for inspection during this period, upon request, to MARAD or its designee. MARAD intends to use information contained in the retained charters for program evaluation and control purposes.

Sales of Vessels to Noncitizens; Transfer to Foreign Registry

MARAD is also proposing a provision, 46 CFR 221.8, that would grant a general approval for the sale to noncitizens or the transfer to foreign registry or flag of vessels that are under 200 gross tons and are either documented, or were last documented under the laws of the United States. MARAD estimates that the proposed provision would eliminate 176 applications annually, a figure which is based on the average number of applications received during the period from fiscal years 1980 through fiscal year 1983. Using clerical, reproduction and filing costs of $9.58 per application, in addition to the application filing cost of $170 imposed by MARAD under 46 CFR § 221.14, the total cost to all applicants that would be eliminated is $31,606 ($179.58×176 applications). MARAD would save approximately $15,000 in administrative costs resulting from its approval process (6.16 hours per application ×$13.59×176).

Presently, the MARAD approval process for vessel sales to noncitizens takes at least 30 days and as many as 90 days. During that period, the purchaser cannot take possession of and operate the vessel, and is unable to benefit from ownership of the vessel. There are also negative economic consequences to the seller who cannot realize the proceeds of the vessel sale, and take advantage of an existing investment opportunity.

Accordingly, MARAD has determined that there is insufficient benefit, administrative or otherwise, to the Government to be derived from the approval process to warrant the economic loss to the parties involved in the sales and the cost to MARAD of reviewing the applications.

The blanket approval of bareboat charters to noncitizens is not intended, in any respect, to be an exception to a MARAD policy statement issued in 1975 that it will no longer grant approval for demise or bareboat charters in the coastwise trade to noncitizens, since recreational vessels are not deemed to engage in the coastwise trade (49 FR 28832; July 9, 1975). This proposed general approval for both the charter of recreational vessels and the sale or foreign transfer of vessels under 200 gross tons relates only to MARAD's responsibilities under existing law with respect to transfers of vessels and vessel interests to noncitizens. The great majority of vessels documented recreational under U.S. laws are less than 200 gross tons. It would have no effect upon the laws and regulations governing vessel documentation and operations administered by any other Federal agency (e.g., 46 U.S.C. § 12109).

E.O. 12291, Statutory Requirements and DOT Procedures

MARAD has made a determination that this proposed rule is not a major rule under Executive Order 12291. Pursuant to Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979), this is a nonsignificant regulation. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

While this proposed amendment will have some effect on small businesses, MARAD anticipates that its primary impact will be on individual owners of recreational boats. Accordingly, the Maritime Administrator certifies that the rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354). This proposed amendment includes amended requirements for the collection of information (§ 221.7(b)), within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that will be submitted to the Office of Management and Budget (OMB) for approval. This proposed amendment would cause a large reduction of the existing burden. The basic information collection approval number is OMB Control No. 2133-0006.

List of Subjects in 46 CFR Part 221

Banks, Banking charter, Citizenship and naturalization, Foreign transfer, Maritime Administration, Maritime carriers, Reporting requirements, Uniform system of accounts.

PART 22—[AMENDED]

Accordingly, it is proposed to amend 46 CFR Part 221 as follows:

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 9, 41 and 43, Shipping Act, 1916, as amended (46 U.S.C. 808, 839, 841(a); 49 CFR 1.66.

§ 221.7 [Amended]

Accordingly, it is proposed to amend 46 CFR Part 221 as follows:

2. In paragraph (a)(1) of 46 CFR 221.7, add the following parenthetical phrase before the final period: "(other than bareboat charters or bareboat subcharters of vessels documented recreational and to be operated personally by the charterers for recreation only)."

3. Revise paragraph (b) of 46 CFR 221.7 to read as follows:

* * * * *

(b) Not later than twenty (20) days after the beginning of a charter period, the vessel owner or owner's representative shall file with the Maritime Administration a copy of any charter which is approved under paragraph (a) of this section (except a bareboat charter or bareboat subcharter of a vessel documented recreational to be operated personally by the charterer for recreation only). The Maritime Administration may grant a request for an extension of time to file such charter or other agreement. The vessel owner or bareboat charterer (or a representative) who charters a documented recretional vessel to a person not a citizen of the United States, which vessel is to be used personally by the charterer or subcharterer for recreation only, shall retain a copy of such charter for a period of one (1) year after the expiration date, and shall make it available for inspection upon request by the Maritime Administration or its designee.

* * * * *

4. A new § 221.8 is added to read as follows:

§ 221.8 Approval of vessel sales to noncitizens; transfer to foreign registry.

(a) The Maritime Administration hereby approves under sections 9 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808 and 839) the sale to a noncitizen, or the transfer to foreign registry or flag, of a vessel of under 200 gross tons that is owned by a United States citizen and is either documented or was last documented under United States laws.

(b) The approvals granted in paragraph (a) of this section shall not

apply if the vessel's purchaser, or one with a controlling interest in the vessel's purchaser, is a national of the U.S.S.R., Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, or Cuba, unless: (1) Such national has been lawfully admitted into, and resides in the United States; and (2) such national does not remove the vessel from the territorial limits of the United States. Also, the approvals shall not apply if the vessel is to be transferred to or placed under the flag of any such country. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

Dated: September 23, 1985.

By Order of the Maritime Administration.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-23168 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers and Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of No Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 85-19 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review due October 10, 1985.

ADDRESS: Petitions for review (Original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street, NW. Washington, D.C. 20573, (202) 523-5825.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's proposed rule in Docket No. 85-19 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 85-19 the Commission proposes to amend its domestic offshore and foreign tariff filing rules to require common carriers to publish in their tariffs the terms and conditions including free-time allowed and detention charges assessed, governing the use of carrier—provided equipment by shippers or their agents.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-23264 Filed 9-27-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 642 and 646

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Managment Council will hold public hearings on October 8, 11, 14, 18, and 30, 1985, to review reduced bag limits for recreational fishermen and reduced harvest levels for commercial fishermen as well as other measures to manage stocks of Gulf Group king mackerel. There is a possibility that catches will have to be reduced to so low a level as to require closing the fishery on the Gulf Migratory Group. A recreational bag limit on the Atlantic Group and reduced commercial quotas may be necessary. An increase on size limits for Spanish mackerel will also be reviewed.

On October 11, 14, and 15, 1985, in conjunction with the mackerel hearings, the public may comment on Special Management Zones for artificial reefs as presented in the Snapper-Grouper Fishery Management Plan. On October 28, 1985, a public hearing will also be held on special management zones for artificial reefs.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and subject matter of the hearings. All hearings will be held from 7:00 p.m. to 10:00 p.m. All written comments should be received by October 30, 1985.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments should be sent to David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407; or Jack T. Brawner, Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: David H.G. Gould, Executive Director, South Atlantic Fishery Mangement Council, 803-571-4366; or Jack T. Brawner, Director, Southeast Region, 813-893-3141.

SUPPLEMENTARY INFORMATION: The hearings, and subject matter, are scheduled as follows:

October 8, 1985—Key West High School, 2100 Flagler Avenue, Key West, FL—Joint South Atlantic/Gulf of Mexico Fishery Management Councils Mackerel hearing.

October 9, 1985—County Civic Center, 25th and Virginia Avenue, Ft. Pierce, FL, Mackerel hearing.

October 10, 1985—Holiday Inn Surfside, 2700 N. Atlantic Avenue, Daytona Beach, FL, Mackerel hearing.

October 11, 1985—Brunswick/Glynn County Regional Library, 208 Glouchester St., Brunswick, GA, Mackerel and Snapper-Grouper Special Management Zone hearing.

October 14, 1985—S.C. Wildlife and Marine Resources Dept. Ft. Johnson Road, Charleston, S.C., Mackerel and Snapper-Grouper Special Management Zone hearing.

Landmark Hotel, 1501 South Ocean Blvd., Myrtle Beach, SC, Mackerel and Snapper-Grouper Special Management Zone hearing.

October 15, 1985—N.C. Marine Resources Center, Kure Beach, NC, Mackerel hearing.

October 16, 1985—N.C. Marine Resources Center, Morehead City, N.C., Mackerel hearing.

October 17, 1985—N.C. Marine Resources Center, Manteo, NC, Mackerel hearing.

October 18, 1985—N.C. Dept., of Natural Resources and Community Development, Archdale Building, Groundfloor Hearing Room, 512 N. Salisbury St., Raleigh, NC, Mackerel hearing.

October 28, 1985—Sheridan Yankee Trader, 303 N. Atlantic Blvd., Ft Lauderdale, FL, Snapper-Grouper Special Management Zone hearing.

October 30, 1985—Sheridan Yankee Trader, 303 N. Atlantic Blvd., Ft. Lauderdale, FL, Mackerel hearing.

Dated: September 25, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23280 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

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 AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

Geothermal Leasing, Lassen National Forest, Lassen, Plumas, Shasta, and Tehama Counties, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, and Department of the Interior, Bureau of Land Management, will jointly prepare an environmental impact statement for proposed geothermal leasing on part of the Lassen National Forest. The land area involved covers 431,000 acres including the 56,750 acres within the Lassen Known Geothermal Resource Area (KGRA), south of Lassen Volcanic National Park.

A range of alternatives will be considered, ranging from no leasing, to leasing with standard and various additional stipulations for protection of surface and subsurface resources.

Public involvement to date has highlighted the following issues: (1) Impacts to geothermal features of Lassen Volcanic National Park and adjacent private lands; (2) impacts to wilderness areas, the Pacific Crest Trail, private land, and Lassen Volcanic National Park; (3) impacts to air, surface water, ground water, fish, wildlife, recreation, visual resources, cultural resource, sound levels, timber, range, sensitive plants, and other vegetation; (4) the types and degree of geothermal activities permitted, their potential effects, and protective measures to mitigate those effects. Such activities include: use of heavy equipment, road construction, truck traffic, buildings, dust emissions, well drilling, steam and gas discharge, fluid and solid waste discharge, and well abandonment.

Public meetings, for the purpose of identifying further issues and determining the scope of concern, will be held: Wednesday October 16, 1985 at 7:00 pm at the Lions Club in Burney, California; and Thursday October 17, 1985 at 7:00 pm at the Mineral Elementary School, Mineral, California. Notices will be published in area newspapers and mailed to those persons who provided comments during the preparation of the Supplement Environmental Assessment for Geothermal Leasing of National Forest System Lands in the Lassen KGRA and Other Parts of the Lassen National Forest, issued in March 1985.

Mr. Zane G. Smith, Jr., Regional Forester of the Pacific Southwest Region, United States Forest Service, will be responsible for providing consent to lease the National Forest System lands; and Mr. Ed Hastey, California State Director, Bureau of Land Management, will be responsible for issuing the leases.

The draft environmental impact statement should be available for public review in March 1986. The final environmental impact statement is scheduled for completion in July 1986.

Written comments and questions concerning the analysis should be sent to Mr. Richard A. Henry, Forest Supervisor, Lassen National Forest, 55 South Sacramento Street, Susanville, California 96130, phone (916) 257–2151; or to Mr. C. Rex Cleary, District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, phone (916) 257–5381. Written comments should be received by November 9, 1985.

Dated: September 23, 1985.

Richard A. Henry,

Forest Supervisor.

Dated: September 23, 1985.

C. Rex Cleary,

District Manager.

[FR Doc. 85–23271 Filed 9–27–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1986 Farm and Ranch Identification Survey Pretest.

Form Number: Agency—86–A4, A5, A6, A6/L3; OMB—N/A.

Type of Request: New collection.

Burden: 3,600 respondents; 360 reporting hours.

Needs and Uses: These report forms are for test purposes in preparing the 1987 Farm and Ranch Identification Survey. The survey will be used to screen nonagricultural related persons and duplicates from the final census of agriculture mailing list.

Affected Public: Farms.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census.

Title: 1986 Pre-enumeration Survey of Los Angeles, California.

Form number: Agency—DP–1350L, DP–1352L; OMB—N/A.

Type of Request: New collection.

Burden: 4,500 respondents; 1,240 reporting hours.

Needs and Uses: This survey will be used to test an alternative method of Census evaluation in case the Post Enumeration Survey proves to be operationally difficult. The results will be used to test whether a pre-enumeration survey is a viable means of evaluating a census.

Affected Public: Individuals or households.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 25, 1985.
Edward Michals,
Departmental Clearance Officer.
[FR Doc. 85-23314 Filed 9-27-85; 8:45 am]
BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Specifications for Portrayal of Marine Information on Electronic (Chart) Displays.

Form number: Agency—N/A; OMB—N/A.

Type of Request: New collection—Preliminary Plan.

Burden: N/A respondents; 1 reporting hour.

Needs and Uses: The information collected will be used to establish a minimum standard for electronic display of nautical chart symbology. A standard is believed to be needed to maintain safe navigation of marine commerce.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 25, 1985.
Edward Michals,
Departmental Clearance Officer.
[FR Doc. 85-23313 Filed 9-27-85; 8:45 am]
BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 30-85]

Foreign-Trade Zone 9—Honolulu, HI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Hawaii Department of Planning and Economic Development, on behalf of the State of Hawaii, grantee of Foreign-Trade Zone 9, requesting authority to expand its foreign-trade zone to include an industrial park site in Ewa, Hawaii, adjacent to the Honolulu Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 10, 1985.

On February 15, 1965, the State of Hawaii received authority from the Board to establish a foreign-trade zone in the Honolulu area (Board Order 65, 30 FR 2377, 2/20/65). Relocated in April 1982 (Board Order 188, 47 FR 18014, 4/15/82), the general-purpose zone currently involves warehousing facilities on 17 acres at Pier 2 on Honolulu Harbor. The zone project also includes 3 subzones.

The proposed expansion site would be located at the 2800-acre James Campbell Industrial Park located on Kalaeloa Boulevard off H-1 Highway in Ewa, some 22 miles west of downtown Honolulu. The site will be operated by Campbell Estate which owns and manages the industrial park. Subzone 9A (Hawaiian Independent Refinery) is already located within the park.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; George Roberts, District Director, U.S. Customs Service, Pacific Region, P.O. Box 1641, Honolulu, HI 96806; and, Colonel Michael M. Jenks, District Engineer, U.S. Army Engineer District Honolulu, Building 230, Ft. Shafter, HI 96858.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 30, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 4106 Federal Building, 300 Ala Moana Blvd., Honolulu, HI 96813.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW, Washington, D.C. 20230.

Dated: September 24, 1985.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 85-23231 Filed 9-27-85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether petroleum wax candles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before October 21, 1985, and we will make ours on or before February 11, 1986.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Ray Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3830.

SUPPLEMENTARY INFORMATION:

The Petition

On September 4, 1985, we received a petition in proper form filed by the National Candle Association, an organization of domestic manufacturers of petroleum wax candles. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. United States price was

derived from price quotes to U.S. purchasers from Hong Kong exporters of candles from the PRC. Some prices were f.o.b. Hong Kong while other were c.i.f. Prices were adjusted, where appropriate, for ocean freight costs, insurance, and U.S. inland freight. Petitioners, alleging that the PRC is a state-controlled-economy-country, derived home market prices from information on the home market prices for petroleum wax candles in Malaysia in accordance with the provisions of 19 CFR 353.36(a)(8). In selecting Malaysia as a surrogate country, petitioner considered the following factors: structure of gross domestic production and distribution of labor force, urban population, per capita gross national product, wage rates, oil production, and similarity of the candle industry. The Malaysian home market prices were obtained by an independent research firm in Malaysia for high volume standard products. The prices represent offers at the wholesale level from two Malaysian candle manufacturers. Based on these figures, petitioner alleges dumping margins ranging from 231 percent to 450 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on petroleum wax candles from the PRC and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether petroleum wax candles from the PRC are being, or are likely to be, sold in the United States at less than fair value.

In the course of our investigation, we will determine whether the economy of the People's Republic of China is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by February 11, 1986.

Scope of Investigation

The products covered by this investigation are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. The products are classified under the *Tariff Schedules of the United States* (TSUS) item 755.25, Candles and Tapers.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of petroleum wax candles from the PRC. We will determine whether critical circumstances exist with respect to these imports in our preliminary determination, and if the investigation proceeds, in our final determination.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 21, 1985, whether there is a reasonable indication that imports of petroleum wax candles from the PRC are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

September 20, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-23230 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-535-001]

Cotton Shop Towels From Pakistan; Initiation of and Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Initiation of and Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan. The review covers the period October 27, 1983, through March 31, 1984, and eight programs.

As a result of the review, the Department has preliminarily determined the net subsidy to be 18.09 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8974) a countervailing duty order on cotton shop towels from Pakistan and announced its intent to conduct an administrative review of the order. In accordance with § 355.10 of the Commerce Regulations, the petitioner requested an administrative review of this order on September 6, 1985. 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 shipments of Pakistani cotton shop towels. Such merchandise is currently classifiable under time 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the period October 27, 1983, through March 31, 1984, and eight programs: (1) A compensatory rebate; (2) an excise tax rebate; (3) a sales tax rebate; (4) a customs duty rebate; (5) income tax reductions; (6) export credit insurance; (7) an import duty rebate; and (8) export financing.

Analysis of Programs

The Pakistani government responded to the Department's questionnaire. The response however contained information covering only 17 percent of the dollar value of imports of Pakistani cotton shop towels into the United States during the period of review. The

Government of Pakistan failed to respond to our request for additional information. Because the initial questionnaire response did not cover a sufficient percentage of the imports into the U.S. during the period of review to allow us to accurately determine the net subsidy during the period, we used the best information available for this review. We conclude that the best information available concerning seven programs is represented by the results published in the final affirmative determination of this case (49 FR 1408, January 11, 1984). In that determination the Department found the *ad valorem* subsidies to be: under the compensatory rebate program, 7.50 percent; under the excise tax rebate program, 3.80 percent; under the sales tax rebate program, 0.11 percent; under the customs duty rebate program 0.37 percent; under the income tax reduction program, 0.01 percent; under the export credit insurance program, 0.80 percent; and import duty rebates not used.

For this review, we calculated the subsidy resulting from export financing provided under the Export Finance Scheme using as the best information available the program description provided to the Departmen by the respondent during this administrative review.

The Export Finance Scheme, which is administered by the State Bank of Pakistan ("the Bank"), grants short-term loans a below market interest rates to exporters. The Export Finance Scheme is divided into two parts. Under Part I, exporters receive preferential short-term export financing loans on the basis of irrevocable letters of credit or firm export orders. Under Part II, exporters are eligible to receive pre-export financing equal to 33⅓ percent of their previous year's exports. We determined that loans under both Parts I and II of the Export Finance Scheme were granted for 180 days at interest rates of 3 percent per annum during the period of review. We used as a benchmark for the market interest rate in Pakistan the "commercial" bank interest rate plus 1 percentage point. The benchmark interest rate for the period of review therefore equaled 14 percent per annum.

We concluded that the same export shipment cannot receive financing under both parts of the Export Finance Scheme. Maximum use of Part I, our best information assumption, would result in 100 percent of exports being financed. Therefore, we also needed to assume no financing under Part II during the period of review. We calculated the net subsidy from this program to be equal to the interest differential between the commercial benchmark and the preferential interest rate, multiplied by the proportion of the year the loans were outstanding and the value of total exports. On this basis, we preliminarily determine the subsidy resulting from export financing provided under the Export Finance scheme during the period of review to be 5.50 percent *ad valorem*.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy for cotton shop towels from Pakistan to be 18.09 percent *ad valorem* during the period October 27, 1983, through March 31, 1984.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the net subsidy determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the net subsidy, and refunded to the extent that the estimated duty is higher than the net subsidy, for merchandise entered, or withdrawn from warehouse, for consumption before the publication of the notice of the final affirmative injury determination by the International Trade Commission, here February 29, 1984

The Department therefore intends to instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1983, the date of the Department's preliminary affirmative determination, and on or before February 28, 1984. We also intend to instruct the Customs Service to assess countervailing duties of 18.09 percent of the f.o.b. invoice price on any shipments entered, or withdrawn from warehouse, for consumption on or after February 29, 1984, and exported on or before March 31, 1984.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 18.09 percent of the entered value on any shipments of Pakistani cotton shop towels 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 five 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 §§ 355.10 and 355.41 of the Commerce Regulations (19 CFR 355.10 and 355.41).

Dated: September 21, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-23315 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50601-5101]

Approval of Five Federal Information Processing Standards for Data Interchange on Flexible Disk Cartridges

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved five standards, which will be published as FIPS Publications 114 through 118.

SUMMARY: On September 8, 1982, notice was published in the **Federal Register** (47 FR 39554-39559) that five Federal Information Processing Standards for magnetic media were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve these standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the

Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The approved standards contain two portion: (1) An announcement portion which provides information concerning the applicability, implemention, and maintenance of the standards and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standards is provided in this notice.

ADDRESS: Interested parties may purchase copies of these standards, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of the standards.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Hogan, Center for Computer Systems Engneering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-3165.

Dated: September 24, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 114

Announcing the Standard for 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for single-sided, single-density, 200 mm (8 in) flexible disk cartridges which have a data density of 6631 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) specifications for the physical track format (the specifications in this document),

(3) specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology, and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The national Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 5654/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4-1977, FIPS PUB 1-2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41-1974, FIPS PUB 1-2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64-1979, FIPS PUB 86.

d. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631-BPR Use), X3.73-1980.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with the following characteristics: two-frequency recording at 6631 bprad on one side, and 77 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficent, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 5654/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

Qualifications

a. ISO 5654/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing—8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4-1977 (defined in FIPS PUBS 1-2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41-1974 (defined in FIPS PUB 1-2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64-1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. After the first sentence in section 5.2.2.1 Track Address (T), of ISO 5654/2, add the following sentence: All tracks shall be recorded in the natural order (i.e., 00, 01, 02, . . ., 75, 76).

c. In ISO 5654/2, replace section 5.2.2.3 Sector Number (S) with the following section:

5.2.2.3 Sector Number (S). The third byte shall represent in binary notation the sector address from 01 for the first sector to 26 for the last sector. All sectors shall be recorded in the natural order (i.e., 01, 02, 03, . . ., 25, 26).

d. Replace section 3.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, in ISO 5654/2, with the following section:

3.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions:
temperature: 23± 2 °C (73± 4 °F)
RH: 40 to 60%
conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oe).

e. In section 5.2.2.1, Track Address (T), in ISO 5654/2, replace 76 with 74.

f. In section 6.2.2.1, Track Address (T), in ISO 5654/2, replace 76 with 74.

Implementation Schedule. This standard becomes effective . Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, single-sided, single-density, 200 mm (8 in) flexible disk cartridges. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631—BPR Use), X3.73–1980, may be cited in agency procurements. While X3.73–1980 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications documents is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 114 (FIPS PUB 114), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 115

Announcing the Standard for 200 mm (8 in) Flexible Disk Cartridge Track Format Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Category Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for two-sided, double-density, 200 mm (8 in) flexible disk cartridges which have a data density of 13262 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use a physicially removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical tract format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recordng technology. Other Federal information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7065/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides-Part 2: Track Format.

Related Documents.

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American national Standard Code Extension Techniques for Use with the 7–Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-MM), 48-tip, Double-Density, Flexible Disk Cartridge-General, Physical, and Magnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with the following characteristics: Modified frequency modulation recording at 13262 bprad on two side, and 77 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the

insterchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7065/2, Data Interchange on 200 mm (8 in) Flexible disk Cartridges using Modified frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 2; Track Format.

Qualifications

a. ISO 7065/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing -8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4–1977 (defind in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. The following additional qualifications are to be applied to ISO 7065/2:

1. Delete section 2, Conformance.

2. Replace section 4.8, Sector, with the following section:

4.8 Sector

All tracks of the flexible disk cartridge shall be divided into 26 sectors.

3. Replace section 4.11, Data Capacity of a Track, with the following section:

4.11 Data Capacity of a Track

The data capactiy of track 00, side 0 shall be 3328 bytes. The data capacity of all other tracks shall be 6656 bytes.

4. In section 6, Track Layout after the First Formatting for all Tracks Excluding Track 00, Side 0, the first sentence and the note are deleted.

5. In section 6.2.2.1, Track Address, add the following sentence under the subheading "Cylinder Address (C):" All cylinders shall be recorded in the natural order (i.e., 00, 01, 02, . . . , 75, 76).

6. In section 6.2.1, Track Address, add the following sentence under the subheading "Side Number (Side):" The sides shall be recorded in the natural order (i.e, 00, 01).

7. Replace section 6.2.2.2, Sector Number (S), with the following section:

6.2.2.2 Sector Number(s)

The third byte shall specify in binary notation the sector number from 01 for the first sector to 26 for the last sector.

The sectors shall be recorded in the natural order (i.e., 01, 02, 03, ..., 25, 26).

8. Replace section 6.2.2.3, Sector Length (SL), with the following section:

6.2.2.3 Sector Length (SL)

This field shall be (01) which defines the number of bytes of the data field to be 256 and consequently determines the number of sectors of the track to be 26.

9. Replace section 6.5, Data Block Gap, with the following section:

6.5 Data Block Gap

This field shall comprise 54 initially recorded (4E)-bytes. It is recorded after each data block and it precedes the following Sector Identifier. After the last Data Block, it precedes the Track Gap.

10. Replace section 6.6, Track Gap, with the following section:

6.6 Track Gap

This field shall follow the Data Block Gap of the last sector. It shall comprise 598 initially recorded (4E) bytes. Writing of the Track Gap takes place until the Index Hole is detected, unless it has been detected during writing of the last Data Block Gap, in which case there will be no Track Gap.

11. Replace section 4.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, with the following section:

4.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2°C (73±4°F). RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oe).

12. Replace all occurrences of "Sector Address" with "Address Identifier."

13. In section 6.2.2.1, Cylinder Address (C), replace 76 with 74.

14. In section 7.4.2.2.1, Cylinder Address (C), replace 76 with 74.

Implementation Schedule. This standard becomes effective ——— Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, two-sided, double-density, 200 mm (8 in) flexible disk cartridges. American National Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-mm), 48 tpi, Double-Density, Flexible Disk Cartridge-General, Physical, and Megnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984, may be cited in agency procurements. While X3.121–1984 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Services, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 115 (FIPS PUB 115), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 116

Announcing the Standard for 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for single-sided, single-density, 130 mm (5.25 in) flexible disk cartridges which have a data density of 3979 bits per radian (bprad) and 35 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartidge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 6596/2, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for One-Sided Single-Density Unformatted 5.25-Inch Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with the following characteristics: two-frequency recording at 3979 bprad on one side, and 35 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 6596/2, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

Qualifications:

a. ISO 6596/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing—8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4–1977 (defined in FIPS PUB 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. After the first sentence in section 7.3.2.2.1, Track Address (T), of ISO 6596/2, add the following sentence: All tracks shall be recorded in the natural order (i.e., 00, 01, 02, . . ., 33, 34).

c. Replace section 4.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, in ISO 6596/2, with the following section:

4.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2 °C (73±4 °F), RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oersteds).

d. In section 7.3.2.2.1, Track Address (T), in ISO 6596/2, replace 34 with 32.

Implementation Schedule. This standard becomes effective ———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, single-sided, single-density, 130 mm (5.25 in) flexible disk cartridges. American National Standard for One-Sided Single-Density Unformatted 5.25-Inch Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980, may be cited in agency procurements. While X3.82–1980 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 116 (FIPS PUB 116), and title. Payment may be made by check, money order,

purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 117

Announcing the Standard for 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for two-sided, double-density, 130 mm (5.25 in) flexible disk cartridges which have a data density of 7958 bits pr radian (bprad) and 40 tracks at a track density of 1.9 tracks per millimeter (bpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7487/3, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4-1977, FIPS PUB 1-2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41-1974, FIPS PUB 1-2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64-1979, FIPS PUB 86.

d. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1,9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125-1985.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with the following characteristics: modified frequency modulation recording at 7958 bprad on two sides, and 40 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7487/3, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 fprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Qualifications

a. ISO 7487/3 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing -8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4-1977 (defined in FIPS PUBS 1-2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41-1974 (defined in FIPS PUB 1-2), and American National Standard Additional Controls for Use with American Standard Code for Inormation Interchange, X3.64-1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. Replace section 4.1.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, with the following section:

4.1.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2°C (73±4°F). RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m 50 Oe).

Implementation Schedule. This standard becomes effective———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, two-sided, double-density, 130 mm (5.25 in) flexible

disk cartridges. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1.9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125–1985, may be cited in agency procurements. While X3.125–1985 is not intended to be sufficient by itself as a procurement specification document, it can surve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to federal Information Processing Standards Publication 117 (FIPS PUB 117), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 118

Announcing the Standard for Flexible Disk Cartridge Labelling and File Structure for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Flexible Disk Cartridge Labelling and File Structure for Information Interchange (FIPS PUB 118).

Category of Standard. Software, Operating Procedure.

Explanation. This standard prescribes a set of logical track format specifications for flexible disk cartridges described in the following physical track format standards:

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116),

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117),

200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114), and

200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (referenced above),

(3) Specifications for the logical track format (the specifications in this document).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

Further physical track format specifications are being developed through the international and national voluntary industry standards process. These specifications will define higher track densities, higher data densities, and/or different sizes of flexible disk cartridges. When these approved specifications become available, they will be considered for inclusion into this series of Federal Information Processing Standards Publications (FIPS PUBS).

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7665, Information Processing—File Structure and Labelling of Flexible Disk Cartridges for Information Interchange.

Related Documents:

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631–BPR Use), X3.73–1980.

e. American National Standard for Single Sided Unformatted Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980.

f. American National Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-mm), 48 tpi, Double-Density, Flexible Disk Cartridge—General, Physical, and Magnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984.

g. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1.9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125–1985.

h. ISO 5654/2—Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

i. ISO 6596/2—Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

j. ISO 7065/2—Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 2: Track Format.

k. ISO 7487/3—Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing flexible disk cartridges described in the following track format standards:

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116),

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117),

200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114), and

200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on

Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7665, Information Processing—File Structure and Labelling of Flexible Disk Cartridges for Information Interchange.

Qualifications:

a. ISO 7665 specifies three nested levels of interchange. For the purposes of this standard, the level called "basic interchange" is required for conformance to this standard. The levels of interchange called "extended interchange level 1" and "extended interchange level 2" are optional.

b. ISO 7665 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing— 8-Bit Coded Character Set for Information Interchange. For the purposes of this guideline, American National Standard Code for Information Interchange, X3.4–1977 (defined in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.4–1979 (defined in FIPS PUB 86) replace all references to ISO 646 ,2022, and 4873. All labels should be recorded in the character code defined in FIPS PUB 1–2.

c. The following additional qualifications are to be applied to ISO 7665:

1. Delete section 2, CONFORMANCE.

2. Replace all occurrences of "Cylinder-Limit" with "the upper cylinder address limit."

3. Replace all occurrences of "Index-Sector-Limit" with "the number of the last sector."

4. Replace TABLE 3, Data Interchange Standards and Parameter Recording-Type, with the following:

TABLE 3.—DATA INTERCHANGE STANDARDS AND PARAMETER RECORDING-TYPE

Standard reference	Format indicator
200 mm cartridge:	
ISO 5654/2	1
ISO 7065/2	M
130 mm cartridge:	
ISO 6596/2	1
ISO 7487/3	M

5. Replace section 7.4.1 with the following section:

7.4.1 The file organization shall be sequential (i.e., cylinders, sides, tracks, and sectors shall be recorded in the natural order).

6. Replace section 8.4.8, Physical Record Length Identifier (CP 76), with the following section:

8.4.8 Physical Record Length Identifer (CP 76)

This field shall specify the length of all physical records on all cylinders other than cylinder 00.

The characters in this field shall be SPACE or a digit.

SPACE—shall mean that the length of all physical records is 128 bytes.

1—shall mean that the length of all physical records is 256 bytes.

7. Replace section 8.4.9, Sector Sequence Indicator (CP 77 to 78), with the following section:

8.4.9 Sector Sequence Indicator (CP 77 to 78)

This field shall specify the sequence of the sectors on the tracks.

The characters in this field shall be SPACE and digits.

SPACE's—shall each mean that the sectors are in the natural or 01 order.

8. Replace the second paragraph in section 6.2, Number of Sides, with the following:

Where this standard specifies requirements for labels and data on side 1, such requirements shall only apply to those types of flexible disk cartridges designated in table 3 with a Format Indicator value of M.

9. Replace the first paragraph in section 6.3, Organization of Space on a Flexible Disk Cartridge, with the following:

The data interchange standards listed in table 3 designate lower and upper cylinder address limits.

10. Replace the first two paragraphs in section 6.4, Index Cylinder (Cylinder 00), with the following:

The index cylinder (cylinder 00) on a flexible disk cartridge shall be reserved for descriptive information about the volume and the data recorded on the volume. The index cylinder shall always be formatted with physical records that have a length of at least 128 data characters.

The number of physical records that shall appear on both tracks of the index cylinder shall be equal to the number of the last sector specified in the related data interchange standard designated in table 3.

11. Replace the second paragraph in section 6.5, Contents of Cylinders with Addresses 01 to Upper Cylinder Address Limit, with the following:

These cylinders shall be formatted with physical records whose length in data characters shall be equal to the number of bytes in the data field defined for these cylinders in the designated data interchange standard listed in table 3.

12. Replace (a) in section 8.2, Justification of Characters with the following:

(a) In each field the contents of which is specified by this standard to be SPACEs or digits, digits shall be right-justifed, and any remaining positions on the left shall be filled only with zeros.

13. Add the following sentence to the end of section 8.5.20, Expiration Date (CP 67 to 72):

A file may not be deleted if Write Protect (CP 43) contains P.

14. Delete the first and third paragraphs in section 11.2, Basic Interchange.

15. Delete the first sentence in section 11.3, Extended Interchange Level 1.

16. Delete the first sentence in section 11.4, Extended Interchange Level 2.

17. Delete the last sentence in section 11.5, Files Not Conforming to Specified Interchange Levels.

Implementation Schedule. This standard becomes effective ———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible, unrecorded flexible disk cartridges. The other standards in this series contain further information on ordering compatible media for each specific physical track format.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 118 (FIPS PUB 118), and title. Payment may be made by check, money order,

purchase order, credit cards, or deposit account.

[FR Doc. 85-23227 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comments.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest white croaker (*Genyonemus lineatus*) by using two domestic vessels operating Canadian style pair trawls in the fishery conservation zone (FCZ) off the California coast. If granted, the EFP would allow fishing with gear which otherwise would be prohibited by Federal regulations governing the mesh size of trawls.

DATE: Comments on this EFP application must be received by October 30, 1985.

ADDRESS: Send comments to E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Chief Fisheries Management Division, NMFS, Southwest Region, 213-548-2518.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the basis for regulating foreign and domestic groundfish fisheries in the FCZ off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982, (47 FR 43964, October 5, 1982). The regulations specify that EFPs may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at 50 CFR 663.10 (b) and (c).

An EFP application to harvest white croaker with Canadian style pair trawl gear was received by the NMFS, Southwest Regional Office on August 16, 1985. The white croaker is not managed under the FMP. However, up to 1,000 pounds per trip of certain species subject to management under the FMP might be included in the incidental catch. The applicant requests authority to use a codend of two-inch mesh size to harvest white croaker and incidental groundfish species. Current groundfish regulations prohibit use of mesh size smaller than three inches in pelagic trawls of four and one-half inches in bottom and roller trawls in the area off central California where the applicant proposes to conduct experimental fishing (§ 663.26(a) and (b)). If granted, the EFP would suspend the mesh size restriction for the time, area, and vessels specified while harvesting white croaker.

The EFP is summarized as follows:

1. *Purpose and goal.* The purpose of the experiment is to attempt to improve the method of harvesting the target species. The experiment also would provide biological and fishing data from areas where they were otherwise unavailable or incomplete.

2. *Significance.* The white croaker resource currently is not under the management regime of the FMP and is not presently overharvested. The greatest significance of this experiment lies in the gear technology involved. White croaker presently are harvested by gill nets, a gear which has proved very controversial in the area of concern due to the incidental capture of marine mammals and seabirds. Development of a more economical and efficient harvest method for white croaker could alleviate problems caused by the use of gill nets, with a minimal effect upon the groundfish proposed in the projected incidental catch. The impacts of the experiment could extend beyond the interests of the EFP applicant.

3. *Vessels.* Two domestic vessels would be involved in the fishery. The first vessel is 32 feet long at 6 net tons; the second vessel is 30 feet long at 6 net tons.

4. *Species and amount.* In addition to unspecified amounts of white croaker, up to a total of 1,000 pounds per trip of all incidentally caught groundfish species captured during experimental fishing are requested to be retained.

5. *Time, place, and gear.* The applicant proposes to fish under the EFP in an area of the Pacific Ocean less than 50 fathoms in depth between Bodega Bay and Point Sur, California, at unspecified times for one year during 1985-1986, with Canadian style pair trawl gear using two-inch mesh size codend.

(16 U.S.C. 1801 *et seq.*)

Dated: September 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-23284 Filed 9-27-85; 4:54 pm]

BILLING CODE 3510-22-M

Availability of Marine Mammal Annual Report

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of availability of Marine Mammal Annual Report.

SUMMARY: The 1984/85 Annual Report on the administration of the Marine Mammal Protection Act in the Department of Commerce is available now, on request, from the National Marine Fisheries Service.

ADDRESS: Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz (Protected Species Division), (202) 634-7529.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. This report reviews the progress NMFS has made to protect these animals; the permit programs for scientific research, public display, the incidental take of marine mammals in commercial fisheries, and the "small take" of marine mammals due to other activities; the marine mammal standing networks; international activities; legal actions; and enforcement activities. It includes a discussion of the management and research programs for cetaceans and pinnipeds that are carried out at the NMFS Southeast, Southwest, Northeast, Northwest, and Alaska Regional Offices as well as its Southeast, Southwest, Northeast, and Northwest and Alaska Fisheries Centers.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23295 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 374]

Endangered Species Permit Modification; Mr. Harold Brundage, III

Notice is hereby given that pursuant to the provisions of § 220.24 of the regulations on endangered species (50 CFR Parts 217-227), Scientific Research Permit No. 374 issued to Mr. Harold Brundage III, Ichthyological Associates, Inc., 100 South Cass Street, Middletown.

Delaware 19709, on March 24, 1982 (47 FR 13399), as modified on February 4, 1983 (48 FR 6331), is further modified as follows:

Section B.4 is replaced by:

4. Of the five hundred (500) shortnose sturgeon (*Acipenser brevirostrum*) authorized in Section A.1, fifty (50) adults may be radio tagged each year as described in the application and modification request.

This modification is effective on September 18, 1985.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974).

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23297 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Stephen W. Mitchell (aka Lee Stevens)

On July 15, 1985, notice was published in the Federal Register (50 FR 28604) that an application had been filed by Stephen W. Mitchell (aka Lee Stevens), 15 Amity Place, Staten Island, New York 10303, for a permit to obtain three (3) captive born or beached/stranded California sea lions *(Zalophus californianus)* for a traveling public display.

Notice is hereby given that on September 17, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23296 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Restricted Eligibility for Grant Award, National Academy of Sciences

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it intends to award on a restricted eligibility basis a grant to National Academy of Sciences (NAS) in partial support of the Committee on Separation Science and Technology. The DOE support under this grant will be $25,000 over a twelve month period.

Procurement Request Number: 01–85CE40774.000.

Project Scope: The National Academy of Sciences, through the Board on Chemical Sciences and Technology, the Committee on Separation Science and Technology will undertake a program to prepare a report on Research Needs and Opportunities in Separation Science and Technologies. The following areas of interest will be emphasized:

Research needs and opportunities in separation science and technology.

Sponsor a workshop on separation science and technology for dilute solutions.

Define separations as a unified technological area.

The DOE continues to support research in existing, underutilized technologies whose implementation could be stimulated through appropriate action. As this effort by the National Academy of Science is in concert with DOE's support of basic research for long-range, high-risk technologies, the DOE has determined that award to NAS on restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on September 23, 1985.

Ben Goldman,

Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85-23309 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-029; OFP Case No. 55080-9289-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Crown Zellerbach Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Crown Zellerbach Corporation.

SUMMARY: On August 6, 1985, Crown Zellerbach Corporation (Crown), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its St. Francisville, Louisiana paper mill, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were

revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 45 MW (net) cogeneration facility consisting of a gas turbine and generator, a 300,000 pound per hour heat recovery steam generator and ancillary equipment.

The plant will be constructed and sold to a yet to be identified third party who will in turn sell all of the electrical output to Crown Zellerbach. The plant will burn natural gas or No. 2 fuel oil. It is expected that virtually all of the net annual electric power produced by the third party cogenerator will be sold to Crown Zellerbach, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR § 500.2. The facility will produce approximately 300,000 lbs. of steam per hour that will supply Crown's needs.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Coal and Electricity Office, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-85-029 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, D.C. 20585, Phone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Crown proposes to construct and sell a cogeneration facility to a third party in St. Francisville, Louisiana, which will (1) generate electrical power for sale to Crown, and (2) produce steam to meet Crown's requirements. The proposed cogeneration system will be operated by the third party. The system will consist of a gas turbine and a heat recovery steam generator which will produce electric power and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Crown has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Crown has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Crown is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on September 23, 1985.

Robert L. Davies,

Director, Coal & Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23298 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-028; OFP Case No. 61052-9287-01-24]

Acceptance of Petition for Exemption and Availability of Certification by Dartmouth College of Hanover, NH

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and availability of Certification by Dartmouth College of Hanover, New Hampshire.

SUMMARY: On August 19, 1985, Dartmouth College of Hanover, New Hampshire, completed the filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for its proposed No. 6 oil fired boiler to replace the aging capacity of its Hanover, New Hampshire campus heating plant. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in new powerplants and certain major fuel

burning installations (MFBI) and the construction of such facilities without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rule governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The basis for the Dartmouth College petition for exemption is the need to replace one existing and aging boiler in its current cogeneration facility with a single multi-fuel capable boiler. The cogeneration facility, located at the Dartmouth College campus at Hanover, New Hampshire, provides electricity to the campus from an underground distribution system emanating from switchgear located in the heating plant. Power is supplied by cogenerated electricity produced by the back-pressure steam turbine generators within the plant and by an electric company metered service, the Dartmouth turbines operating in parallel with the electric utility service. Since the proposed replacement boiler is to be larger that the existing one, the parameters of the current cogeneration facility will change, so that in effect, a new cogeneration facility will be created when the boiler replacement will be completed. The proposed MFBI (as classified by Fuel Use Act regulation) will be a 90,000 lb/hr No. 6 oil fired boiler. The oil or gas that will be consumed by the heating plant with the new boiler is designed to be less than that which would otherwise be consumed with the continuation of the present system. The future heating plant will not be classified as an electric powerplant as all electricity produced by cogeneration will be used by Dartmouth College.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Coal and Electricity Office, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585 (Attn: Xavier Puslowski). Docket No. ERA-FC 85-028 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: The facilities to be constructed for Dartmouth's boiler project include a field erected boiler, the auxiliaries required for No. 6 oil firing and a small addition to the existing heating plant. The roof line of the existing heating plant will also be modified. Space allowances and other provisions to accommodate future addition of solid fuel handling, ash removal, and particulate removal equipment are also incorporated into the design.

The boiler will be a field erected, two drum multiple pass, balanced draft steam generator with integral superheater. It is sized to produce 90,000 lbs/hr of 455 psig/650°F steam while firing No. 6 oil. With the future addition of a grate and other solid fuel auxiliaries, it will be capable of producing 70,000 lbs/hr of 455 psig/650°F steam while firing wood fuel. The boiler can also be converted to pulverized coal firing; its capacity in this mode would also be 70,000 lbs/hr.

Boiler auxiliaries include soot blowers, a forced draft fan, and induced draft fan, a tubular air heater with soot blowers, combustion air duct work and flue gas duct work. The flue gas duct work will be connected to existing breeching and the existing 175' brick stack. The existing fuel oil storage, fuel oil pumping and boiler feedwater treatment systems will service the new boiler.

The No. 6 fuel oil firing system will include two front mounted burners with propane ignitors, air registers, windbox, and air or steam atomization piping. The boiler vendor will also supply a complete burner management system. The maximum rated heat input of the new boiler will be about 114 MMBtu/hr.

Limited physical changes to the existing hearing plant will be required to accommodate the new boiler. The currently in use boiler No. 1, a 29-year old Babock and Wilcox unit, will be demolished to accommodate the multi-fuel boiler. In addition, the existing west end hip roof will be removed and reconstructed as a gable roof. A 900 square foot addition will be constructed on the south wall of the plant; this addition will house the induced draft fan and tubular air heater for the new boiler.

Demolition of the currently in use boiler No. 1 is scheduled for early 1986. The construction schedule calls for the start of site work in March of 1986. Installation of the new boiler and auxiliaries is scheduled to begin by mid-1986. The new boiler should be tested and ready for operation for the peak 1986/87 hearing season.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Dartmouth has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Dartmouth has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Dartmouth is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on September 19, 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23299 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-026; OFP Case No. 65039-9286-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Northern Cogeneration One Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Northern Cogeneration One Company.

SUMMARY: On August 2, 1985, Northern Cogeneration One Company (Northern) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility to be known as the Texas City Cogeneration Facility (Facility) to be located at 3301 5th Avenue South, Texas City, Galveston County, Texas, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemption from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed Facility will be a topping cycling cogeneration plant consisting of three combustion turbine generators, three heat recovery steam generators, and one auto-extraction condensing steam turbine. The power production capacity of the Facility will be 431 MW which consists of 108 MW per combustion turbine generator and 107 MW for the steam turbine generator (140 MW under maximum generating conditions). Under normal operating conditions the net plant output will be 424 MW of power (7 MW of the electricity produced will be consumed by the Facility for auxiliary power).

It is expected that more than 50 percent of the net annual electric power generation of the Facility will be sold to Texas Utilities Electric Company (TUEC), making the cogeneration facility an electric powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefore, would be published in the Federal Register.

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-85-026 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: Northern proposes to construct, operate, and own a cogeneration facility to produce steam for industrial use and to generate electrical power. The steam generated by the Facility will be sold to Union Carbide Corporation for chemical process requirements along with 30 MW of electric power for internal use in their plant. The approximately 393 MW of electric power purchased by TUEC will be interconnected with the Electric Reliability Council of Texas regional grid. The Facility will be a topping cycle cogeneration plant consisting of three combustion turbine generators, three heat recovery steam generators, and one auto-extraction condensing steam turbine and associated equipment.

The cogeneration facility is classified as an electric power plant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Northern has certified to ERA that:

1. The gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodology for calculating such savings set forth in 10 CFR 503.37(b); and

2. The use of mixture of oil and coal or natural gas and coal in the cogeneration unit is not economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), Northern has included as part of the petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's Guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Northern is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. September 19, 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23300 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With Bi-Petro, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (EPA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Bi-Petro, Inc., (Bi-Petro) shall be made a final order of the DOE. The Consent Order resolves Bi-Petro's compliance with the federal petroleum price and allocation regulations concerning the resale of crude oil for the period August 19, 1973 through January 27, 1981. Bi-Petro will pay to the DOE the aggregate amount of $1,250,000 plus installment interest, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Bi-Petro Consent Order final as modified was made after a review of all written comments received. The Consent Order is effective as a final order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special Counsel (RG-13), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4945.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Comments Received.
III Decision.

I. Introduction

ERA issued a notice announcing a proposed consent order between DOE and Bi-Petro which would resolve matters relating to Bi-Petro's compliance with the federal petroleum price and allocation regulations pertinent to the resale of crude oil for the period August 19, 1973 through January 27, 1981. (50 FR 29737, July 22, 1985). The proposed consent order requires Bi-Petro to pay $350,000 within ten days of the effective date of the Consent Order, and to pay $450,000 plus interest within 12 months, and again within 24 months, of the effective date of the CO.

The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

EPA received three comments, which addressed the question of the ultimate disposition of the funds to be paid by Bi-Petro pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following:

Governor's Energy Office, State of Florida;
Department of Commerce, State of Indiana;
Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

The three comments, although formulated differently from one another and differing in the nature and amount of supporting analysis, are all devoted exclusively to establishing the proposition that monies received under the Bi-Petro Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

The Consent Order contains no determination, however, either that it will be impossible to identify the parties injured by Bi-Petro's alleged overcharges, or that funds paid under the Consent Order will remain after identification of such injured parties. Moreover, EPA has made such determinations. Nor does the Consent Order provide that funds paid under it will be deposited in the U.S. Treasury. Rather, as stated in the notice of the proposed Consent Order, the ERA intends to petition the Office of Hearings and Appeals to establish procedures pursuant to 10 CFR Subpart V for the distribution of the funds. During such a proceeding, a determination will be made as to whether and to what extent particular persons have been injured by the alleged overcharges by Bi-Petro. In addition, the States that have filed comments on the Bi-Petro Consent Order will be able to address the question of the appropriate disposition of the refunds covered by the Consent Order. Thus, the comments by the states concerning distribution of the funds to be paid by Bi-Petro are premature at this time.

For the foregoing reasons, and for the reasons set forth in the notice of the proposed Consent Order, ERA has decided to finalize the Consent Order with Bi-Petro.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Bi-Petro and DOE shall become a final order of the DOE on the date of publication of this notice in the **Federal Register.**

Issued in Washington, D.C., on September 13, 1985

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-23306 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-838-000, et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP85-838-000]

September 24, 1985.

Take notice that on August 29, 1985, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-838-000 an application pursuant to section 7(c) of the natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 700 Mcf of natural gas per day for the Engine Products Division of Dana Corporation (Dana) and for authority to add and delete delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 700 Mcf of natural gas per day on an interruptible basis for use in Dana's Engine Products Division pursuant to a gas transportation agreement dated August 16, 1985. The gas to be transported would be purchased from Energy Pipeline, Inc. (Energy), and would be delivered to Applicant at the outlet of a processing plant operated by Damson Gas Processing Corporation (Damson) in Weld County, Colorado. Applicant would transport and deliver thermally equivalent volumes, less fuel use/loss and unaccounted-for gas, to Public Service Company of Colorado (PSCo) for Dana's account, at the interconnection of Applicant's and PSCo's facilities in Pueblo County, Colorado. Applicant states that PSCo would deliver the gas to Dana for use in its manufacturing operations in its Pueblo, Colorado, plant.

Applicant avers that this proposal would allow Dana to receive a supply of natural gas that would be less expensive than the gas Dana is currently purchasing from PSCo, thereby enabling it to reduce its manufacturing operations cost. Applicant states further that this proposed transportation service would displace gas Applicant would otherwise sell to PSCo for resale to Dana.

Applicant proposes to charge Dana 57.54 cents for each Mcf of natural gas it redelivers or the rate effective subject to refund or determined in RP85-122-000. The 57.54-cent rate is said to be equal to 56.29 cents per Mcf which is Applicant's margin for its Rate Schedules G-1 and P-1 and 1.25 cents per Mcf for the General R&D Funding Unit of the Gas Research Institute.

Applicant avers no new facilities are required for this transportation service, but requests flexible authority to add/delete receipt points.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP85-870-000]

September 23, 1985.

Take notice that on September 11, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-870-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for United States Steel Corporation (US Steel), an industrial end-user of gas, under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport natural gas for US Steel limited to quantities equivalent to 50 billion Btu on a peak day and 18.25 trillion Btu on an annual basis, pursuant to the terms of a July 15, 1985, gas transportation agreement. Natural states that approximately 27.165 billion Btu in equivalent volumes of natural gas would be transported on an average day. It is explained that the gas would be purchased by US Steel from TXO Production Corp. (TXO) pursuant to a July 1, 1985, contract. The TXO sales contract reflects that TXO would make its gas supplies available to US Steel from undesignated sources.

Natural states it would receive the gas from Delhi Gas Pipeline Corporation (Delhi) at the inlet of Natural's compressor station 340 near Goodrich in Polk County, Texas, for transportation and delivery to US Steel's designee, Columbia Gulf Transmission Company (Columbia Gulf), near Erath in Vermilion Parish, Louisiana. Natural avers that Columbia Gulf would deliver the gas to Columbia Gas Transmission Corporation which would in turn deliver the gas to Columbia Gas of Ohio, Inc. (the local distributor), for ultimate delivery to US Steel. Natural states that the gas will be consumed by US Steel in its plants at Lorain and Haverhill, Ohio, as boiler-fuel, fuel for furnaces, *etc.*

Natural proposes to charge TXO initially, as US Steel's designee, a rate of 8.8 cents per dt equivalent of natural gas transported for US Steel.

Natural advises that it commenced this transportation service for US Steel on July 19, 1985, as reported in Docket No. ST85-1541. It is noted that Delhi reported its related transportation service in Docket No. ST85-1523. Natural states that since the existing regulatory authority for the transportation service is scheduled to terminate on October 31, 1985, Natural proposes to continue the service for the duration of the one-year term of its transportation agreement (until July 19, 1986) in the event the Commission's regulations are amended to allow such continuation of service.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Natural would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP85-839-000]

September 24, 1985.

Take notice that on August 29, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-839-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Northern Gas Marketing, Inc. (Northern Gas), acting on behalf of Armour-Dial, Inc. (Armour-Dial), under the certificate issued in Docket No. CP82-414-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Midwestern proposes to transport up to 5,000 Mcf of natural gas per day, less a fuel reduction percentage, on an interruptible basis for Armour-Dial. It is stated that the gas to be transported would be purchased from reserves available to Northern Gas in Oklahoma and would be used as boiler fuel in Armour-Dial's plant in Montgomery, Illinois. It is indicated that the gas is not released by Midwestern. Midwestern would receive the gas from ANR Pipeline Company (ANR) at an existing interconnection in Will County, Illinois, or from Trunkline Gas Company (Trunkline) at an existing interconnection near Potomac, Illinois.

Midwestern would transport and deliver the gas to Northern Illinois Gas Company (NIGAS), for Armour-Dial's account, at their interconnecting facilities near Joliet, Illinois. NIGAS would transport and deliver the gas to Armour-Dial's plant in Montgomery.

It is stated that the service would be until the earlier of October 31, 1985, or the effective date of a final rule in Docket No. RM85-1-000 and/or termination of the transportation agreement by the parties thereto.

Midwestern proposes to charge an amount based upon the rate currently effective in its Rate Schedule IT-1. Also, Midwestern would retain 1.13 percent of the total gas quantity received from Trunkline for system fuels, or 0.5 percent of the gas quantity received from ANR for fuel, it is explained. Midwestern also would collect the Gas Research Institute surcharge of 1.25 per Mcf of gas delivered.

Midwestern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points on the market area. Midwestern will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional source of gas, would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP85-846-000]

September 24, 1985.

Take notice that on August 30, 1985, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-846-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Sharon Tube Company (Sharon) under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to transport up to 1,700 Mcf of gas per day and 620,500 Mcf of gas per year for Sharon, to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Sharon at Sharon's facilities in Sharon, Pennsylvania, pursuant to the terms of a gas transportation agreement dated July 1, 1985. National states that the current transporation rate is 26.72 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T-2

National states that the gas to be purchased by Sharon involves gas supplies previously under contract to and released by National. Sharon would use the gas in boilers and forge furnaces. National states that no new facilities are necessary for the proposed transportation. It is stated that the proposed transportation would commence on October 29, 1985, and terminate on October 31, 1985, or such later date specified by the Commission in a further extension of its blanket certificate program applicable to all end-users of natural gas, or upon termination of the transportation contract which provides for a term of three months, effective July 1, 1985, and month to month thereafter.

National also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas, not to delivery points in the market area. National would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85-848-000]

September 24, 1985.

Take notice that on September 3, 1985, Northwest Central Pipeline Corporation (Northwest Central), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-848-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim measuring and appurtenant facilities in Ellsworth County, Kansas, and to abandon the delivery of gas through these facilities under the blanket authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that the facilities were installed in 1973 to make a direct sale of gas to Frank J. Black, Inc., for oil lease operations. It is stated that the customer has advised Northwest Central that the oil lease has been abandoned and that gas is no longer needed at this point; and, therefore, the measuring facilities are no longer needed. The cost to reclaim the facilities is estimated at $1,090 and the salvage values is estimated at $170.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northern States Power Company (Minnesota)

[Docket No. CP76-328-001]

September 24, 1985.

Take notice that on August 23, 1985, Northern States Power Company (Minnesota) (Applicant), 414 Nicollet Mall, Minneapolis, Minnesota 55401, filed in Docket No. CP76-328-001 an application pursuant to section 7(b) of the Natural Gas Act for permission and apoproval to abandon its liquefaction of natural gas for Minnegasco, Inc. (Minnegasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it agreed to provide liquefaction services for Minnegasco under a contract dated January 21, 1974, which the Commission approved on January 12, 1977, in Docket No. CP76-286, *et al.* (57 FPC 148). Under this authorization, says Applicant, it received up to 2,500 Mcf of natural gas per day from March 1 through October 30 of each year to liquefy at its Wescott Plant in Inver Grove, Minnesota, for Minnegasco. Minnegasco would then move the resulting liquefied natural gas by overland cryogenic trucks.

Applicant states that its contract with Minnegasco has expired by its own terms. In a letter to Applicant dated July 31, 1985, included in this application, Minnegasco also relinquished its remaining contractual right to first call on additional liquefaction service through 1986.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Sea Robin Pipeline Company

[Docket No. CP85-860-000

September 24, 1985.

Take notice that on September 5, 1985 Sea Robin Pipeline Company (Sea

Robin), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization permitting Sea Robin to abandon three 1100 horsepower compressors by sale to HuB Energy Services, Inc. (HuB), and for a certificate of public convenience and necessity authorizing Sea Robin to lease from HuB the same three compressor units, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states it owns a 60 percent interest and Mobil Oil Exploration and Production S.E., Inc. (Mobil) owns a 40 percent interest in Compressor Unit Nos. 124, 125 and 129 located on Platforms A and B in East Cameron Area Block 270, offshore Louisiana. HuB has agreed to purchase the compressors from Sea Robin and Mobil for $255,000 and for a primary term of three years and year to year thereafter lease back to Sea Robin and Mobil the same three compressors for a rental-maintenance of $19,350 per month. Sea Robin alleges the proposed sale and lease-back arrangement is more cost efficient when compared to the rental-maintenance fee of $24,000 per month, which Sea Robin and Mobil previously paid.[1]

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP85-825-000]

September 24, 1985.

Take notice that on August 26, 1985, Southern Natural Gas, Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-825-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Gas Transmission Corporation (Columbia) and Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Columbia and Texas Gas purchased separately from Texaco Inc. and Amoco Production Company, produced from the B and C production platforms in Block 273, Eugene Island area, offshore Louisiana. Applicant proposes to transport on an interruptible basis by means of its existing facilities up to 1 billion Btu per day for both Columbia and Texas Gas, or such greater quantities as Applicant may accept from time to time. Applicant states that Columbia and Texas Gas would each deliver its gas to Applicant for transportation at the inlet of Applicant's existing facilities located on the Eugene Island Block 260 B production platform. Applicant would redeliver to Columbia and Texas Gas an equivalent quantity of gas at the existing subsea point of interconnection between the 10-inch pipeline facilities of Applicant and the 24-inch pipeline facilities of Sea Robin Pipeline Company located in Eugene Island Block 273, less Columbia's and Texas Gas' separate *pro rata* shares of gas used as fuel, company-used gas and unaccounted-for gas losses, and less their *pro rata* share of gas lost or vented during transportation for any reason except gross negligence on the part of Applicant. Applicant further states that Columbia and Texas Gas have each agreed to pay Applicant a transportation rate of 24.7 cents per million Btu.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84-441-008]

September 20, 1985.

Take notice that on September 10, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-008 a petition to amend the order issued June 14, 1985, in Docket No. CP84-441-002 pursuant to section 7(c) of the Natural Gas Act so as to authorize firm transportation service for Fitchburg Gas and Electric Light Company (Fitchburg) and EnergyNorth Inc. (EnergyNorth) of 2,727 Mcf of natural gas per day and 4,682 Mcf of natural gas per day, respectively, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP84-441-002 it was authorized to provide firm storage transportation service subject to approval of Penn-York Corporation's (Penn-York) application in Docket No. CP76-492-038 to provide increased firm storage services to EnergyNorth and Fitchburg. Pending disposition of Penn-York's application, Petitioner states that the Commission authorized Petitioner to transport reduced firm storage volumes of 1,818 Mcf of gas per day for EnergyNorth and 1,239 Mcf of gas per day for Fitchburg. Petitioner further states that the Commission also authorized Petitioner in Docket No. CP84-441-002 to construct and operate the necessary facilities to provide the firm storage transportation services for EnergyNorth and Fitchburg at the volume levels originally requested of 4,682 Mcf of gas per day and 2,727 Mcf of gas per day, respectively.

Petitioner seeks authorization to provide the full firm storage transportation service of 4,682 Mcf per day for EnergyNorth and 2,727 Mcf per day for Fitchburg under its currently authorized Rate Schedule FSST-NE. Petitioner states that EnergyNorth and Fitchburg have executed one-year storage contracts with Consolidated Gas Transmission Corporation (Con Gas) which when added to the storage service currently authorized from Penn-York would provide a total of 300,00 Mcf of storage capacity for Fitchburg and 515,000 Mcf for EnergyNorth. Petitioner alleges that EnergyNorth and Fitchburg are pursuing negotiations with Penn-York and Con Gas to maintain these storage levels on a long-term basis.

Petitioner further seeks authorization to deliver storage injection volumes and receive storage withdrawal volumes in any increment of the total transportation volume authorized from either/or Con Gas and Penn-York as directed by Fitchburg and EnergyNorth. Petitioner indicates that it would deliver storage injection volumes and receive storage withdrawal volumes at the following existing interconnections on Petitioner's system:

Con Gas—Ellisburg sales meter station, Potter County, Pennsylvania;

Penn-York—Petitioner's main line valve 313G-102, Potter County, Pennsylvania.

In addition, Petitioner states that the receipt and delivery points for EnergyNorth and Fitchburg related to the combined storage services offered by Penn-York and Con Gas would be at the following existing sales delivery points on Petitioner's system:

EnergyNorth—Manchester sales, Hillsborow County, Massachusetts at Petitioner's valve 270B-621;

Fitchburg—Fitchburg sales, Worchester County, Massachusetts at Petitioner's valve 268A-124.

Petitioner alleges that the requested firm storage transportation service is necessary to meet EnergyNorth's and Fitchburg's gas supply requirements for this upcoming winter period. As indicated in letters dated August 28, 1985, and included in Exhibit I of the Petitioner's petition to amend, without the additional storage service from Con Gas and the related firm transportation

[1] Sea Robin and Mobil had leased the compressors from Crawford Enterprises, Inc., previous to their purchase from Crawford on December 31, 1984.

service from Petitioner, both EnergyNorth and Fitchburg allege that they would have a greater dependency on higher cost propane or liquefied natural gas supplies to meet peak day requirements on their systems.

Comment date: October 4, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Texas Eastern Transmission Corporation

[Docket No. CP84-703-003]

September 24, 1985.

Take notice that on September 10, 1985, Texas Eastern Transmission Corporation (Petitioner), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP84-703-000 a petitioner to amend the order of October 26, 1984, as amended, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to extend the term of the transportation service presently being provided to United States Steel Corporation (USS) from the currently authorized expiration date of October 31, 1985, to October 31, 1986, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that USS has obtained a quantity of natural gas from Carnegie Natural Gas Company (Carnegie) which petitioner receives from carnegie, by displacement, and delivers, for USS's account, to Philadelphia Electric Company (Philadelphia). Petitioner is said to receive up to 37,200 dt equivalent of natural gas per day from Carnegie, by displacement, at an existing point of interconnection between Petitioner and Carnegie in Greene County, Pennsylvania, or at other mutually agreeable points of receipt from Carnegie. Petitioner then transports and redelivers such gas to Philadelphia, for the account of USS, at points of interconnection between Petitioner and Philadelphia in Delaware County, Pennsylvania, Montgomery County, Pennsylvania, or at other mutually agreeable points of delivery to Philadelphia. Philadelphia in turn transports and delivers such gas to USS at USS's Fairless Works in Bucks County, Pennsylvania.

Petitioner requests that the Commission grant authorization to allow Petitioner to transport gas through October 31, 1986, pursuant to the terms and conditions of a letter agreement dated August 15, 1985.

Comment date: October 15, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP85-834-000]

September 24, 1985.

Take notice that on August 28, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-834-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas on behalf of Ellwood City Forge Corporation (Ellwood) under the certificate issued United in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Ellwood, a low-priority end-user, has purchased gas from The Resource Group up to 2,000 Mcf of gas per day to be delivered for the account of Ellwood at United's facilities in the Cotton Plant Field, section 21, Township 13 North, Range 2 East, Caldwell Parish, Louisiana. United would then transport and redeliver the gas to existing points of interconnection between United's and Columbia Gulf Transmission Company's (Columbia Gulf) facilities located near Barron, Rapides Parish, Louisiana, and/or Erath, Vermilion Parish, Louisiana, at the interconnection of Columbia Gulf's and Sea Robin Pipeline Company's facilities. United states that Columbia Gulf, under a separate agreement, would deliver the gas to Columbia Gas Transmission Corporation (Columbia Gas) for delivery to Columbia Gas of Pennsylvania, Inc., which would deliver the gas to Ellwood.

United states that the rate applicable to this transportation service is an amount equal to United's Type I Rate (Rate Schedule IT) which excludes a component for gas consumed in the operation of United's pipeline system. Currently such rate is said to be 7.72 cents per Mcf.

It is explained that the transportation agreement was effective on May 22, 1985, and would remain in effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85-1-000 for low-priority end-use transportation or October 31, 1985, or until terminated by either party upon 30 days prior written notice.

United also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. United will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23225 Filed 9-27-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

University Research Instrumentation Program

AGENCY: Energy Research Office, Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, to discuss the eligibility requirements for this program, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328), (2) October 18, 1983, DOE changes to the program (48 FR 48277), and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to:

Mr. Walker K. Love, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations Office, Department of Energy, Oak Ridge, TN 37831, Telephone Number: (615) 576-0791.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. Although no final congressional action for Fiscal Year 1986 has yet been approved for this program, the Presidential budget request to Congress for this program for FY 1986 is $4.5 million. In anticipation of Congressional support for the program, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE-ER-0184/1, Notice of Program Announcement Number DE-PS05-86ER75237. Selection for award under this solication is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1986 the URI program's funds will be concerned primarily with capital equipment (costing $100,000 or more) needed for on-campus research in one of four specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of examples of related research topics are given. Within each topic area no preference is given to any of the examples.

1. *Advanced Materials Characterization, Synthesis, and Processing Science*—(a) Conventional transmission and scanning electron microscopy of metallic, ceramic, polymeric, semiconducting and other materials; (b) high resolution, atomic resolution, and lattice imaging electron microscopy; (c) analytical electron microscopy; (d) field ion/imaging atom probe microscopy; (e) scanning tunnelling microscopy; (f) other surface and interface analytical techniques; (g) molecular beam/-epitaxy; (h) ceramic powder preparation and consolidation; (i) chemical vapor deposition (CVD) laser assisted reactions and CDV; (j) sputtering; (k) ion and molecular beam deposition and diagnostics.

2. *Catalysis (Heterogeneous and Homogeneous), Photochemistry and Photocatalysis*—(a) Metal organic chemistry; (b) surface chemistry; (c) surface structure; (d) surface spectroscopy; (e) catalyst preparation and characterization; (f) kinetics and mechanisms of catalytic reactions; (g) model catalysts; (h) catalytic treatment of coal; (i) catalytic production of synthetic fuels; (j) photoinduced redox reactions in homogeneous and heterogeneous systems; (k) charge separation in photoredox reactions by micelles, vesicles, and membranes; (l) photoelectrochemical reactions with chemically modified electrodes; (m) chemical kinetics of radicals and other pertinent species; (n) molecular dynamics of high temperature combustion sequences especially key properties of highly reactive and short lived species; (o) chemistry of atomic and molecular fragments arising from pyrolysis of fuels; (p) analytical instrumentation.

3. *Engineering Sciences*—(a) Tribology; (b) energy-conserving fabrication and production techniques; (c) electric power technology including conversion technologies and superconducting storage and transmission; (d) fluid dynamics and thermal processes including multiphase and turbulent flow, flow-inducted vibrations and small temperature difference heat engines; (e) geotechnical engineering including fracture mapping, fragmentation and remote sensing; (f) mechanics of solids including failure mechanisms for structures under dynamic loading; (g) process control including improved sensors and advanced systems for heating, ventilating and air conditioning.

4. *Health and Environmental Effects of Energy Development and Use*—(a) Research to better characterize and measure radiation and energy-related chemicals; (b) determine their transport and transformation in the atmosphere and in aquatic and terrestrial systems; (c) elucidate the mechanisms controlling the function and response of ecosystems to radiation or chemicals; (d) define their potential effects and mechanisms of action on human health via direct observations and through animal, cellular and molecular systems, including biomolecular structure and function; (e) gene function and control, genetic damage and repair and cell transformation.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1983, to September 30, 1985).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area.

DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument(s) requested (or for use with existing research instrument(s)) in the selected area may be considered.

Application Forms

Program solicitations are expected to be ready for mailing by October 4, 1985. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies may be obtained by writing to: Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, ER–44, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone Number: (202) 252–8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received by the Oak Ridge Operations Office by 4:30 p.m., December 6, 1985.

Authority for the University Research Instrumentation program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC, on September 18, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

[FR Doc. 85–23310 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of August 23 Through August 30, 1985

During the Week of August 23 through August 30, 1985, the appeal and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 23 through Aug. 30, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 26, 1985	Holy Cross Hospital, Mission Hills, California	HEE-0163	Exception to the Energy Conservation Program. If granted: Holy Cross Hospital would receive exception relief from the regulations at 10 C.F.R. § 455 that govern the Department of Energy's institutional conservation grants program for schools and hospitals.
Do	Rodgers Hydrocarbon and Ray V. Rodgers, Jr., Washington, DC.	HRD-0298, HRH-0298	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr., in response to the March 26, 1985 Proposed Remedial Order issued to them (Case No. HRO-0298).
Aug. 28, 1985	Robert J. Grix, Miami Beach, Florida	HFA-0306	Appeal of an Information Request denial. If granted: The Freedom of Information Request Denial issued by the Manager of the Nevada Operations Office would be rescinded and Robert J. Grix would receive access to documents relating to his exposure to radiation.
Aug. 30, 1985	Economic Regulatory Administration, Washington, DC	HRD-0289	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Proposed Remedial Order issued to Goldsberry Operating Co., Inc. (Case No. HRO-0287).
Do	Oxnard Refining Company, Los Angeles, California	HRD-0291, HRH-0291	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by the Oxnard Refining Company in response to a Proposed Remedial Order issued to it (Case No. HRO-2091).

REFUND APPLICATIONS RECEIVED

[Week of Aug. 23 to Aug. 30, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/26/85	Good Hope/Coral Petroleum, Inc	RF189-2
8/26/85	Gulf/Valentines Service Station	RF40-3042
8/26/85	Gulf/Domenic Cristinzio, Inc	RF40-3043
8/26/85	Aminoil/Steve Hall Oil Co., Inc	RF139-94
8/26/85	Aminoil/Murray & Massie Butane Co	RF139-93

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 23 to Aug. 30, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/26/85	Aminoil/Pruett's L.P. Gas, Inc	RF139-92
8/26/85	Aminoil/Duncan Propane, Inc	RF139-91
8/26/85	Husky/Metro Oil Products	RF161-14
8/26/85	Glaser/Red Tag Gas Company	RF174-2
8/26/85	Red Triangle/Liberty Auto Service	RF178-12
8/26/85	Cibro/Tullo Oil Co., Inc	RF184-3
8/26/85	LARCO/Mountain States Petroleum Corp	RF112-179
8/26/85	Arkla Chemical/Tesoro Petroleum Corp	RF153-19
8/26/85	Arkansas Louisiana/Tesoro Petroleum Corporation	RF154-8
8/27/85	Red Triangle/Paul Lindsay	RF178-13
8/27/85	Aminoil/Gas, Inc	RF139-96
8/27/85	Aminoil/MGU Development Company	RF139-95
8/27/85	Husky/Harris Oil Co., Inc	RF161-16
8/27/85	Husky/Colorado Petroleum Products Co	RF161-15
8/27/85	Warren Holding/Puritan Oil Co	RF169-6
8/27/85	Boswell/Belle Vernon Oil Company	RF179-6
8/27/85	Boswell/Suchiko Gas & Oil	RF179-5
8/27/85	St. James/Avon Coal & Oil, Inc	RF180-21
8/27/85	APCO/U-Pump-It of Kansas	RF83-141
8/28/85	Arkansas Louisiana/Enterprise Products Company	RF154-9
8/28/85	Aminoil/Williams & Sons Fuel Co., Inc	RF139-98
8/28/85	Aminoil/Elkins Butane Propane Co	RF139-97
8/28/85	Arkansas Louisiana/Gaines Pet Co	RF154-11
8/28/85	Arkansas Louisiana/B-S-F Oil Co	RF154-12
8/28/85	Arkansas Louisiana/Curtis Parker	RF154-10
8/28/85	Arkansas Louisiana/May Oil Company	RF154-13
8/28/85	Arkla Chemical/May Oil Company	RF153-20
8/28/85	Arkansas Louisiana/Temple Oil & Tire Co., Inc	RF154-14
8/28/85	Arkansas Louisiana/Byers Oil Co	RF154-15
8/28/85	Arkansas Louisiana/Tom's Service Center	RF154-16
8/28/85	Arkansas Louisiana/Sullivan Oil Co., Inc	RF154-17
8/28/85	Arkansas Louisiana/Southern Marketing, Inc	RF154-18
8/28/85	Arkansas Louisiana/Petron, Inc	RF154-19
8/28/85	Arkansas Louisiana/Tri-State Wholesale Produce Co	RF154-20
8/28/85	Husky/U-Pump-It of Kansas	RF161-17
8/29/85	F.O. Fletcher/Geno Morris Fuel	RF172-12
8/29/85	Inland/McCollum Service Station	RF176-6
8/28/85	Gulf/Louis and Ray Wilhelm	RF40-3044
8/28/85	Tenneco/Rice Oil Company	RF7-130
8/29/85	Husky/Asamera Oil U.S., Inc	RF161-18
8/29/85	St. James/Deckar & Simmons	RF180-22
8/29/85	St. James/D.B. Simmons Company	RF180-23
8/29/85	OKC/Rilco Company	RF13-37
8/29/85	Red Triangle/Pokorra's Red Triangle	RF178-14
8/29/85	Inland/USO Oil Company	RF176-7
8/29/85	Aminoil/Draketown Gas, Inc	RF139-99
8/29/85	Tenneco/Liberty Oil Co., Inc	RF7-131
8/30/85	Husky/Calder's Gas "N" Go	RF161-20
8/29/85	Crystal/Tesoro Petroleum Corp	RF190-1
8/30/85	Aminoil/Frymann's Gas Sales	RF139-103
8/30/85	Aminoil/Buckhalter LP Gas Co	RF139-102
8/30/85	Aminoil/Dewey Wood Propane Co	RF139-101
8/30/85	Aminoil/Evans Oil & Gas, Inc	RF139-100
8/30/85	Husky/Milne Truck Lines, Inc	RF161-19
8/30/85	Gulf/Graeber Brothers	RF40-3045

[FR Doc. 85-23302 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 30 Through September 6, 1985

During the Week of August 30 through September 6, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application with ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 30 through Sept. 6, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 30, 1985	Economic Regulatory Administration, Washington, DC	HRD-0293	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0272).
Do	Economic Regulatory Administration, Washington, DC	HRD-0294	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0273).

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Aug. 30 through Sept. 6, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Economic Regulatory Administration, Washington, DC	HRD-0295	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0275).
Do	Economic Regulatory Administration, Washington, DC	HRD-0296	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0276).
Sept. 3, 1985	Economic Regulatory Administration, Washington, DC	HRZ-0268	Interlocutory. If granted: Michael Hickerson, Donald Goff and Hal Musco would be joined as respondents to two Proposed Remedial Orders issued to Clean Machine, Inc. (Case Nos. HRO-0048 and HRO-0049).
Sept. 4, 1985	Red River Oil Company, Moorhead, Minnesota	HEE-0164	Exception to the reporting requirements. If granted: Red River Oil Company would no longer be required to file Form EIA-782B, "Reseller/Retailers Monthly Petroleum Product Sales Report."
Sept. 5, 1985	Fulbright & Jaworski, Washington, DC	HFA-0308	Appeal of an information request denial. If granted: Fulbright & Jaworski would receive access to records regarding RFP No. DE-RP01-851G00103 entitled "Expanded Scope Audit Coverage for the Office of Inspector General."
Do	IBEW, Local No. 5, Pittsburgh, Pennsylvania	HFA-0307	Appeal of an information request denial. If granted: The August 14, 1985, Freedom of Information Request Denial issued by the Deputy Director for Naval Reactors would be rescinded and IBEW, Local No. 5 would receive access to complete payroll reports submitted by C&T Enterprises, Inc.
Sept. 6, 1985	Howell Corporation, Corpus Christi, Texas	HEZ-0269	Interlocutory. If granted: The Application for Exception filed by the Department of Interior (Case No. HEE-0159) would be dismised.
Do	Howell Corporation, Corpus Christi, Texas	HES-0049	Request for stay. If granted: The proceeding involving an Application for Exception submitted by the Department of Interior (Case No. HEE-0159) would be stayed pending OHA's consideration of requests for interlocutory relief filed by Howell.
Do	P J W Corporation, Pomona, California	HEE-0165	Exception to the reporting requirements. If granted: P J W Corporation would no longer be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	Pacific Northern Oil Company, Seattle, Washington	HEE-0166	Exception to the reporting requirements. If granted: Pacific Northern Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	Petroleum Supply, Inc., & Don Ragland, Washington, DC	HRD-0297, HRH-0297	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petroleum Supply, Inc. in response to the May 28, 1985 Proposed Remedial Order issued to the firm (Case No. HRO-0293).

Refund Applications Received

[Week of Aug. 30, 1985, to Sept. 6, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/3/85	Boswell/U.S. Steel Corp	RF179-7
9/3/85	Husky/Crowley Maritime Corp	RF161-21
9/3/85	VGS/Miller Transporters, Inc	RF191-1
9/3/85	Aminoil/John Bogle Propane Co	RR139-106
9/3/85	Aminoil/Jim Thomas Enterprises	RR139-107
9/3/85	Aminoil/Yothers Propane Co	RF139-105
9/3/85	Aminoil/Ever Ready Gas Co., Inc	RF139-104
9/3/85	Inland/Flash Oil Corp	RF176-10
9/3/85	Inland/Site Oil Co	RF176-9
9/3/85	St. James/Volta Oil Co., Inc	RF180-24
9/3/85	Inland/Knapp Oil Co	RF176-8
9/3/85	Champlain/Jerry's Citgo	RF187-3
9/3/85	Arkansas Louisiana/Shereveport Oil Co	RF154-21
9/3/85	Good Hope/Texaco, Inc	RF189-3
9/3/85	Champlain/Keith's Trading Post	RF187-4
9/3/85	Gulf/Liberty Oil Company	RF40-3046
9/3/85	Gulf/Warrenville Gulf	RF40-3047
9/3/85	Saber/Texaco, Inc	RF192-1
9/3/85	National Helium/Maryland	RQ3-228
9/3/85	Perry Gas/Maryland	RQ183-229
9/3/85	Colline/Maryland	RQ2-230
9/3/85	Husky Refund Applications	RF161-22 through RF161-64
9/4/85	Husky/Blair Dean, Inc	RF161-65
9/4/85	Aminoil/Virgil Elliott Petroleum	RF139-108
9/4/85	Aminoil/Everheat Gas Sales	RF139-109
9/4/85	Aminoil/LA. Olson Company	RF139-110
9/4/85	Aminoil/J. Petty Company	RF139-111
9/4/85	Aminoil/Vanguard Petroleum Corp	RF139-112
9/4/85	Aminoil/Stevens Petro	RF139-113
9/5/85	Aminoil/Miller Oil Company	RF139-114
9/5/85	Aminoil/Rex Smith Propane	RF139-115
9/5/85	Aminoil/Ramsey L-P Gas Company	RF139-116
9/5/85	Aminoil/Hopkins Bottle Gas, Inc	RF139-117
9/5/85	Husky/Petroenergy Corporation	RF161-66
9/5/85	Husky/B-D Oil Co	RF161-67
9/5/85	Aminoil/A-1 Gas	RF139-118
9/5/85	Gulf/Richard A. Standley	RF40-3048
9/5/85	St. James/Field's Oil Heat Service	RF180-25
9/6/85	Aminoil/Warren County Oil Company	RF139-120
9/6/85	Aminoil/Dixie LP Gas Company	RF139-121
9/6/85	Aminoil/Ford Pinkerton Company, Inc	RF139-122

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 30, 1985, to Sept. 6, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/6/85	Aminoil/Eldridge Propane Service, Inc	RF139-123
9/6/85	Aminoil/Fisher Propane Service	RF139-124
9/6/85	Aminoil/Vaughn Gas & Appliance	RF139-125
9/6/85	Aminoil/Plymouth LP Gas Service	RF139-126
9/6/85	Husky/Chevron, USA, Inc	RF161-68
9/6/85	Field/Walt DeVore's Service	RF173-5
9/6/85	Aminoil/Harper Industries, Inc	RF139-127
9/6/85	Aminoil/Heart of Dixie LP Gas Co	RF139-128
9/6/85	Aminoil/Daughtridge Gas Company	RF139-129
9/6/85	Red Traingle/Herbert R. McCarey	RF178-15
9/6/85	Aminoil/Clayton Bottled Gas	RF739-119

[FR Doc. 85-23303 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 2 Through September 6, 1985

During the week of September 2 through September 6, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy.

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, SW., 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.

Grorge B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

Motions for Discovery

Navajo Refining Company, Department of the Interior, 9/5/85, HED-0283, HED-0284

Navajo Refining Co. (Navajo) and the Department of the Interior (DOI) each filed a Motion for Discovery in connection with a pending Application for Exception in which DOI requests retroactive exception relief with respect to certain crude oil certification requirements that applied to its sales of royalty oil to Navajo. See *DOI/Navajo*, Case No. HEE-0083 (Proposed Decision and Order (PDO) issued April 26, 1985). In the PDO, the DOE proposed to grant DOI's request except with respect to the sales reflected in a December 1980 invoice. In their Motions for Discovery, Navajo and DOI sought discovery with respect to a variety of matters, including the December invoice.

In considering the parties' request for discovery with respect to the December 1980 invoice, the DOE found that Navajo had first-hand knowledge concerning the circumstances underlying that invoice. Accordingly, the DOE determined that DOI's request for discovery from Navajo should be granted with respect to the invoice. The DOE also determined that after the submission of pleadings with respect to such discovery, the DOE would consider *sua sponte* whether DOI should be required to furnish any information with respect to the issues surrounding the December 1980 invoice and if so, the appropriate means through which that information should be submitted. With respect to the remainder of the parties' requests, the DOE found that they did not relate to material factual issues or would not materially assist in the resolution of the proceeding. Accordingly, DOI's Motion for Discovery was granted in part and Navajo's Motion for Discovery was denied.

Refund Applications

Gulf Oil Corporation/K-C Fuel Company, 9/6/85, RF40-1671

The DOE issued a Decision and Order concerning an Application for Refund filed by K-C Fuel Company, a reseller of Gulf petroleum products. K-C stated in its application that it had purchased fuel from Skelly Oil Company. However, because Skelly participated in an exchange with Gulf, K-C picked up the fuel from a Gulf terminal. After examining the evidence submitted by the applicant, the DOE determined that the fuel which K-C purchased was actually Skelly product rather than Gulf product Accordingly the Application for Refund was denied.

Gulf Oil Corporation/Time Oil Company, 9/5/85, RF40-1537

The DOE issued a Decision and Order concerning an Application for Refund filed by Time Oil Company, a reseller of Gulf petroleum products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, Time demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. Time also indicated that it had purchased products directly from Gulf. After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that Time should receive a total refund of $74,673 ($65,407 principal plus $9,266 interest) based upon a total volume of 54,505,914 gallons of Gulf purchases.

Willis Distributing Company, Inc./Country Fair, Inc., 9/4/85, RF41-0014

The DOE issued a Decision and Order concerning an Application for Refund filed by Country Fair, Inc., a reseller of Willis Distributing Co., Inc. motor gasoline. The firm elected to limit its Application for Refund to the 50,000 gallons per month threshold for small claims set forth in *Willis Distributing Co.*, 12 DOE ¶ 85,062 (1984). In considering this application, the DOE concluded that Country Fair should receive a refund of $8,562 based upon the adjusted volume of its Willis motor gasoline purchases.

[FR Doc. 85-23304 Filed 9-27-85 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of July 22 Through July 26, 1985

During the week of July 22 through July 26, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 19, 1985.

Apache Oil Company, Inc., Pasadena, Texas, HRO-0299, Crude Oil

On July 26, 1985, Apache Oil Company, Inc., P.O. Box 177, 5136 Spencer at Pansy, Pasadena, Texas 77501, filed a Notice of

Objection to a Proposed Remedial Order (PRO) which the DOE Dallas District Office of Enforcement issued to the firm on April 30, 1985. In the PRO, the Dallas District found that during the period October 1, 1979 through December 31, 1979, Apache violated the provisions of 10 CFR § 212.93 by charging prices in excess of the firm's maximum lawful selling prices for gasoline.

According to the PRO, the violation resulted in $164,153, plus accrued interest.

North American Petroleum Company and Mellon Energy Products Company, Abilene, Texas, HRO-0297, Crude Oil

On July 24, 1985, Mellon Energy Products Co., LaJet, Inc., and the State of California filed Notices of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued on June 20, 1985. In the PRO the ERA found that from October through December 1975, January through June 1976, March through May 1977, and July through November 1977, North American Petroleum Co., through its subsidiary LaJet, Inc., entered into processing arrangements for the purpose of lowering its reported crude oil runs to stills in order to qualify for Small Refiner Bias entitlements benefits. The ERA also found that Mellon Energy Products Company received unlawful profits in sales of crude oil and refined petroleum products.

According to the PRO, the various violations total $3,574,756.15.

O.K. Oil and Gas, Incorporated, Oklahoma City, Oklahoma, HRO-0296, Crude Oil

On July 22, 1985, O.K. Oil and Gas, Inc., 8005 S I-35, Oklahoma City, Oklahoma 73149 and the State of Texas filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Office of Enforcement issued to the firm on May 6, 1985. In the PRO the Office of Enforcement found that during the period October 1979 through December 1980, the firm sold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D.

According to the PRO, the violation resulted in $256,111.01 of overcharges.

Rodgers Hydrocarbon Corporation, Wichita Falls, Texas, HRO-0298, Crude Oil

On July 23, 1985, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Field Office of the Office of Enforcement issued to the firm on March 29, 1985. In the PRO, the Dallas Office found that during the period September 1977 through January 1980, Rodgers sold uncertified and improperly certified crude oil in violation of the provisions of 10 CFR Part 212.

According to the PRO, the violation resulted in $2,782,495.73 of overcharges.

[FR Doc. 85-23301 Filed 9-27-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $11,387,002 obtained as a result of a consent order which the DOE entered into with Lincoln Land Oil Company, a reseller-retailer of petroleum products located in Springfield, Illinois. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0116.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $11,387.02 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Lincoln Land Oil Company. The funds were provided to the DOE by Lincoln Land to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period March 1, 1979, through September 30, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Lincoln Land. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Lincoln Land and to demonstrate that it was injured by Lincoln Land's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals:

September 18, 1985.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Lincoln Land Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0116.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Lincoln Land Oil Company (Lincoln Land).

I. Background

Lincoln Land is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR § 212.31 and is located in Springfield, Illinois. Following an audit of Lincoln Land's records, ERA issued a Notice of Probable Violations (NOPV) in which it alleged that the firm had violated of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The NOPV originally alleged that between March 1, 1979, and September 30, 1979, Lincoln Land committed pricing violations amounting to $643,852.37 in its sales of motor gasoline. Based upon further information submitted by the firm, this amount was adjusted to $24,685.53.

In order to settle all claims and disputes as to the firm's sales of motor gasoline during the audit period, Lincoln Land and the DOE entered into a consent order on August 30, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that Lincoln Land does not admit to any violations of the regulations. Under the terms of the consent order, Lincoln Land was required to deposit $11,387.02 into an interest-bearing escrow account for ultimate distribution by the DOE. Lincoln Land remitted this sum on July 7, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by Lincoln Land's pricing practices during the period March 1, 1979 through September 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Lincoln Land refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Lincoln Land's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon approprate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users of Lincoln Land products were injured by Lincoln Land's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Lincoln Land times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0007555 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Lincoln Land's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. As a result, without some simplified procedures, injured parties would be deprived of an opportunity to receive a refund. This presumption also accelerates the refund process by eliminating the need for a claimant to assemble and provide, and OHA to analyze, detailed proof of the occurrence and extent of injury.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases beow a certain level. Several factors determine the value of this threshold. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the

[1] As of July 31, 1985, the Lincoln Land escrow account contained $17,493.19, including accrued interest.

[2] This figure is derived by dividing the $11,307.02 settlement amount by the 15,072,152 gallons of products sold by Lincoln Land during the consent order period.

refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*) and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

However, if a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Lincoln Land not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted, we are proposing a finding of injury with respect to end users which purchased motor gasoline from Lincoln Land. An important aspect of this finding is that many, if not all, of the members of this group were not subject to the requirements of the petroleum regulations during the consent order period. As a result, these firms were not required to base their pricing decisions on cost increases or to keep records which would show whether cost increases were passed on as price increases. Under these circumstances, an analysis of the impact of the alleged overcharges on these unregulated end users would be beyong the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983)(*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4] Therefore, to prove injury, end users must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Lincoln Land's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an application for Refund pursuant to 10 CFR 205.283. In its Application, a claimant must include a schedule, broken down by product, of its monthly purchases from Lincoln Land. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement, or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Lincoln Land Oil Company pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-23307 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE ¶ 85,029 at 88,125 (1982) (Ada).

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy

announces the procedures for disbursement of: $10,000 obtained as a result of a consent order into which the DOE entered with L & L Oil Company, a reseller of petroleum products located in Belle Chasse, Louisiana; $52,347.47 obtained as a result of a consent order into which the DOE entered with Lowe Oil Company, a reseller of petroleum products based in Clinton, Missouri; and $12,173.48 obtained as a result of a consent order into which the DOE entered with Moyle Petroleum Company, a reseller of petroleum products headquartered in Rapid City, South Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the L&L, Lowe, or Moyle consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0111 (L&L), HEF-0118 (Lowe), or HEF-0133 (Moyle) and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to consent orders entered into by the DOE and L & L Oil Company, the DOE and Lowe Oil Company, and the DOE and Moyle Petroleum Corporation. The consent orders settled all claims and disputes between the firms and the DOE regarding the manner in which the firms applied the federal price regulations with respect to their sales of refined petroleum products during the respective consent order periods—November 1, 1973, through April 30, 1974, for L & L and Lowe, and March 1, 1979, through June 30, 1979 for Moyle. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the L & L, Lowe, and Moyle consent order funds was issued on June 28, 1985. 50 FR 28636 (July 15, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of the three escrow accounts funded by the firms pursuant to the consent orders. The DOE has decided that a portion of the consent order funds should be distributed to 46 of L & L's customers, 3 of Lowe's, and 22 of Moyle's, all of whom may have been overcharged, after each has filed an application for refund. These purchasers were identified by DOE audits and alloted funds based on findings and presumptions of injury which the DOE has used in past proceedings. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by firms and individuals who purchased petroleum products from L&L, Lowe, or Moyle during the respective consent order periods. Applications will be accepted provided they are filed in duplicate and are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: L&L Oil Company, Inc., Lowe Oil Company, Moyle Petroleum Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0111, HEF-0118, HEF-0133.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with L&L Oil Company, Inc. (L&L), Lowe Oil Company (Lowe), and Moyle Petroleum Company (Moyle) (collectively referred to as the consent order firms).

I. Background

L&L, Lowe, and Moyle are all "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. L&L is located in Belle Chasse, Louisiana. Lowe's main office is in Clinton, Missouri. Moyle's headquarters are in Rapid City, South Dakota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The L&L consent order covers the period November 1, 1973, through April 30, 1974. In a Notice of Probable Violation (NOPV) issued to the firm, ERA alleged that during that period, L&L committed possible pricing violations amounting to $95,299.15, with respect to its sales of No. 2 diesel fuel. In order to settle all claims and disputes between L&L and the DOE regarding the company's sales of No. 2 diesel fuel during the period covered by the NOPV, L&L and the DOE entered into a consent order on September 20, 1979. Under the terms of the consent order, L&L was to deposit $10,000 into an interest-bearing escrow account for ultimate distribution by the DOE. L&L remitted this sum on November 1, 1979.[1]

The Lowe consent order likewise covers the period November 1, 1973, through April 30, 1974. ERA issued a Proposed Remedial Order (PRO) to Lowe, in which the agency alleged that the company had committed possible pricing violations amounting to $81,943.09 on its sales of motor gasoline and motor oils between November 1973 and April 1974. In order to settle all claims and disputes between them regarding Lowe's sales of motor gasoline and motor oils during the period covered by the PRO, Lowe and the DOE entered into a consent order on September 1, 1981. The consent order required Lowe to deposit $52,347.47 into an interest-bearing escrow account for ultimate distribution by the DOE. The company fulfilled this requirement on September 14, 1981.[2]

[1] As of July 31, 1985, the L&L escrow account contained $18,135.60, including accrued interest.

[2] Including accrued interest, the Lowe escrow account contained $77,788.19 as of July 31, 1985.

The period covered by the Moyle consent order runs from March 1, 1979, through June 30, 1979. A DOE audit alleged that during the period, Moyle had committed possible pricing violations amounting to $24,346.98 on its sales of motor gasoline. To settle all claims and disputes between them concerning Moyle's sales of motor gasoline during the audit period, Moyle and the DOE entered into a consent order on December 31, 1980. The terms of the consent order required Moyle to deposit $12,173.48 into an interest-bearing escrow account for ultimate distribution by the DOE. The DOE received Moyle's check for that amount on January 15, 1981.[3]

This decision concerns the distribution of the funds in the three escrow accounts, including the accrued interest. On June 28, 1985, we issued a Proposed Decision and Order (PD&O) which set forth a tentative plan for the distribution of refunds to parties who were injured by the consent order firms' alleged violations in the sale of petroleum products during the respective consent order periods. 50 FR 28636 (July 15, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of actual or alleged violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's product are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination regarding the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured by the consent order firms' pricing practices during the audit period who would also be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various petroleum dealers' associations. The only comments received regarding the first-stage procedures were submitted by Texaco, Inc. (Texaco). Texaco's comments concern the small-claims presumption and will be addressed below in the section dealing with that issue. Comments were also submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Those comments concern the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the L&L, Lowe, and Moyle refund proceedings. Any procedures pertaining to the disposition of any monies remaining after each proceeding's first stage will necessarily depend on the size of the respective fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address the issues raised by the states' comments at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by L&L's or Lowe's pricing practices between November 1, 1973 and April 30, 1974, or by Moyle's pricing practices between March 1 and June 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds To Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of L&L, 46 first purchasers were identified as having allegedly been overcharged. During the audit of Lowe, 3 first purchasers were similarly identified. In the audit of Moyle 22 first purchasers were identified as having allegedly been overcharged. In all three cases, ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices B-1, B-2, B-3, B-4, C, and D.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides

[3] The Moyle escrow account contained $20,107.69 as of July 31, 1985, including accrued interest.

considering the information which the audit file provides, we will adopt presumptions to be used in determining the level of a purchaser's injury. We will use these two methods to distribute the funds in the three escrow accounts. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for impelementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we will adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. We will also adopt a rebuttable presumption that customers which made only spot purchases were not injured. In addition, we find that end users suffered injury.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the ncessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. In its comments, Texaco suggests that a firm identified by ERA's audit should be permitted to state that it is willing to rely on the data in the audit file and not have to document its purchase volumes. This is not different from what was stated in the PD&O. In the PD&O, we stated that firms identified by the audit could submit either purchase schedules or statements that they would rely on the data in the audit files. A firm using the data in an audit file is still in effect providing purchase volumes; it is merely using figures already in OHA's possession rather than providing new figures.

Several factors determine the value of the threshold below which claimants need not submit proof of injury beyond purchase volumes. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that all the firms identified in the L&L and Moyle proceedings are eligible for small refunds, as are two of those identified in the Lowe proceeding. The one Lowe customer whose potential refund falls above the threshold purchased products in quantities that suggest that it is significantly larger than the other potential refund recipients.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases, we believe that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that those firms listed in Appendix B-4 made only spot purchases from L&L. Firms on this list will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 2 diesel fuel from L&L during the consent order period.

As noted above, we find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of petroleum products sold by one of the consent order firms be required to document only their purchase volumes from the applicable firm to make a sufficient showing that they were injured by the alleged overcharges.[5]

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of L&L's, Lowe's, or Moyle's

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and not be required to make any showing of injury beyond that required by other end users.

alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, such firms will be included in the class of claimants that are not required to show that they did not not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for small amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

Finally, as indicated in the PD&O, if additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after all appropriate claims have been analyzed.[6]

B. Refunds to Other Purchasers

In all three of the cases affected by this decision there were some first purchasers who were not identified by the ERA audit.[7] These firms, and downstream purchasers, may have been injured as a result of the consent order firms' pricing practices. If so, they would be entitled to a portion of the consent order funds provided by the company from which they made purchases. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric procedure. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel [8] purchased by the claimant.[9]

The volumetric refund amount is the average per gallon refund. Appendix A lists the volumetric amount relevant to each of the three proceedings. Potential applicants who were not identified by the ERA audit may use the listed figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. The presumptions and finding adopted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in a particular escrow account, all refunds from that account will be reduced by a pro rata amount.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the L&L, Lowe, and Moyle consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased No. 2 diesel fuel from L&L between November 1, 1973, and April 30, 1974; motor gasoline or motor oil from Lowe between November 1, 1973 and April 30, 1974; or motor gasoline from Moyle between March 1, 1979 and June 30, 1979. As we proposed, a portion of the consent order funds will be distributed to those firms listed in Appendices B–1, B–2, C, and D who file applications for refund provided they make any necessary demonstrations of injury.[10] The consent order firms' other eligible customers may also apply for a refund. Firms listed in Appendix B–4 may receive refunds if they can rebut the spot purchaser presumption.

No valid addresses are available for those L&L customers listed in Appendix B–2 or for Dale's 66, one of Moyle's customers. In some cases no addresses at all are available; in others, copies of the PD&O sent to the firms' last known addresses were returned by the Post Office. In an attempt to locate these firms, we will provide Moyle and various petroleum dealers' associations with copies of this Decision and will publish a notice in the **Federal Register**. We will accept information regarding the identities and present locations of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register**.[11]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of petroleum products from the applicable consent order firm. An applicant listed in appendices B–1, B–2, B–4, C, or D may instead submit a statement verifying that it purchased petroleum products from the applicable firm and is willing to rely on the data in the audit file;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the

[6] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

[7] Appendix E contains a list of 306 Lowe customers. We will contact directly those for whom we can obtain addresses. We seek assistance from interested parties in locating the others.

[8] With Lowe, the volumetric system applies to sales of motor oil. Refunds will be based on the number of cases of motor oil purchased. Lowe customers should therefore substitute the word "case" for the word "gallon" and the term "motor oil" for the word "fuel."

[9] A volumetric approach is appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury in the treatment of allegedly overcharged claimants who are unable to quantify their injury.

[10] The share of the L&L escrow fund allocated to each firm listed in Appendices B–1, B–2, B–3, and B–4 represents 10.49 percent of the amount each was allegedly overcharged. Firms listed in Appendix C have been allocated shares of the Lowe escrow fund equal to 63.88 percent of the amount they were allegedly overcharged. In Appendix D, firms have been allotted shares of the Moyle consent order equal to 50 percent of the amount they were allegedly overcharged. These figures are consistent with the terms of the L&L, Lowe, and Moyle consent orders, which settled for 10.49 percent, 63.88 percent, and 50 percent, respectively, of the total amount of alleged overcharges.

[11] If we are unable to locate any firm listed in Appendix B–2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR § 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received with 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF-0111 (L&L), HEF-0118 (Lowe), or HEF-0133 (Moyle) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by L&L Oil Company, Inc. pursuant to the consent order executed on September 20, 1979; by Lowe Oil Company pursuant to the consent order executed on September 1, 1981; and by Moyle Petroleum Company pursuant to the consent order executed on December 31, 1980, may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Date: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Consent order firm	Consent order period	Product	Amount available[1]	Volume sold (gallons)	Volumetric refund (per gal.)	Minimum purchase[2] (gallons)
L&L	November 1973 to April 1974	No. 2 diesel fuel	$303.53	218,770	$0.001387	10,812
Lowe	do	Motor oil	32,775.22	[3]77,223	[3]0.4244	[3]36
Moyle	March 1979 to June 1979	Motor gasoline	4,389.92	1,229,205	0.003571	4,200

[1] This figure represents the amount of the settlement available for purchasers not identified by the ERA audit (excluding interest).
[2] The figure listed shows the purchase volume required for a claimant to receive a $15 refund.
[3] The numbers for Lowe represent cases, not gallons.

Appendix B-1

L&L Oil Company, Inc.

First purchasers	Share of settlement[1]
A.W.I. Inc., 1229 Peters Road, Harvey, Louisiana 70058	$333.23
B.J., Inc., 3525 N. Causeway Boulevard, Metairie, Louisiana 70002	35.16
Diamond M. Drilling, Railroad Avenue, Morgan City, Louisiana 70380	1,374.50
Halliburton Services, 365 Canal Street, Suite 2600, New Orleans, Louisiana 70130	544.53
Lee & Leon, Venice, Louisiana 70091	1,185.86
Louisiana Land & Exploration, 225 Baronne Street, New Orleans, Louisiana 70112	101.79
Mallard Well Service, 5918 Fairfield Avenue, Shreveport, Louisiana 71106	27.57
The Mayronne Corporation, 3824 Peters Road, Harvey, Louisiana 70058	126.51
Noble Drilling Company, 144 Canal Street, New Orleans, Louisiana 70130	648.65
Texaco, Inc., Texaco Building, New Orleans, Louisiana 70112	153.28
Westside Oil, 527 Destrahan Avenue, Harvey, Louisiana 70058	2,104.10

[1] Not including accrued interest.

Appendix B-2

L&L Oil Company, Inc., No Address Available

First purchasers	Share of Settlement[1]
Atchafalaya Workover	$77.70
Atlantic & Pacific Marine Corp	176.79
B.R. Dredging	161.08
Centerville Petroleum Co.	158.50
Dredge Manchac	802.35
Fritz Jahncke Services	518.50
Harvey Workover	78.73
P&A Well Service	18.55

[1] Not including accrued interest.

Appendix B-3

L &L Oil Company, Inc., Unmeritorious Distributions

First purchasers	Share of settlement[1]
Coueuous & Sons	$13.49
Creppel Towing	1.57
James Dean Marine Division	.32
Dowell Chemical	11.49
Getty Oil Company	3.36
Labor Services, Inc., 2332 Pailet Street, Harvey, Louisiana 70058	7.89
Lafitte Welding Works	1.45
Lane Towing	7.72
Local Tugs, Inc	3.11
John Moterio	2.43
New Orleans Prestressed Co., Inc	9.52
Pertint Brothers	6.28
Talor Plumbing & Heating	.59
Total Services, Inc., 2605 Concord Road, Belle Chasse, Louisiana 70037	13.08
Ward Rig #16	10.37

[1] Not including accrued interest.

Appendix B-4

L&L Oil Company, Inc.

Spot purchasers	Share of settlement[1]
Ayers Material, Inc	$186.74
C.F. Bean, Inc	54.57
Brown & Root, Belle Chasse, Louisiana 70037	304.38
Great Lakes Dredge & Dock Co., 2475 Canal Street, New Orleans, Louisiana 70119	29.38
Gulf South Dredging	52.59
Sala Dredging	20.25
Salathe Oil, 2226 Peters Road, Harvey, Louisiana 70058	43.72
John W. Smith Well Service	19.68
Jules Shebert's Marina Supply	41.65
Southern Pacific Railroad, 185 Spring Street, S.W., Atlanta, Georgia 30303	67.34

L&L Oil Company, Inc.—Continued

Spot purchasers	Share of settlement[1]
Wheelers Dredging	156.13

[1] Not including accrued interest.

Appendix C

Lowe Oil Company

First Purchasers	Share of settlement[1]
Don's Texaco, Clinton, Missouri 64735	$589.60
Gibson Products, 3805 North Oak Trafficway, Kansas City, Missouri 64116	18,720.63
Jones Texaco, Warsaw, Missouri 65355	262.02

[1] Not including accrued interest.

Appendix D

Moyle Petroleum Company

First purchasers	Share of settlement[1]
Black Hills Propane, Post Office Box 2860 Rapid City, South Dakota 57709	$16.36
Budget Rent-A-Car, Post Office Box 2950, Rapid City, South Dakota 57709	84.84
Bargain Barn, Piedmont, South Dakota 57769	1,220.46
Custer 66, 844 Rushmore Road, Custer, South Dakota 57730	167.35
Dale's 66	547.18
Hill City Super G, Post Office Box 365, Hill City, South Dakota 57745	486.47
Horse Thief Campground & Resort, Post Office box 282, Hill City, South Dakota	73.17
I-90 Super G	[2]10.12
Jim's One Stop, 29 Main Street, Rapid City, South Dakota 57701	186.80
Kelly Company, South Boulevard, Wall, South Dakota 57790	58.38
Long's Resort, Hot Springs, South Dakota 57747	36.58

MOYLE PETROLEUM COMPANY—Continued

First purchasers	Share of settlement [1]
National Car Rental, Rapid City Regional Airport, Rapid City, South Dakota 57701	180.58
Norton's 66, Hot Springs, South Dakota 57747	266.20
Pactola Pines, Keystone Route, Post Office Box 3125, Rapid City, South Dakota 57701	75.50
Philtown 66, Post Office Box 777, Sturgis, South Dakota 57785	3,743.11
Rapid City Rent-A-Car, Route 2, Post Office Box 631, Rapid City, South Dakota 57701	189.14
Red Arrow Safari Camping, Route 9 Post Office Box 657, Rapid City, South Dakota 57701	32.69
Restway Travel Park, Rural Route 1, Post Office Box 39, Hermosa, South Dakota 57744	80.17
Rockerville Trading Post, Rockerville, South Dakota 57701	132.32
Somer Sun Resort, Post Office Box 185, Hot Springs South Dakota 57747	93.40
Three Forks Inn, Keystone Route, Post Office Box 418, Rapid City, South Dakota 57701	63.28
Trout Haven Campground, Nemo Route, Deadwood, South Dakota 57732	19.46

[1] Not including accured interest.
[2] As noted in the body of the Proposed Decision, we do not intend to grant claims for less than $15.

Appendix E

LOWE OIL COMPANY

Customer Name	City and State
Walmart Discount Ctr	Bentonville, AR.
Miska Supply Company	Cedar Rapids, IA.
Farm & Home Supply	Centerville, IA.
Ross & Sons Repair	Columbus Junction, IA.
Strum Auto Supply	Davenport, IA.
Fleetway Stores	Iowa City, IA.
Hanoco Oil	Leon, IA.
Quantity Discount	Leon, IA.
McCarty Oil	Leon, IA.
Fleetway Stores	Muscatine, IA.
Dixon #1 Discount	Oskaloosa, IA.
Elliott Oil	Ottumwa, IA.
Perry Discount	Perry, IA.
Farm King Supply	Macomb, IL.
Goodyear Service Store	Quincy, IL.
Illinois Oil Products	Rock Island, IL.
A.E. West Petroleum	Kansas City, KS.
Homelite Company	Lenexa, KS.
Neil's Garage	Louisburg, KS.
Quality Discount	Neodesha, KS.
C & C Inc	Olathe, KS.
Willard IGA	Osawatomie, KS.
Caylor Bros	Osawtomie, KS.
OK Bargain Store	Popla, KS.
Southerland Ben Franklin	Pacta, KS.
G & T Service	Pleasanton, KS
Henkle Egg Company	Pleasonton, KS.
Laughlin Bros	Stanley, KS.
Bob's Kwik Shop	Kearney, NE.
May Oil Company	Cowetta, OK.
Hill's Truck Service	Adrian, MO.
Mac's Discount	Adrian, MO.
Gragg's Skelly	Appleton City, MO.
Fenimore Motors	Appleton, MO.
Warner Oil	Archio, MO.
Taylor's DX Service	Barnett MO.
Riggert Tire Company	Belton, MO.
Compton Auto Parts	Belton, MO.
K.L. Brown Implement	Belton, MO.
Western Auto Store	Belton, MO.
Everetts DX Service	Belton, MO.
O.K. Tire Company	Blue Springs, MO.
Four Trees Skelly	Boonville, MO.
Windmill Shell Service	Boonville, MO.
Mike's Sinclair	Boonville, MO.
Herigon's Fina	Boonville, MO.
Simmons & Sons Garage	Boonville, MO.
Lindsey Sinclair Service	Brunswick, MO.
Bucklin Farm Supply	Bucklin, MO.
Carl's Skelly Service	Butler, MO.
Billingsley DX	Butler, MO.
Malco Discount Center #109	Butler, MO.
Jensen Farm Store	Butler, MO.
Don Apco	Butler, MO.
Oklahoma Tire & Supply	Butler, MO.
Bittner-Stark Pontiac	Butler, MO.
Bill's Champlin	Butler, MO.
Harry Cherry Service	Butler, MO.
Peabody Coal	Calhoun, MO.
Putnam Chevrolet	California, MO.
Norris MFA Service	Camdenton, MO.
Palace Standard	Camdenton, MO.
Camden Oil Company	Camdenton, MO.
Greenview Garage	Camdenton, MO.
Kenniston Hardware	Camdenton, MO.
Quality Discount	Cameron, MO.
Ayers Oil Company	Canton, MO.
Auto Tire & Parts Company	Cape Girardeau, MO.
Carroll's Vicker	Carrollton, MO.
Malco Discount	Carrollton, MO.
Rays Apco	Cedar City, MO.
North Star Service	Cedar City, MO.
Oliver Oil Company	Centerview, MO.
Airways Vickers	Centerview, MO.
Bob Station Service	Chillicothe, MO.
Rupp Oil Company	Chillicothe, MO.
LeRoy's Apco	Climax Springs, MO.
Wilkerson Garage	Climax Springs, MO.
Brigg's & Tillman	Clinton, MO.
James Brown	Clinton, MO.
Bill's Apco	Clinton, MO.
Hinken Apco	Clinton, MO.
Clinton Chrysler Plymouth	Clinton, MO.
Jim's Saw Shop	Clinton, MO.
Ray Odom	Clinton, MO.
Ron's Auto Parts	Clinton, MO.
Jay's Service Center	Clinton, MO.
Keck Oil Company	Clinton, MO.
Stewart Nattinger	Clinton, MO.
Paul's Derby	Cole Camp, MO
Bob's MFA	Cole Camp, MO.
W&K Chevrolet	Cole Camp, MO.
Cleo's Package Store	Cole Camp, MO.
Marvins 66 Service	Cole Camp, MO.
Weinberg's Conoco	Cole Camp, MO.
Veals Skelly Service	Cole Camp, MO.
Rogers Garage	Cole Camp, MO.
Arnold's Auto Repair	Cole Camp, MO.
Bud's Place	Cole Camp, MO.
Help Apco Service	Columbia, MO.
Coleman's Apco	Columbia, MO.
Skaggs Drug Company	Columbia, MO.
MFA Oil Company	Columbia, MO.
Beary, Conner & Hawkins Distributors.	Columbia, MO.
Creighton Oil Company	Creighton, MO.
Hart's Sinclair	Edwards, MO.
Harbison Apco	Eldon, MO.
Miller's Auto Supply	Eldon, MO.
Ivey Oil	Eldon, MO.
Bob's Service	Eldon, MO.
Ernie Jones Motor Company	Eldon, MO.
Allison Oil Company	Eldorado Springs, MO.
Interstate Apco	Emma, MO.
Opies Discount	Eugene, MO.
Bill's Mobil Service	Eugene, MO.
Doerhoff's Garage	Eugene, MO.
Excelsior Springs Apco	Excelsior Springs, MO.
Collier Store	Foster, MO.
Phil Fina	Friesoe, MO.
Pardue Apco	Fulton, MO.
Zook DX	Garden City, MO.
Mel's Apco	Garden City, MO.
Yoder Oil Company	Garden City, MO.
Ament's #3	Garden City, MO.
Gilliam Trucking	Gilliam, MO.
Granby Auto Supply	Granby, MO.
Hawks Standard service	Hamilton, MO.
L & L Champlin Service	Hamilton, MO.
Hannibal Farm Supply	Hannibal, MO.
Bo's Oil Company	Harrisonville, MO.
Bill's Skelly	Harrisonville, MO.
Bridges Chevrolet	Harrisonville, MO.
Wingert Oil	Harrisonville, MO.
McHenry Pontiac	Harrisonville, MO.
Harvey Buick	Harrisonville, MO.
Ament's #1	Harrisonville, MO.
Ament's #2	Harrisonville, MO.
Don's Truck Stop	Harrisonville, MO.
Harold Cherry	Harrisonville, MO.
Tractor Parts & Supply	Harrisonville, MO.
Frank & Ida's Coop	Henrietta, MO.
Higginsville Auto Supply	Higginsvilla, MO
Opfer & Deke	Higginsville, MO.
R & S Bargain	Higginsville, MO.
MFA Service	Higginsville, MO.
Brown & Eissler Implement	Holden, MO.
Earl's Garage	Holden, MO.
Wee Discount	Holden, MO.
Lawler Oil Company	Holden, MO.
S & H Vickers	Holder, MO
B & H Service	Hustonia, MO.
McGees Oil	Hume, MO.
Independence Auto Supply	Independence, MO.
Mid States Oil	Jefferson City, MO.
Schanzmeyer Ford	Jefferson City, MO.
Racher's 66	Jefferson City, MO.
Gerbes Super Market #1	Jefferson City, MO.
Apache Flat	Jefferson City, MO.
House of Bargains	Jefferson City, MO.
Charles North Star	Jefferson City, MO.
Normans Auto Supply	Jefferson City, MO.
Pike Oil Company	Jefferson City, MO.
Jefferson Street Apco	Jefferson City, MO.
Stan's Market	Kansas City, MO.
King Gas & Oil Company	Kansas City, MO.
Ament's #5	Kansas City, MO.
A & M Auto Parts	Kansas City, MO.
Safeway Stores	Kansas City, MO.
McWilliams Liquidators	Kansas City, MO.
Main Wholesale (Bargain City)	Kansas City, MO.
Skaggs Drug	Kansas City, MO.
Harry's Factory Outlet	Kansas City, MO.
Skaggs Drug #168	Kansas City, MO.
Coast to Coast Stores	Kansas City, MO.
Keytesville Itco	Keytesville, MO.
Ferguson Implement	Kingsville, MO.
Farm & Home Supply	Kirksville, MO.
Hilltop Fina Service	Knob Noster, MO.
Porters Service	Knob Noster, MO.
Smiley's Mobil	Knob Noster, MO.
King Oil (Mini Mart)	Lamonte, MO.
Faulconer's Garage	Lamonte, MO.
Malco Discount Center	Lees Summit, MO.
Tire City Discount	Lees Summit, MO.
Glens Apco	Lees Summit, MO.
G&W Sales	Lees Summit, MO.
Junction Service	Leeton, MO.
Dicks Standard	Lexington, MO.
Malco Discount Center	Lexington, MO.
Mattingly Bros	Lexington, MO.
Chuck's Standard	Lexington, MO.
Pat's Quick Stop	Lexington, MO.
Davis Oil Company (MFA)	Lincolin, MO.
Palo Store	Lincoln, MO.
Hurley's Skelly Service	Livonia, MO.
Smith's Auto Parts	Louisiana, MO.
Troost Auto Parts	Louisiana, MO.
Save Way Oil	Lowry City, MO.
Oakley Johnson	Lucerne, MO.
Curt's Deeprock Service	Macon, MO.
Brigg's & Cupp Chevrolet	Marcelino, MO.
Dillon DX	Marshall, Mo.
Earl Kays Motor	Marshall, MO.
Owen Coop	Mayview, MO.
Franklin Garage	Mayview, MO.
Sechrest Service	Medford, MO.
Farm & Home Supply	Memphis, MO.
Sherrell's Fina	Meta, MO.
Oasis Sales	Mobery, MO.
Robert Bros. Service	Montrose, MO
Robert Bros. Service	Montrose, MO.
Lynn Meredith	Montrose, MO.
Skagg's Auto Supply	Neosho, MO.
Wysong Motors Inc	Nevada, MO.
Ziajor Auto Supply	Osceola, MO.
Naus DX	Otterville, MO.
Gerbes Super Market	Pleasant Hill, MO.
Perry Service	Pleasant Hill, MO.
D & S Apco	Pleasant Hill, MO.
Central Coop Service	Pleasant Hill, MO.
Bob's Apco	Pleasant Hill, MO.
Hammons DX	Pleasant Hill, MO.
Meyer's Service	Pola, MO.
Sell's Standard	Prairie Home, MO.
Raymore Service Center	Raymore, MO.
Skaggs Drug #183	Raytown, MO.
Sam's Bargain City	Raytown, MO.
Western Auto Store	Rich Hill, MO.
C.R. Morgan Oil	Rich Hill, MO.
Red Star Oil Company	Rich Hill, MO.
Steuke Oil Company	Rich Hill, MO.
L.W. McElroy	Rich Hill, MO
Carmichael Vickers	Richmond, MO.
J & 7 Service	Roach, MO.
Jakes Skelly	Rockville, MO.

LOWE OIL COMPANY—Continued

Customer Name	City and State
North Shore Shopping Center	Rocky Mount, MO.
Campbell's Garage	Russellville, MO.
Ed's Garage	Russellville, MO.
Skaggs Drug	Sedalia, MO.
Consumers Market	Sedalia, MO.
DLC Petroleum	Sedalia, MO.
W.T. Grant Store	Sedalia, MO.
Broadway Apco	Sedalia, MO.
Chamerlin Champlin	Sedalia, MO.
Kenney Dobson	Sedalia, MO.
Midwest Auto Stores	Sedalia, MO.
B & B Transmission	Sedalia, MO.
Sunrise DX	Sedalia, MO.
Routzong & Malmo	Sedalia, MO.
Kast MFA	Sedalia, MO.
Seneca Auto Supply	Seneca, MO.
Dennis Oil	Springfied, MO.
Keltner Interprises	Springfield, MO.
Missouri White Trucks	Springfield, MO.
Blocks Super Discount	St. Joseph, MO.
Viebrocks Auto Repair	Stover, MO.
M & M Oil Company	Stover, MO.
Davis EZ Wash	Stover, MO.
Sousley's DX	Stover, MO.
Tim's Skelly	Stover, MO.
Lakeland Sinclair	Sunrise Beach, MO.
Powell Service	Sunrise Beach, MO.
Lakeland Discount	Sunrise Beach, MO.
J & B Service	Sweet Springs, MO.
Frazier Ford	Sweet Springs, MO.
Green's Skelly	Tipton, MO.
Wolf's Repair Service	Tipton, MO.
Irvin Oil Company	Trenton, MO.
Martin's Town & Country	Trenton, MO.
Barreth Oil	Union, MO.
B & R Bargain Spot	Unionville, MO.
Urich Oil Company	Urich, MO.
Vogt Skelly	Urich, MO.
E.O. Graham	Urich, MO.
Kelsay Elevator	Urich, MO.
5 & 52 Apco	Versailles, MO.
Kenny's Apco	Versailles, MO.
Orbit Car Wash	Versailles, MO.
Gabriel Skelly	Versailles, MO.
Clark's Apco	Versailles, MO.
West Vue Service	Versailles, MO.
Gerbes Supermarket	Versailles, MO.
Clark's Retreading	Versailles, MO.
Salzman's Fina	Versailles, MO.
Yarnell's DX	Versailles, MO.
Avey's Shell	Versailles, MO.
Warrensburg Fina	Warrensbury, MO.
TG&Y Stores #475	Warrensbury, MO.
Owings Sinclair	Warrensbury, MO.
George Rusch Motors	Warrensbury, MO.
Denny Gulf Service	Warrensbury, MO.
B & B Motor Supply Inc	Warrensbury, MO.
Warrensburg Deeprock	Warrensbury, MO.
Steven's Sinclair	Warrensbury, MO.
Hunt's MFA	Warrensbury, MO.
Paul Shinn Oil Company	Warsaw, MO.
Jack's Apco	Warsaw, MO.
Smith's Center	Warsaw, MO.
Oklahoma Tire & Supply	Warsaw, MO.
Webb City Auto Supply	Webb, City, MO.
Western Farm & Home	West Plains, MO.
Ferguson Chevrolet	Windsor, MO.
Suhr Standard	Windsor, MO.
Baskins Conoco	Windsor, MO.
Sim's Apco	Windsor, MO.
Ellis DX	Windsor, MO.

[FR Doc. 85-23308 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2904-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Office of Water

National Pollutant Discharge Elimination System (NPDES)

Title: Modification/Variance for Permit to Discharge Wastewater, and Associated Regulations (EPA ID #0029, 40 CFR Parts 122-125). (This submission requests renewal of existing requirements. No changes are being proposed.)

Abstract: NPDES permittees must notify EPA or the State agency of facility changes which may require adjustment of permit conditions. Permittees or other interested persons may also request adjustment by submitting technical data to the permit authority, which approves/denies the request according to established criteria.

Respondents: Individuals, businesses, and other organizations discharging wastewater.

Agency PRA Clearance Requests Completed by OMB

EPA #0010, Compliance Demonstration by Importers of Non-Conforming Motor Vehicles and Engines, was approved 8/23/85 (OMB #2060-0095; expires 7/31/88).

EPA #1221, Milk Cow and Population Survey, was approved 8/29/85 (OMB #2080-0017; expires 8/31/88).

EPA #1251, Information Requirements for Advanced Treatment Performance Evaluation, was approved 8/20/85 (OMB #2040-0099; expires 8/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street SW., Washington, D.C. 20460;

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, D.C. 20503.

Dated: September 24, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Division.

[FR Doc. 85-23247 Filed 9-27-85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board Membership

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the GSA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Director, Executive Resources Division, Office of Personnel, General Services Administration, 18th anf F Streets, NW., Washington, DC 20405 (202) 566-1207.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Paul T. Weiss, Executive Assistant to the Administrator;

2. A. C. Arterbery, Associate Administrator for Operations;

3. Frank J. Carr, Assistant Administrator for Information Resources Management;

4. Donald C. J. Gray, Assistant Administrator for Federal Supply and Services;

5. Earl E. Jones, Acting Commissioner, Federal Property Resources Service;

6. Allie B. Latimer, General Counsel;

7. William F. Sullivan, Commissioner, Public Buildings Service.

Dated: September 20, 1985.

Terence C. Golden,

Administrator.

[FR Doc. 85-23272 Filed 9-27-85; 8:45 am]

BILLING CODE 6820-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-055-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1986

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

ACTION: General Notice With Comment Period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program for fiscal year 1986. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary or carrier agreement or take other contract actions; assign or reassign providers of services to an intermediary; or designate regional or national intermediaries.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, as amended by section 2326 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which requires us to publish for public comment in the Federal Register those criteria and standards against which we evaluate intermediaries and carriers.

EFFECTIVE DATES: The criteria and standards are effective October 1, 1985. We will consider revising the criteria and standards based on public comments. To assure consideration, comments should be received by October 29, 1985.

ADDRESS: Address comments in writing to: Halth Care Financing Administration, Department of Health and Human Services, Attention: BPO-055-GNC, P.O. Box 26676, Baltimore, Maryland 21207

In commenting, please refer to file code BPO-55-GNC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890). Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. We will, however, accept the comments of interested parties, consider them, and publish the comments and our responses to them in a subsequent **Federal Register** if we modify the FY 1986 criteria and standards as announced.

FOR FURTHER INFORMATION CONTACT: Newton H. Dikoff, (301) 594-8191.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations are known as fiscal intermediaries and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the reimbursable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop standards, criteria, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. Since 1980, we have evaluated intermediary performance through the Contractor Performance Evaluation Program (CPEP).

On June 23, 1980 was published regulations at 42 CFR 421.120 (45 FR 42174) to implement the requirement of section 1816(f) of the Act that we establish by regulations our criteria and standards for evaluating intermediary performance. We revised § 421.120 on February 18, 1983 (48 FR 7176) to provide for publication of **Federal Register** notices to announce standards and criteria applicable during each fiscal year. Since that time we have been publishing our standards and criteria for intermediaries in the **Federal Register.**

Section 1842(b)(2) of the Act allows us to evaluate the performance of Medicare carriers. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries.

As a result of section 2326(c) of the Deficit Reduction Act of 1984, we are required to publish in the **Federal Register** the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing them. (See 49 FR 38516, September 28, 1984 for an explanation of the effect of Pub. L. 98-369 on prior regulatory requirements concerning publication of criteria and standards.) In view of this requirement, this notice announces the FY 1986 criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers.

B. Fiscal Year 1986 Criteria and Standards—General

The FY 1986 CPEP retains the structural changes which were included in the notice which announced the FY 1985 criteria and standards (see 49 FR 38516). These include:

1. Inclusion of the statistical standards provided for by 42 CFR 421.122 under the applicable performance criteria, rather than presentation of the standards as a separate part of the notice;

2. Alignment of the performance areas to parallel the organization of intermediary and carrier budgets;

3. Use of a two-tiered scoring system (criteria and elements/statistical standards) instead of the three-tiered approach (performance areas, criteria, and elements) used prior to FY 1985; and

4. Establishment of an individual unit cost standard for each contractor.

Although we have made no additional major structural changes in CPEP for FY 1986, we have made two organizational changes which resulted in a reduced number of performance criteria from FY 1985. At the request of the contractor community, for both intermediaries and

carriers, we have removed the elements measuring the timeliness and accuracy of various reports from the criterion on contract management and placed them in the criteria to which they functionally relate. Intermediaries and carriers advised us that CPEP would be more useful to them for purposes of self-evaluation if the evaluation of these reports was organized in a manner similar to the organization of a contractor's operations. Because the remaining contract management elements were too few to support a separate criterion they have been merged into the fiscal management criterion to create a single criterion on fiscal and contract management. In addition, the Part A criterion evaluating provider services has been combined with the beneficiary services criterion to form a new beneficiary and provider services criterion. We believe that the similarity of services provided by intermediaries to beneficiaries and providers, which concern primarily bill-processing inquiries, obviates the need for two separate criteria in these areas. As these services are already evaluated in a single criterion for carriers, this brings the criteria for Part A contractors and those for Part B into closer alignment. These changes reduce the number of criteria for intermediaries from nine for FY 1985 to seven for FY 1986 and for carriers from seven to six.

Action Based on Performance Evaluations

We may, as in previous years, initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance standards and elements. Under Sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determinations on:

1. Entering into, renewing, or terminating agreements with contractors;

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards and elements in which superior, average, or deficient performance occurs;

c. Extent of each failure;

d. Relative significance of the elements and standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the efficient administration of the Medicare Program.

Replacement of Contractors Through Competitive Bidding

Section 2326(a) of the Deficit Reduction Act of 1984 allows HCFA to use competitive bidding to replace a contractor whose performance over a period of time has been in the lowest 20th percentile as measured by these performance criteria and standards. In FY 1985 and 1986, section 2326(a) authorizes HCFA to enter into two intermediary agreements and two carrier contracts based on competitive bidding, without regard to provider nomination rights, in order to replace low ranking intermediaries and carriers. Although this provision was not invoked in FY 1985, we anticipate invoking it in FY 1986.

C. Scoring System

For both intermediaries and carriers, each performance criterion is comprised of a number of review elements and, in certain criteria, statistical standards. Each element and standard is scored on a scale of 0–10 and has a method of evaluation that is used to calculate a rating based on a contractor's performance in that element or standard.

A contractor's performance is evaluated against each applicable element and standard. In general, if a contractor exactly meets the requirements for an element or standard, it achieves a rating of 7, to which we refer as the threshold score. Based on the performance level established for each element and standard, a rating below the threshold (i.e., 6 or lower) constitutes a deficiency requiring correction or improvement.

Each standard and element is assigned a weight of 1, 3, or 5 according to its relative significance within the evaluation program, with critical elements and standards receiving a weight of 5. The final score for each element and standard is determined by multiplying the rating by the weight. For each performance criterion, the sum of the final scores achieved for all standards and elements in the criterion is compared to the total points available to the contractor for the criterion. If a contractor does not perform a particular function or the element or standard measuring a particular function is not revised for some other reason, the total points available to the contractor in that criterion will be reduced appropriately. A contractor must achieve 70 percent of the available points for a performance criterion as well as equal or exceed the threshold score for each of the designated critical standards and elements in order to pass the criterion.

Certain standards and elements have been designated as "critical", with a weight of 5. A critical standard or element is one which addresses a contractor function of such significance to the program that deficient performance cannot be tolerated. Therefore, a rating below the threshold (i.e., 6 or less) constitutes a failure not only of that standard or element, but of the criterion in which it is included and of the CPEP. In FY 1986, there are 19 critical elements and one critical standard for intermediaries and 11 critical elements and three critical standards for carriers. Critical standards and elements are annotated with an asterisk in the lists of standards and elements.

Failure to meet the individual unit cost standard (in the absence of adjustment to the standard pre-appoved by HCFA) will result in failure of CPEP. The mean of the individual contractor unit cost standards will be the standard for all contractors. Contractors with actual FY 1986 unit costs over this mean will receive a score less than the total score possible for the element under CPEP.

D. Criteria and Standards for Intermediaries

We will use seven criteria to evaluate the overall quality of an intermediary's performance during FY 1986. They are: (1) Bill processing; (2) beneficiary and provider services; (3) productivity investments; (4) payment safeguards—bill processing; (5) payment safeguards—provider reimbursement; (6) payment safeguards—medical review; and (7) fiscal and contract management. The seven criteria contain a total of 80 elements and six standards. There are seven elements for bill processing, six for beneficiary and provider services, two for productivity investments, 10 for payment safeguards—bill processing, 27 for payment safeguards—provider reimbursement, eight for payment safeguards—medical review, and 20 for fiscal and contract management. There are also six standards for bill processing.

1. Bill Processing Criterion

An intermediary must properly control and process bills from providers, transmit accurate bill information to HCFA, and achieve an acceptable unit cost. The intermediary is required to meet the following elements:

- Control bills from date of receipt (Element 1 Weight=3.0).
- Hospital inpatient bills must pass HCFA utilization edits (Element 2 Weight=1.0).
- Outpatient bills must pass HCFA utilization edits (Element 3 Weight=1.0).
- SNF bills must pass HCFA utilization edits (Element 4 Weight=1.0).
- Make payment for dialysis to End-Stage Renal Disease (ESRD) providers based on a determined composite rate or the approved exception rate and assure that duplicate payments do not occur (Element 5 Weight=3.0).
- Submit accurate Intermediary Benefit Payment Reports (Element 6 Weight=3.0).
- Submit Intermediary Benefit Payment Reports timely (Element 7 Weight=1.0).

The intermediary must also meet the following standards:

- Process hosptial inpatient bills timely (Standard 1 Weight=3.0).
- Process outpatient bills timely (Standard 2 Weight=3.0).
- Process SNF bills timely (Standard 3 Weight=3.0).
- Process HHA bills timely (Standard 4 Weight=3.0).
- Control the number of days work on hand to an acceptable level (Standard 5 Weight=3.0).
- Process bills at an acceptable unit cost (Standard 6 Weight=5.0) *.

2. Beneficiary and Provider Services Criterion

An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to inquiries, providing reconsiderations of claims, and furnishing appropriate notices of decisions. We will use the elements below to evaluate the beneficiary services for FY 1986. The intermediary is required to:

- Respond accurately to beneficiary and provider inquiries (Element 1 Weight=3.0).
- Respond to beneficiary and provider inquiries timely (Element 2 Weight=1.0).
- Prepare accurate reconsideration determinations (Element 3 Weight=3.0).
- Provide appropriate notices of reconsideration decisions and furnish copies to appropriate parties (Element 4 Weight=1.0).
- Maintain proper level of service for providers' incoming telephone calls (Element 5 Weight=3.0).
- Respond accurately to providers' telephone inquiries (Element 6 Weight=3.0).

3. Productivity Investments Criterion

An intermediary must take programmatic, administrative, and systems initiatives designed to improve the cost effectiveness and/or efficiency of Medicare claims operations, reduce burden on the public, and improve beneficiary understanding of the program. We will use the elements below to evaluate this criterion in FY 1986. The intermediary is required to:

- Meet targeted volume of electronic media claims (Element 1 Weight=5.0) *.
- Implement systems enhancements effectively (Element 2 Weight=3.0)

4. Payment Safeguards—Bill Processing Criterion

An intermediary must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the following elements to evaluate this criterion in FY 1986.

The intermediary is required to:

- Properly process waiver of liability for non-PPS provider billings and accurately determine presumptive status (Element 1 Weight=3.0).
- Achieve targeted Medicare secondary payer goals (Eelement 2 Weight=5.0) *.
- Identify and dispose of all fraud and abuse cases properly (Element 3 Weight=3.0).
- Properly apply blended payment rate under PPS (Element 4 Weight=5.0) *.
- Assure that providers submit bills timely in order to meet requirements to receive periodic interim payments per HCFA 15–1, section 2405.1B (Element 5 Weight=3.0).
- Properly process bills in accordance with beneficiary status regarding HMO enrollment (Element 6 Weight=3.0).
- Assure that Part A denial data are transmitted timely to the carrier (Element 7 Weight=3.0).
- Provide the UNIBILL to Peer Review Organizations (PROs) within agreed upon timeframes and assure complete hospital discharge data (Element 8 Weight=5.0) *.
- Provide consistent error-free UNIBILL data to PROs (Element 9 Weight=5.0) *.
- Process adjustment records timely and return the adjusted record to the PRO (Element 10 Weight=5.0) *.

5. Payment Safeguards—Provider Reimbursement Criterion

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the elements below to evaluate the criterion in FY 1986. The intermediary is required to:

- Establish interim payments for hospitals to approximate Medicare reimbursable costs (Element 1 Weight=5.0) *.
- Establish interim payments for SNFs to approximate Medicare reimbursable costs (Element 2 Weight=3.0).
- Establish interim payments for HHAs to approximate Medicare reimbursable costs (Element 3 Weight=3.0).
- Properly compute, review, and adjust interim rates under PPS (Element 4 Weight=5.0)*.
- Review Interim Rate Change Reports (HCFA 91s) and take appropriate action in accordance with general instructions (Element 5 Weight=1.0).
- Take appropriate action when providers fail to file cost reports by the due date (Element 6 Weight=3.0).
- Confine the incidence of hospital overpayments to acceptable levels (Element 7 Weight=5.0)*.
- Confine the incidence of SNF overpayments to acceptable levels (Element 8 Weight=5.0)*.
- Confine the incidence of HHA overpayments to acceptable levels (Element 9 Weight=5.0)*.
- Properly calculate and assess interest penalties (Element 10 Weight=3.0).
- Recover overpayments to providers (Element 11 Weight=5.0)*.
- Properly finalize PPS hospital cost reports (Element 12 Weight=5.0)*.
- Properly finalize SNF cost reports (Element 13 Weight=3.0).
- Properly perform audits and target amount computations required by section 1886 of the Social Security Act (Element 14 Weight=5.0)*.
- Properly finalize HHA cost reports (Element 15 Weight=3.0).
- Administer a cost-effective provider audit program (Element 16 Weight=5.0)*.
- Identify and dispose of fraud and abuse cases involving audited cost reports properly (Element 17 Weight=3.0).
- Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS) (Element 18 Weight=3.0).

- Submit HCRIS reports timely (Element 19 Weight=3.0).
- Submit accurate provider overpayment data (Element 20 Weight=3.0).
- Submit provider overpayment data timely (Element 21 Weight=1.0).
- Submit accurate ESRD cost reports and worksheets (Element 22 Weight=1.0).
- Submit ESRD cost reports and worksheets timely (Element 23 Weight=1.0).
- Settle hospital cost reports timely (Element 24 Weight=3.0).
- Settle SNF cost reports timely (Element 25 Weight=3.0).
- Settle HHA cost reports timely (Element 26 Weight=3.0).
- Ensure that no payments are made to excluded, terminated, or suspended providers or physicians (Element 27 Weight=3.0).

6. Payment Safeguards—Medical Review Criterion

An intermediary must perform necessary medical review activities as required by HCFA instructions in a timely, accurate, and cost-effective manner. We will use the elements below to evaluate the criterion in FY 1986. The intermediary is required to:

- Subject bills to the appropriate level of medical review (Element 1 Weight=5.0)*.
- Process bills to ensure that correct medical review determinations are made (Element 2 Weight=5.0)*.
- Properly rank HHAs for coverage compliance reviews (Element 3 Weight=3.0).
- Review HHAs ranked in the top 10 percent within one year of the ranking (Element 4 Weight=3.0).
- Accurately conduct HHA coverage compliance reviews (Element 5 Weight=3.0).
- Administer a cost-effective medical review/utilization review (MR/UR) program (Element 6 Weight=5.0)*.
- Submit accurate quarterly reports of benefit savings (Element 7 Weight=3.0).
- Submit timely reports of benefit savings (Element 8 Weight=1.0).

7. Fiscal and Contract Management Criterion

An intermediary must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations, and HCFA instructions. The intermediary is required to:

- Ensure that allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with relative benefits received or other equitabler relationship (Element 1 Weight=3.0).
- Control actual operations expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 2 Weight=3.0).
- Control actual MR/UR expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 3 Weight=3.0).
- Control actual provider audit expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrance of such expenditures (Element 4 Weight=3.0).
- Control actual productivity investments expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 5 Weight=3.0).
- Control administrative funds drawn to the approved budget distribution and in line with actual expenditures (Element 6 Weight=3.0).
- Submit an accurate budget request (Element 7 Weight=3.0).
- Submit the budget request timely (Element 8 Weight=1.0).
- Submit accurate plan of Expenditure Reports and Interim Expenditure Reports (Element 9 Weight=3.0).
- Submit Plan of Expenditure Reports and Interim Expenditure Reports timely (Element 10 Weight=3.0).
- Submit accurate Variance Reports (Element 11 Weight=3.0).
- Submit Variance Reports timely (Element 12 Weight=3.0).
- Submit accurate Time Account Adjustment Schedules (Element 13 Weight=1.0).
- Submit Time Account Adjustment Schedules timely (Element 14 Weight=1.0).
- Submit an accurate Final Administrative Cost Proposal (FACP) (Element 15 Weight=3.0).
- Submit the FACP timely (Element 16 Weight=3.0).
- Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions (Element 17 Weight=3.0).
- Achieve Small and Disadvantaged Business goals (Element 18 Weight=1.0).
- Accurately and timely implement program instructions and manual transmittals issued by HCFA (Element 19 Weight=3.0).
- Implement Priority 1 critical tasks timely and accurately (Element 20 Weight=5.0).

E. Criteria and Standards for Carriers

We will use six criteria to evaluate the overall quality of carrier performance during FY 1986. They are: (1) Claims processing; (2) beneficiary services; (3) productivity investments; (4) payment safeguards—claims processing; (5) payment safeguards—medical review; and (6) fiscal and contract management. The six criteria contain a total of 70 elements and six standards. There are eight elements for claims processing, 14 for beneficiary services, four for productivity investments, 15 for payment safeguards—claims processing, 10 for payment safeguards—medical review, and 19 for fiscal and contract management. In addition, there are four standards for claims processing and two for payment safeguards—claim processing.

1. Claims Processing Criterion

A carrier must process Part B Medicare claims to allowance or disallownace in accordance with general instructions. A carrier must also accurately determine the amount of program payments allowed for covered services. For FY 1986 we will use the following 8 elements to assess carriers' claims processing performance. The carrier is required to:

- Control claims from date of receipt (Element 1 Weight=3.0).
- Establish customary charge screens in accordance with HCFA instructions (Element 2 Weight=3.0).
- Establish locality prevailing charges in accordance with HCFA requirements (Element 3 Weight=3.0).
- Update new reasonable charge screens timely (Element 4 Weight=3.0).
- Properly compute the ESRD physician monthly capitation rate and assure that duplicate payments are not made under this program (Element 5 Weight=3.0).
- Properly integrate the ESRD beneficiary selection from the HCFA-382 annual listing and monthly update into the claims processing system (Element 6 Weight=1.0).

• Submit initial Part B Medicare (BMAD) files timely (Element 7 Weight=3.0).
• Resubmit returned BMAD files timely (Element 8 Weight=3.0).

The carrier must also meet the following standards:

• Process assigned claims timely (Standard 1 Weight=3.0).
• Process nonassigned claims timely (Standard 2 Weight=3.0).
• Control the number of days work on hand to an acceptable level (Standard 3 Weight=3.0).
• Process claims at an acceptable unit cost (Standard 4 Weight=5.0)*.

2. Beneficiary Services Criterion

A carrier must ensure that Medicare beneficiaries are treated according to law, regulations, and general instructions covering areas such as responding to inquiries, issuing notices of determinations, and providing impartial reviews. We will use 14 elements to evaluate carrier performance in serving beneficiaries. The carrier must:

• Respond timely to beneficiary inquiries (Element 1 Weight=1.0).
• Respond accurately to beneficiary inquiries (Element 2 Weight=5.0).
• Provide readable responses to beneficiary inquiries (Element 3 Weight=3.0).
• Maintain a proper level of service for incoming telephone calls (Element 4 Weight=3.0).
• Respond accurately to all telephone inquiries (Element 5 Weight=3.0).
• Respond timely to all telephone inquiries (Element 6 Weight=1.0).
• Respond accurately to physician and supplier inquiries (Element 7 Weight=3.0).
• Respond timely to physician and supplier inquiries (Element 8 Weight=1.0).
• Properly generate explanations of Medicare benefits (EOMBs) and denial notices (Element 9 Weight=3.0).
• Ensure that special messages developed by the carrier for the EOMB were approved by the HCFA regional officer (Element 10 Weight=1.0).
• Prepare the Medicare Participating Physician/Suppliers Directory timely (Element 11 Weight=3.0).
• Complete reviews accurately (Element 12 Weight=5.0)*.
• Complete reviews timely (Element 13 Weight=1.0).
• Furnish readable notices of review determinations to beneficiaries (Element 14 Weight=3.0).

3. Productivity Investments Criterion

A carrier must take programmatic, administrative, and systems initiatives designed to improve the cost effectiveness and/or efficiency of Medicare claims operations, reduce the burdens on the public, and improve beneficiary understanding of the program. We will use four elements to assess performance of this activity. The carrier must:

• Meet targeted volume of electronic media claims (Element 1 Weight=5.0)*.
• Implement the HCFA Common Procedure Coding System annual update timely (Element 2 Weight=5.0)*.
• Notify the HCFA regional office promptly of all local code assignments (Element 3 Weight=3.0).
• Implement systems enhancements effectively (Element 4 Weight=3.0).

4. Payment Safeguards—Claims Processing Criterion

A carrier must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use 15 elements and two standards to assess performance in this area. The carrier is required to meet the following elements:

• Ajudicate claims for non-physician medical services accurately (Element 1 Weight=3.0).
• Conduct postpayment reviews to identify and develop claims for nonphysician services furnished to hospital inpatients (Element 2 Weight=3.0).
• Correctly determine reimbursement of laboratory services (Element 3 Weight=3.0).
• Follow HCFA instructions regarding provider-based physician reimbursement (Element 4 Weight=3.0).
• Follow HCFA instructions regarding teaching physician reimbursement (Element 5 Weight=3.0).
• Achieve targeted Medicare secondary payer goals (Element 6 Weight=5.0)*.
• Identify and dispose of all fraud and abuse cases properly (Element 7 Weight=3.0).
• Determine liability and properly dispose of beneficiary overpayment cases (Element 8 Weight=3.0).
• Properly calculate and assess interest penalties (Element 9 Weight=3.0).
• Ensure that no payments are made to excluded, terminated, or suspended providers, physicians, or suppliers (Element 10 Weight=3.0).
• Submit accurate physician/supplier overpayment data quarterly (Element 11 Weight=3.0).
• Submit physician/supplier overpayment data timely (Element 12 Weight=1.0).
• Correctly determine reimbursement of durable medical equipment (Element 13 Weight=3.0).
• Properly process claims in accordance with beneficiary status regarding HMO enrollment (Element 14 Weight=3.0).
• Furnish fee schedules for clinical diagnostic laboratory services to the appropriate Medicare intermediary in a timely manner (Element 15 Weight=3.0).

The carrier must also meet the following standards:

• Maintain an acceptable overpayment deductible error rate (Standard 1 Weight=5.0)*.
• Maintain an acceptable underpayment deductible error rate (Standard 2 Weight=5.0)*.

5. Payment Safeguards—Medical Review Criterion

A carrier must perform necessary medical review activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. We will use ten elements to assess performance in this area. The carrier is required to:

• Submit accurate quarterly medical review reports (Element 1 Weight=3.0).
• Submit timely quarterly medical review reports (Element 2 Weight=1.0).
• Submit an accurate annual medical review report on postpayment activities (Element 3 Weight=3.0).
• Submit a timely annual medical review report on postpayment activities (Element 4 Weight=1.0).
• Make accurate medical review determinations (Element 5 Weight=5.0)*.
• Administer a cost-effective MR/UR program (Element 6 Weight=5.0)*.
• Conduct an effective postpayment program (Element 7 Weight=3.0).
• Implement mandated prepayment medical review screens with parameters (Element 8 Weight=5.0)*.
• Implement HCFA protocols for medical review (Element 9 Weight=5.0)*.
• Review physician services for Part A denials referred to Part B for review (Element 10 Weight=5.0)*.

6. Fiscal and Contract Management Criterion

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and the cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations, and HCFA instructions. We will use 19 elements to measure performance of

carriers' fiscal and contract management of the Medicare program. The carrier is required to:

- Ensure that cost allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship (Element 1 Weight=3.0).
- Control actual operations expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 2 Weight=3.0).
- Control actual MR/UR expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 3 Weight =3.0).
- Control actual productivity investments expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 4 Weight=3.0).
- Control administrative funds drawn to the approved budget distribution and in line with actual expenditures (Element 5 Weight=3.0).
- Submit an accurate budget request (Element 6 Weight=3.0).
- Submit the budget request timely (Element 7 Weight=1.0).
- Submit accurate Plan of Expenditure Reports and Interim Expenditure Reports (Element 8 Weight=3.0).
- Submit plan of Expenditure Reports and Interim Expenditure Reports timely (Element 9 Weight=3.0).
- Submit accurate Variance Reports (Element 10 Weight=3.0).
- Submit Variance Reports timely (Element 11 Weight=3.0).
- Submit accurate Time Account Adjustment Schedules (Element 12 Weight=1.0).
- Submit Time Account Adjustment Schedules timely (Element 13 Weight=1.0).
- Submit an accurate Final Administrative Cost Proposal (FACP) (Element 14 Weight=3.0).
- Submit the FACP timely (Element 15 Weight=3.0).
- Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions (Element 16 Weight=3.0).
- Achieve Small and Disadvantaged Business goals (Element 17 Weight=1.0).
- Accurately and timely implement program instructions and manual transmittals issued by HCFA (Element 18 Weight=3.0).
- Implement Priority 1 critical tasks timely and accurately (Element 19 Weight=5.0)*.

F. Regulatory Impact Analysis

1. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as a rulemaking document, including a notice such as this one, that is likely to have an annual economic impact of $100 million or more, cause a major increase in costs or prices, or have a significant adverse effect on competition, employment, investment, productivity, or innovation.

We do not expect this notice to meet any of these criteria. Its primary direct effect is on our operations and the operations of our contractors. We expect the incremental costs of administering these criteria and standards to be more than offset by resulting improvements in efficiency and effectiveness. We estimate that our costs will increase only minimally. Further, we expect the effects on both competition and productivity to be favorable, not adverse, and the effects, if any, on employment, investment, and innovation to be negligible.

For these reasons, we have determined that this notice is not a major rule. Therefore, a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 to 612), requires us to prepare and publish a regulatory flexibility analysis for any rulemaking document unless the Secretary certifies, under setion 605(b) of the Act, that the requirements do not have a significant impact on a substantial number of small entities.

Under the RFA, a small entity is defined as a small business, an independently owned and operated nonprofit enterprise that is not dominant in its field, or an agency or governmental entity of a jurisdiction with a population of less than 50,000. We consider all providers and suppliers to be small entities. We do not consider intermediaries and carriers to be small entities since they are our agents. Rather, we consider the providers, physicians and suppliers with which they deal on our behalf to be the entities for which we assess impacts subject to the RFA.

The direct effect of this notice is on our contractors. Since they are not small entities, even though we expect this notice to have an effect on contractor operations, an analysis of that impact is not required. However, it is clear that many standards and elements, such as those governing bill processing, beneficiary services, and provider services, will have indirect effects on a substantial number of providers and suppliers. Therefore, in order to verify that a regulatory flexibility analysis is not required, we assessed whether the indirect impact on those small entities will be significant.

Generally, the operations to which the standards and elements of the intermediary and carrier performance criteria refer are required by law, other regulations, contract, or other program instructions. These criteria provide an evaluation process and do not in themselves require the performance of the operations they evaluate. The most important indirect effect on providers and suppliers is to ensure that they are paid timely and accurately. We do not expect these criteria and standards to have any indirect adverse effects on them. Therefore, we have determined that the evaluation process in itself will not have a significant impact on providers and suppliers, and the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. An initial flexibility analysis is not required.

3. Paperwork Reduction Act

This notice contains no information collection requirements subject to EOMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1102. 1816 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: September 16, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-23255 Filed 9-25-85; 4:24 pm]

BILLING CODE 4120-01-M

[BPO-50-N]

Medicare and Medicaid Programs; Collection of Overdue Medicare Part B Premiums

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

ACTION: Notice.

SUMMARY: This notice sets forth our policy on collection of Medicare Part B premiums from States with "buy-in" agreements. It describes the assessment of interest on overdue premiums and the offset against Federal financial participation (FFP) if we do not receive payment by the specified date. The intent of this policy is to encourage timely payment of Part B premiums by States.

We are taking this action in accordance with authority under common law and the Federal Claims Collection Act of 1966, to reduce the large volume of overdue premiums.

EFFECTIVE DATE: This notice is effective November 29, 1985.

FOR FURTHER INFORMATION CONTACT: William Grant, (301) 594-7848.

SUPPLEMENTARY INFORMATION:

Background

Under section 1843 of the Social Security Act (the Act), States may enter into contractual agreements with the Secretary to enroll in Medicare Part B (Supplementary Medical Insurance) those Medicaid beneficiaries who are also eligible for Medicare. These agreements are commonly referred to as "buy-in" agreements. States which have entered into "buy-in" agreements with the Secretary agree to enroll individuals eligible for both programs in the Part B program, and to pay the Part B premium on their behalf. If a State fails to pay premiums due, it violates the terms of the contractual agreement.

The Secretary may terminate an agreement if the terms are violated. Termination of "buy-in" agreements, however, would disadvantage States since section 1930(b)(1) of the Act and regulations at 42 CFR 431.625(c)(2) specify that no Federal financial participation (FFP) is available in State Medicaid expenditures that could have been paid for under Medicare Part B, but were not because an individual was not enrolled in Part B. Recognizing this, we have not terminated any agreements in the past, but have permitted unpaid premium balances to accumulate.

As of October 1984, a total of $87 million in Part B premiums was overdue from States under "buy-in" agreements. We believe that the outstanding amount is excessive, and requires that we improve our debt management practices to reduce the amount of delinquent Part B premiums. These funds belong in the Supplementary Medical Insurance Trust Fund where they would generate interest for the program. The loss to the program is significant in that it represents not only the delinquent premiums, but also millions of dollars of interest on those premiums. The $87 million, however, when recovered, will be a one time increase in the Trust Fund for fiscal year (FY) 1985. This notice, therefore, announces the actions we will take to encourage States to pay Part B premiums more promptly under "buy-in" agreements.

Authority

The basis for claims collection standards and procedures for the Federal government is generally found in the Federal Claims Collection Act of 1966 (FCCA), now codified at 31 U.S.C. 3711, and regulations at 4 CFR Parts 101–105, which were issued jointly by the General Accounting Office and the Department of Justice. Departmental regulations implementing the FCCA are located in 45 CFR Part 30. HCFA regulations implementing FCCA include 42 CFR Part 401, Subpart F. Our regulations at 42 CFR 401.607 provide that we may recover amounts due from debtors, including interest where appropriate, by (a) direct collections in lump sums or installments, or (b) offsets against funds we owe the debtor. In addition, the Departmental debt collection procedures, published on September 17, 1980, at 45 FR 61792, section 4–70–60, provide for both the collection of interest and application of offset.

HCFA also has authority at common law to collect interest (*Young* v. *Godbe*, 82 U.S. 562 (1873)) and to apply offset (*United States* v. Munsey Trust Co., 332 U.S. 234 (1947)). This common law authority is independent of FCCA statutory authority contained in implementing regulations. See the preamble to the 1984 revisions to the 4 CFR joint regulations published at 49 FR 8889 (March 9, 1984) and Comptroller General Opinion No. B-212222, dated August 23, 1983.

Present Billing Procedures

Under the "buy-in" program, eligible individuals are identified each month on a magnetic tape provided by either States or the Social Security Administration (SSA). (SSA provides a magnetic tape for States which elect to have SSA determine eligibility for both Supplemental Security Income (SSI) and Medicaid benefits.) We bill each State for Part B premiums on or about the 10th of each month on form HCFA-1604 for all individuals on the State's "buy-in" account. Chapter 6 of the State Buy-In Manual describes this process. In the past, this form did not specify a date by which a State must pay the premiums. Our intent, however, has been that premiums are due when a bill is presented.

The large volume of delinquent premiums indicates to us that a formal due date is required. Therefore, form HCFA-1604 is being revised to specify that premiums are due on the first day of the month for which they apply, i.e., the month for which Part B coverage is being purchased.

Revised Billing Procedures

We are revising or procedures to provide that the first day of the month for which the Part B premium applies is the due date from which interest will accrue. We are also providing for a 25-day grace period for payment so that interest will be waived for payments received by the 25th day of the month for which they apply. This allows approximately 45 days from the billing date for receipt of payment.

Interest Assessment

To encourage States to pay Part B premiums on a timely basis, we will charge interest on premiums which remain unpaid at the end of the grace period. Interest will accrue from the first day of the month for which the Part B premium applies. For example, if the Part B premium payment is due October 1, interest will accrue beginning October 1 unless full payment for the premium is received by October 25. The applicable interest rate will be the Supplementary Medical Insurance (SMI) trust fund rate as computed for new investments in accordance with section 1841(c) of the Act, 42 U.S.C. 1395t(c). This rate approximates the actual loss to the SMI trust fund and is derived from the average yield on all marketable obligations to the U.S. Treasury as of the last day of the month. The interest will be calculated monthly, and applied in thirty-day increments, i.e., a thirty-day interest assessment will be incurred at the beginning of each new thirty-day period. Interest will be assessed on:

(a) The balance of the amount billed on the form HCFA-1604 remaining unpaid at the expiration of the grace period;

(b) Unpaid balances from prior periods; and

(c) Any delinquent premiums existing on the effective date of this notice.

Interest will be assessed on delinquent premiums until the balance is

paid by the State or offset as described below.

Application of Payments

Under the Government's generally applicable claims collection procedures, payments received are first applied to interest, then to the principal amounts of a debt in the order most advantageous to the Government. In this case, it is more advantageous to apply payments first to premiums for which a State is responsible but which are not subject to FFP, and then to those premiums for which Federal matching payment applies. (Section 1903(a)(1)(A) and (B) of the Act and regulations at 42 CFR 431.625 describe the nature and extent of Federal matching for Part B premiums under buy-in agreements.)

Payments received from States will be applied in the following order:

(1) To the outstanding balance of any interest due;

(2) To the most delinquent premiums that do not qualify for FFP (e.g., medically needy or medical assistance only cases in which a cash grant is not paid);

(3) To the most delinquent premiums that do qualify for FFP (e.g., categorically needy individuals receiving cash grants under one of the Federally supported welfare programs, as specified in section 1903(a)(1)(A); and those categorically needy individuals who are included in the State's Medicaid program because they are receiving a State supplementary payment meeting the requirements set forth in section 1903(a)(1)(B) of the Act).

We wish to make clear that, in accordance with the so-called "U.S. rule", when a State presents payment in the face amount of the bill after an interest charge has accrued, the balance remaining represents upaid premiums which will continue to accrue interest in thirty-day increments until paid or offset.

Offset Against FFP

We will offset immediately against monies due the State on its grant award for premiums which are overdue beyond the grace period, plus the accrued interest from the first day of the month the premiums apply to the date of offset. The offset of premiums and interest against monies due the State on its grant award is not a disallowance of FFP. Offset is simply an accounting adjustment after the amount of FFP is determined, which reduces the amount of money actually paid to a State.

Appeal Procedures

Should a State disagree with the amount of the Part B premium bill, the amount of interest assessed, or adjustments made to the State's account by way of offset, Chapter 6 of the State Buy-In Manual will specify the procedures that a State may follow to appeal. A State must provide evidence to us to substantiate its position, and we will evaluate the evidence presented. Credits for premiums or interest which we determine to be due a State will be reflected as adjustments in subsequent premium bills effective with the date the corrected amount should have been applied.

Effective Date

The procedures set forth in this notice will be applied to monthly premium billings dated on or after the effective date of this notice. Since monthly billings include all premium amounts outstanding as of the date of the bill, existing arrearages will be resolved during the first billing cycle beginning on or after the effective date. Thus, States will have until the end of the grace period contained in the first bill to which the new procedures apply to pay existing overdue premiums without incurring interest charges or having offset applied.

Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations (as defined in the order) that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires us to prepare and publish an initial regulatory flexibility analysis for regulations, as defined in that Act for which notice and comment are required, unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, States are not treated as small entities. Furthermore, we have determined that notice and public comment are not required for this notice, and that it is not a "rule" as defined in the RFA. For these reasons, a regulatory flexibility analysis is not required.

In addition, as noted above, as of October 1984 a total of about $87 million was overdue from States for Part B premiums. Currently, the total monthly liability for these premiums is about $41 million, so it is clear that the total overdue amount is less than three months' total billing. We expect that most States will be able to pay their delinquent premiums by the effective date of this notice without incurring either interest or an offset against FFP.

We expect that this notice will result in a significant increase in the Part B Trust Fund for FY 1985. This will be a one-time effect, since we do not expect States to continue to have substantial overdue amounts. Further, if the Part B Trust Fund were increased by $87 million for FY 1985, it would cost the Medicaid program about $40 million in FY 1985, since we routinely reimburse the States for part of the money they pay for Part B premiums. Again, this will be a one-time expense.

Since the total amount currently overdue is less than $100 million, and it is reasonable to expect this amount to be reduced by the effective date of this notice, it is obvious that interest and offsets will not reach an annual magnitude that would meet the criteria for identifying major rules. Therefore, we have determined that this notice is not a major rule and that a regulatory impact analysis is not required.

Authority: Sections 1102, 1840(e) and (h), 1841(c), 1843 and 1903(a)(1) of the Social Security Act as amended; 42 U.S.C. 1302, 1395s(e) and (h), 1395t(c), 1395v and 1396b(a)(1).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85–23257 Filed 9–27–85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Idaho Falls District: Idaho Falls District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Wednesday, November 6, 1985. Notice of this meeting is in accordance with Pub. L. 92–463. The meeting will begin at 9 a.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public and public comments on agenda items will be accepted from 10:45 to 11:00 a.m.

Agenda items for the meeting include:

1. District Highlights.
2. The Omnibus Range Bill.

3. The Hazardous Waste Program.
4. Riparian Habitat Management.
5. The Land Exchange Program.
6. BLM/Forest Coordination and Implementation of the secretarial initiative on the Public Lands Education Campaign.

The minutes of the meeting will be kept in the District Office and available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401; telephone (208) 529-1020.

Dated: September 20, 1985.

O'dell A. Frandsen,

District Manager.

[FR Doc. 85-23233 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC, 20503, telephone (202) 395-7340.

Title: Urban Park and Recreation Recovery Program—Project Performance Report.

Abstract: Project Performance Reports show progress on the physical completion percentage of each grant, financial expenditures expended to date and any other information necessary to grant completion.

Bureau Form Number: None.

Frequency: Quarterly.

Description of Respondents: State and Local Governments.

Annual Responses: 460.

Annual Burden Hours: 690.

Bureau Clearance Officer: Russell K. Olsen, (202) 523-5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 85-23273 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Public Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council on Monday, October 28, 1985, from 1-5 p.m. and Tuesday, October 29, 1985, starting at 8 a.m. at the Embassy Suites, Camelhead Hotel, 1515 North 44th Street, Phoenix, Arizona 85008.

Purpose of Meeting

Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report.

Proposed Agenda

The Department of the Interior, Department of Agriculture, and Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

Public Participation

The meeting of the Advisory Council is open to the public.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

All communications regarding this meeting, including requests for time to make statements, should be addressed to Mr. Al R. Jonez, Chief, Colorado River Water Quality Office, Bureau of Reclamation, D-1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

Dated: September 19, 1985.

Clifford I. Barrett,

Acting Commissioner of Reclamation.

[FR Doc. 85-23229 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[V-OPI-420]

Motor Carriers; Decision-Notice; Trailways Lines, Inc., etc.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant to $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate

authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 23, 1985.

By the Commission.

James H. Bayne,

Secretary.

MC-F-16480, filed August 26, 1985. Trailways Lines, Inc.—Merger—Trailways Bus System, Inc., Et Al. Representative: George W. Hanthorn, 1500 Jackson St., Room 415, Dallas, TX, 75201. Trailways Line, Inc. (Trailways Lines) (1500 Jackson St., Dallas, TX, 75201) (MC-109780), with which its parent The Trailways Corporation joins, seeks authority to merge the operating rights and/or properties of the following Trailways Lines' subsidiaries into that carrier for management, control, and operation: (1) Trailways Bus System, Inc. (System) (same address as Trailways Lines) (MC-107586), (2) Denver Colorado Springs Pueblo Motorway, Inc. (DCS) (1055 19th St., Denver, CO, 80202) (MC-28462), (3) Midwest Buslines, Inc. (Midwest) (same address as Trailways Lines) (MC-61616), (4) Trailways Arkansas, Inc. (Trailways Arkansas) (same address as Trailways Lines) (MC-50026), (5) Trailways Texas, Inc. (Trailways Texas) (same address as Trailways Lines) (MC-57298), (6) American Buslines, Inc. (American) (same address as Trailways Lines) (MC-2890), (7) Trailways Southern Lines, Inc. (Southern) (327 Gayoso St., Memphis, TN, 38103) (MC-29957), (8) Trailways Tennessee Lines, Inc. (Trailways Tennessee) (same address as Southern) (MC-55312), (9) Trailways Tamiami, Inc. (Tamiami) (200 Spring St. NW, Atlanta, GA, 30303) (MC-74761), (10) Trailways Southeastern Lines, Inc. (Southeastern) (same address as Tamiami) (MC-61599), (11) Virginia Stage Lines, Inc. (Stage) (1101 14th St. NW, Washington, DC, 20005) (MC-59238), (12) Safeway Trails, Inc. (Safeway) (1005 1st St. NE, Washington, DC, 20002) (MC-84728), (13) Trailways of New England, Inc. (TNE) (625 8th Ave., New York, NY, 10018) (MC-1940), (14) Elan Transportation, Inc. (Elan) (3001 NW 87th Ave., Miami, FL, 33172) (MC-168828), and (15) noncarrier Trailways Tours, Inc. (Tours) (same address as Trailways Lines).

Tours is a noncarrier which controls Elan. Elan holds no regular route authority but conducts charter and special operations as specified below. Otherwise, each carrier holds interstate and State issued intrastate authority to transport passengers and express in regular route service generally as set forth below. Transferee and all of transferors (except Trailways Arkansas, Tamiami, Stage, and Elan) also hold some intrastate regular route authority issued by the Commission. Each regular route carrier holds authority to transport passengers in charter and special operations generally coextensive with its interstate operations. In addition, transferee and many of transferors hold authority to conduct charter and special operations between points in the United States (except Hawaii) and to transport shipments weighing 100 pounds or less between points in the contiguous United States.

Trailways Lines conducts regular route operations in California, Arizona, New Mexico, Colorado, Kansas, Oklahoma, Texas, Missouri, Arkansas, and Louisiana. Its operations extend from Sacramento, CA, on the north to Los Angeles, CA, on the south, and from Los Angeles to Kansas City, MO, via Albuquerque, NM, and Oklahoma City, OK. Generally, its routes extend throughout Kansas and Texas. It also operates from Dallas to Shreveport, LA, and from Albuquerque to Las Cruces, NM. Its intrastate authority is contained in the following certificates: CA-Charter Permit #TCP-146 A, Decision No. 86517; CO-1891 & I; AR-#M-508; KS-Docket 7214 M-Route 6; LA-#569; MO-#147; NE-#B-959; NM-#45; OK-#21662; TX-Passenger #7, Common Carrier #3979, and Charter #976. It requires no intrastate authority to operate in Arizona.

System conducts operations in Texas, Colorado, Utah, and New Mexico. Its operations extend from Corpus Christi, TX, on the south to Houston, TX, on the east. It also operates from Dallas, via Amarillo, to Denver; generally throughout Colorado; from Denver to Salt Lake City, UT; and from Salt Lake City to Albuquerque. Its intrastate authority is contained in the following certificates: CO-#761 & I and #1635 & I; NM-#687; TX-Motor Bus #23, Common Carrier #3974, and Charter #23A; and UT-#1641.

DCS operates in Colorado, Wyoming, Montana, and South Dakota. Its routes extend generally between the Colorado/New Mexico State boundary line and Billings, MT, and extend to Rapid City, SD. Its intrastate authority is contained in the following certificates: WY-#240; NM-#2946; and CO-#4562 & I and #48 & I. Its Montana and South Dakota certificate numbers are unknown.

Midwest conducts operations in Texas, Louisiana, Arkansas, Missouri, and Tennessee. It operates from St. Louis, MO, to Little Rock, AR; from Little Rock to Natchez, MS; and from Little Rock, via Texarkana, TX, to Houston. Its intrastate authority is contained in the following certificates: AR-#442, Docket #M-5719; LA-#479; MO-#28; and TX-Motor Bus #222, Common Carrier #3989, and Charter #222-A. It holds no Tennessee intrastate authority.

Trailways Arkansas operates in Texas, Arkansas, and Tennessee. It operates over a regular route from Texarkana, TX, via Little Rock to Memphis. Its Arkansas authority is contained in certificate #B-253, Docket #M-5718. It holds no intrastate authority from Texas or Tennessee.

Trailways Texas conducts operations in Texas. It operates from Van Horn on the west, to Brownsville on the south; from Brownsville to Corpus Christi; and between San Antonio and Stephenville. Its Texas intrastate authority is contained in Motor Bus Cert. #68, Charter Cert. #1328, and Common Carrier Cert. #3977.

American conducts regular route operations in California, Nevada, Utah, Arizona, New Mexico, Colorado, Texas, Oklahoma, Nebraska, Iowa, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Maryland, and the District of Columbia. Generally, it operates from San Francisco and Los Angeles on the west to New York and the District of Columbia on the east. Its southern route extends from New York, via Pittsburgh, PA, St. Louis, Oklahoma City, Dallas, Tucson, AZ, and San Diego, CA, to Los Angeles. Its northern route extends from San Francisco via Salt Lake City, Denver, Omaha, NE, Chicago, IL, and Cleveland, OH, to Pittsburgh. Its intrastate authority is contained in the following certificates: CA-#TCP22A; IL-#56747 & 51209; IA-#C12P; MO-#261; NV-#A496; NE-#B-700 and #B-959; NJ-Route File 174604; NM-#489; OH-Permit #1524 & Cert. #s 11584-B, 11693-B, 11574-B, 11575-B, and 11458-R; OK-#MC-2455; PA-#00100510; TX-Motor Bus #1238-B, Common Carrier #3971, and Charter #2182-B; UT-#1643; and CO-#36 & I. It requires no intrastate authority to operate in Arizona. It conducts no intrastate operations in New York or the District of Columbia. Its intrastate

certificate numbers in Indiana and Utah are unknown.

Southern conducts operations in Texas, Louisiana, Mississippi, Alabama, Arkansas, Tennessee, Missouri, and Illinois. Its routes extend from St. Louis on the north to New Orleans, LA, on the south, via Memphis, and from Birmingham, AL, on the east to Shreveport and Houston on the west. Generally, its routes blanket the States of Mississippi and Louisiana. Its intrastate operating authority is contained in the following certificates: AL–#s 256 and 321; AR–#B–9; IL–#s 50322 and 58106; LA–#s 570 and 570A through 570J; MS–#2507; MO–#5630; TN–#591–0; and TX–Motor Bus #958, Common Carrier #3957, and Charter #s 932 and 1232.

Trailways Tennessee operates in Tennessee, Alabama, Kentucky, and Georgia. Its operations generally extend between Atlanta and Nashville, TN; between Louisville, KY, and Montgomery, AL; between Montgomery and Atlanta; and between Birmingham and Johnson City, TN. Its intrastate authority is generally contained in the following certificates: GA–#s 5853, 5832, 4025, 3012, 2963, 2704, 2560, 37, 1433, 1478, 2559, 1633, and 1619; KY–#1069; TN–#s 9A, 9B, 9F, 9K, 9L, 9N, 9O, 9P, 9Q, 9R, 9S, 9U, 9V, 9W, and 9X; and AL–#325.

Tamiami conducts operations in Florida and Georgia. Its routes generally blanket Florida and Georgia, extending as far north as Atlanta. Its Georgia intrastate authority is contained in certificates #s 1, 13, 61, 243, 538, 584, 1009, 1010, 1012, 1079, 1092, 1179, 1230, 1249, 1305, 1397, 1439, 1458, 1530, 1551, 1555, 1575, 1787, 2011, 2020, 2080, 2116, 2803, 2951, 2969, 3028, 3186, 3293, 4336, and 4745. Its Florida intrastate operations are deregulated.

Southeastern conducts regular route operations generally throughout North Carolina and South Carolina. It serves as far west as Chattanooga, TN, and as far south as Augusta and Savannah, GA. Its intrastate authority is contained in the following certificates: NC–#s B–69, B–84, and B–17; and SC–120 class A certificates of PC&N issued under Docket No. 80–76–T, Order No. 80–161. [Georgia not specified.]

Stage operates regular route service in Virginia, West Virginia, and the District of Columbia. It operates between the District of Columbia and Danville, VA, via Charlottesville and Lynchburg. It also conducts operations between the District of Columbia and Richmond, VA, and between Richmond and Welch, WVA, via Charlottesville and Roanoke, VA. Its West Virginia intrastate authority is contained in certificate #5392. Stage holds extensive operating authority from the Virginia Public Service Commission which authorizes transferor to render regular route, package express, and charter service generally throughout Virginia. It holds no District of Columbia authority.

Safeway operates over regular routes in New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia. Generally, it operates from New York, via Philadelphia, PA, Wilmington, DE, and Baltimore, MD, to the District of Columbia. It also operates between Philadelphia and Atlantic City, NJ. Its intrastate authority is contained in the following certificates: NJ–PUC Route File #244–209; PA–#A00035361 Folder 8; and Maryland (number not known). It holds no intrastate authority from New York, Delaware, or the District of Columbia.

TNE conducts operations in Massachusetts, Connecticut, and New York. Generally, it conducts operations over regular routes from Boston, MA, via Worcester, MA, to Springfield, MA, and Hartford, CT, then to New Haven, CT, Bridgeport, CT, and New York. Its Massachusetts intrastate authority is contained in certificates #s 984, 337, 645, 1366, 1682, 1740, 1774, 1994, 2018, 3269, 3290, 3338, 3370, and 3480. It holds Connecticut authority in Bus Application No. 4853. TNE holds no New York intrastate authority.

Elan is authorized to conduct charter and special operations between points in Florida, on the one hand, and, on the other, points in the United States.

Transferee has been authorized previously to control transferors in MC–F–10160, MC–F–16101, MC–F–12340, and MC–F–15327.

[FR Doc. 85–23235 Filed 9–27–85; 8:45 am]
BILLING CODE 7035–01–M

Release of Waybill Data for Use by Greenbriar Intermodal

The Commission has received a request from Greenbriar Intermodal (Greenbrier) to obtain from the Commission's 1984 Waybill Sample TOFC/COFC traffic flows between BEA Economic Areas (Department of Commerce's Bureau of Economic Analyses Economic Areas). Greenbrier need this data to quantify market and market shifts from the Twin-Stack™ Car which Greenbriar is marketing with another company. The traffic involved is largely F.A.K.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to Greenbriar's request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

FOR FURTHER INFORMATION CONTACT: Elaine K. Kaiser (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 85–23234 Filed 9–27–85; 8:45 am]
BILLING CODE 7035–01–M

[No. 39930]

Water Carriers; Proposed Tariff Filing Exemption and Pacific Hawaiian Line, Inc.; Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pacific Hawaiian Line, Inc., a water contract carrier, seeks exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts.

The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, DC.

Any interested party may file a comment in this proceeding.

DATES: Comments are due on October 15, 1985. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered and, within 20 days of the close of the comment period, the Commission will issue a final decision granting or denying the exemption.

ADDRESS: Send an original and 15 copies of comments to: Docket No. 39930, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Barbara G. Saddler, (202) 275–6978
Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to T.S. Infosystems, Inc., Room 2229, 12th & Constitution Ave., NW., Washington, DC 20423 or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: September 17, 1985.

By the Commission, Division 2, Commissioners Andre, Simmons, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–23237 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-159X)]

Seaboard System Railroad, Inc.; Abandonment Exemption in Gainesville, Alachua County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .349-mile line of railroad between Valuation Station 1276+55 and Valuation Station 1295+00 in Gainesville, Alachua County, FL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaint within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 30, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by October 10, 1985, and petitions for reconsideration, including environmental energy, and public use concerns, must be filed by October 21, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–23236 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL SCIENCE FOUNDATION

Program Solicitation; Materials for Elementary School Mathematics Instruction

This document is the first in a series of targeted program solicitations that NSF's Directorate for Science and Engineering Education will issue to elicit proposals directed toward specific high priority problems and opportunities facing mathematics, science and technology education in the Nation's schools. These solicitations are intended to complement, not to supplant, already existing program guidelines and announcements, which describe the broad range of interests of NSF's Divisions of Materials Development and Research (see NSF Publication #85–10) and of Teacher Enhancement and Informal Science Education (NSF #85–9).

Introduction

The Division of Materials Development and Research (DMDR) supports a wide range of projects designed to expand the knowledge base and to provide new and improved models and materials resources needed to increase the quality of, and continuously renew, the Nation's educational systems in mathematics, science and technology. This broad goal translates into four specific objectives that frame the Division's programs. These objectives are to:

- Expand the pool of knowledge about the factors critical to effective teaching and learning of mathematics, science and technology;
- Stimulate the development of, provide exemplary models for, and facilitate the use of new and improved instructional materials for students and teachers that incorporate the most recent advances in subject matter content, research in teaching and learning, and instructional technology;
- Stimulate thinking and experimentation about, and provide exemplary models and materials for, improved and innovative methods for the preparation of teachers of mathematics, science and technology; and
- Analyze the potential for, and facilitate the use of, state-of-the-art technologies in education.

The Division employs a combined approach in eliciting and selecting projects for support. First, the Division accepts "unsolicited" proposals submitted in response to program announcements describing its general purview and interests (e.g., NSF 85–10). Second, every year the Division will issue a set of program solicitations, each targeted to address a specific high priority problem or opportunity. These solicitations often will be for one-time NSF support, designed to leverage or energize activity with the expectation that the activity will be self-perpetuating after NSF support is no longer provided.

This is the first in a projected series of program solicitations that will be issued by the Division of Materials Development and Research. The target of this solicitation is the creation of improved materials and model programs for elementary school mathematics instruction, taking cognizance of the wide availability of calculators and computers. The Division expects to issue two additional solicitations in the very near future, one targeted on improved programs and materials for science instruction at the elementary level, and one targeted on improved programs for the preparation of science and/or mathematics teachers.

Recent advances in technology have lowered the cost of a hand calculator to the point where it is less expensive than a textbook. Moreover, microcomputers are now sufficiently inexpensive that they are available in many schools

throughout the Nation. It is reasonable to assume that, at least within a few years, a calculator will be available for every student and a computer will be available in every classroom. Yet the impact of calculators and computers on elementary and middle school mathematics curricula is still minimal.

The availability of this technology has consequences both for the kinds of mathematics that children *should* learn and for the kinds of mathematics that children *can* learn. On the one hand, much of the time that has been devoted in the past to mastering the mechanics of arithmetic algorithms is no longer necessary. On the other hand, calculators and computers can be used to enhance significantly children's understanding of mathematical concepts and applications. Although there has been some thought and effort devoted to this, there still is little if any, available in the way of instructional materials and elementary mathematics curricula that reflect these issues.[1]

The Division of Materials Development and Research is inviting proposals for porjects that will explore the consequences of the availability of calculators and computers for the elementary mathematics (K–6) curriculum. The goal is to develop model mathematics curricula and prototypical instructional materials under the assumption that every student has a calculator and has access to a computer. It is expected that these curricula will, for example, place substantially more emphasis on mental arithmetic, estimation, and approximation, and substantially less on paper and pencil calculations. Exploration of the implications of using calculators and/or computers for teaching applications of elementary mathematics is another appropriate emphasis for these projects.

Projects likely will be conducted in phases. In the first phase, these projects will thoroughly review existing elementary mathematics textbpooks and curricula, determine which topics in existing curricula are no longer appropriate or are treated in too much detail, and which topics are not treated but should be. This process should take into account the recommendations of professional societies and commissions [2-6] and efforts that have already been made in other countries as well as in this Nation. [7-9] The projects will then develop plans, based on the findings of this first phase, for a complete K–6 mathematics curriculum, for a subset of that curriculum (e.g., for grades K–3 or 4–6), or for a strand within the curriculum. Finally, each project will develop prototypical instructional materials that will model the major recommended changes.

Projects supported under this solicitation may focus on calculators, on computers, or on both calculators and computers. Projects that include a computer focus should not devote significant effort to the development of computer software, but rather should take in to account existing software and software likely to be available in the near future.

Each project should include plans for the evaluation of the materials developed and for the widespread dissemination of both the prototypic materials and the project's recommendations. The project should also formulate recommendations for teacher training necessary for the implementation of the recommended curriculum.

The Division of Materials Development and Research expects to make three to six awards in this area, with a duration of from three to four years each, totaling up to $5 million.

Important Considerations

1. The project team must include professionals with the requisite knowledge and experience. Thus each proposal should document the education and experience of project staff in the following areas: mathematics, mathematics education, computing, school policies and procedures, and classroom teaching at the relevant levels.

2. Projects should be designed in such a manner as to take cognizance of the results of recent research on the teaching and learning of science and mathematics.

3. Projects should include an analysis of the teacher training issues associated with the implementation of its recommendations and developed materials and should formulate recommendations and develop supplementary teacher materials as appropriate.

4. Projects should include an analysis of student evaluation issues associated with the implementation of its recommendations and should develop prototypical evaluation instruments/mechanisms appropriate for the developed materials.

5. Proposals should include plans for the field testing and evaluation of the developed materials, and provisions for revision of the materials based on the results of the field tests. Funds may be requested to support teacher workshops associated with the testing of the materials.

6. Proposals should include plans for dissemination of the developed materials and recommendations. These plans should include strategies for informing all interested constituencies (such as mathematics educators, state and local school agencies, elementary school principals and teachers) about the recommendations and materials, and plans for making the materials available to those who wish to study them or to use them in their classes. The involvement of publishers or other relevant organizations early in the process of materials development is strongly encouraged.

Preparation and Submission of Proposals

For guidance on the specifics of proposal preparation, proposers should consult the two publications, *Program Announcement, Division of Materials Development and Research* (NSF 85–10) and *Grants for Scientific and Engineering Research* (NSF 83–57). The first of these publications includes required forms that should accompany each proposal and a discussion of the criteria that are used in evaluating proposals. The second publication provides detailed information on proposal preparation and processing and on grant administration. This latter

[1] *Needed Changes in Mathematics Curricula.* Z. Usiskin. In: *School Mathematics: Options for the 1990's.* Volume 2: Proceedings of the Conference, U.S. Department of Education, 1984.

[2] *An Agenda for Action: Recommendations for School Mathematics of the 1980's.* National Council of Teachers of Mathematics, 1980.

[3] *Educating Americans for the 21st Century.* National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1983.

[4] *The Impact of Computing Technology on School Mathematics.* National Council of Teachers of Mathematics, 1984.

[5] *The Mathematical Sciences Curriculum K–12: What is Still Fundamental and What is Not.* Report from the Conference Board of the Mathematical Sciences to the National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1982.

[6] *School Mathematics: Options for the 1990's* (Chairman's Report and Proceedings of the Conference). U.S. Department of Education, 1984.

[7] *Mathematics Counts* (Reports of the Committee of Inquiry into the Teaching of Mathematics in Schools under the Chairmanship of Dr. W. H. Cockcroft). Her Majesty's Stationery Office, London, 1982.

[8] *Future Oriented Mathematics and Computer Literacy Development Project for Elementary Schools.* Project supported by NSF grant DPE 84–70128. Preliminary report available from Dr. Ruth I. Hoffman at the Department of Mathematics and Computer Science, University of Denver, Denver, CO 80208.

[9] *University of Chicago School Mathematics Project.* Judd Hall, 5835 S. Kimbark, Chicago, IL 60637.

document should be used with the following understandings:

• For "research" substitute "science education" or "science education project" as appropriate;

• The terms "new discoveries" or "fundamental advances" include development of the science and engineering infrastructure directed toward those goals.

Except as modified by the guidelines set forth herein and in NSF 85–10, standard NSF guidelines on proposal preparation (content, format, budget, other sources of support, etc.), proposal submission, evaluation, NSF awards (general information and highlights), declinations, and withdrawals contained in NSF 83–57 are applicable.

These publications can be obtained from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Who May Submit

Organizations with a scientific or educational mission are eligible to submit proposals. Among these are: colleges and universities; state and local education agencies; professional societies; science museums and zoological parks; research laboratories; private foundations; private industries; and other public and private organizations, whether for profit or non-profit. Proposers are strongly encouraged to involve participation from more than one of these areas.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals from all qualified scientists and science educators, and strongly encourages women and minorities to compete fully in the development programs described in this document. In accordance with Federal statutes and regulations and NSF policies, no person shall be excluded on grounds of race, color, age, gender, national origin, or physical handicap from participation under any program or activities receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for Information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

When To Submit

All proposals responding to this program solicitation must be submitted no later than March 17, 1986. Project starting dates of September 1, 1986, or later may be requested.

What To Submit

By their nature, proposals appropriate for the solicitation target described in this announcement are likely to be one of a kind and rather complex. Therefore, contact with program staff before submitting formal proposals is strongly encouraged. Program staff can be reached at 202/357–7066.

Fifteen (15) complete copies of the proposal and three (3) additional copies of the Cover Sheet and Project Summary should be prepared and sent to: Data Support Services Section, National Science Foundation, Room 220, Washington, DC 20550.

Cover Page

In the upper left hand block labeled "For Consideration by NSF Organizational Unit," it is important to identify the Division and the solicitation target to which you are responding, i.e., "Division of Materials Development and Research; Materials for Elementary School Mathematics Instruction."

Inquiries

Questions not addressed in this publication or in the publications NSF 85–10 and NSF 83–57 may be directed to the NSF staff by writing to: Instructional Materials Development Program, Division of Materials Development and Research, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550.

(Catalog of Federal Domestic Assistance Number 47.067, Materials Development and Research)

Dated: September 24, 1985.

Raymond J. Hannapel,

ADD Materials Development & Research.

[FR Doc. 85–23265 Filed 9–27–85; 8:45 am]

BILLING CODE 7555–01–M

[Docket No. 50–320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Correction to Amendment of Order

On August 8, 1985, the Director, Nuclear Reactor Regulation, issued an Amendment of Order to be effective September 23, 1985, modifying certain limiting conditions for operation and their corresponding bases in the Proposed Technical Specifications to more correctly reflect the systems or equipment that are necessary, based on the present status of TMI–2. The Director's action was supported by the staff's safety evaluation issued concurrently with the August 8, 1985 Amendment of Order. The changes to the Proposed Technical Specifications, which included the deletion of the closed cycle cooling water systems in Section 3.7.3, contain two errors of an editorial nature. Proposed Technical Specification page 3.7–1 correctly deleted the requirements of sections 3.7.3.1, 3.7.3.2, and 3.7.3.3, as addressed in the staff's safety evaluation. However, in the revised Proposed Technical Specifications the licensee failed to delete Sections 3.7.3.2 and 3.7.3.3 from page 3.7–2, although these sections had been correctly modified and added to page 3.7–1. On page B 3/4 7–1 of the Proposed Technical Specifications, the licensee neglected to list Section *3/4 7.3.3 Mini Decay Heat Removal System (MDHRS)*, which, although correctly deleted as addressed in the safety evaluation and authorized by the Amendment of Order, should nonetheless have been listed on that page.

Unrelated to the actions authorized by the Amendment of Order, the licensee has identified a typographical error contained on page B 3/4 7–1 of the Proposed Technical Specifications. In section *3/4 7.6 Flood Protection*, the value 301 ft. should be 302 ft. The correct value, 302 ft., remains unchanged, consistent with the current Proposed Technical Specifications.

Accordingly, the Amendment of Order dated August 8, 1985, is hereby corrected to incorporate the modifications described above.

Effective Date: September 23, 1985.

Dated at Bethesda, Maryland.

Issuance Date: September 20, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–23316 Filed 9–27–85; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A85–29; Order No. 635]

St. Charles, SC 29134 (J.H. Haynesworth, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 23, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A85-29.
Name of Affected Post Office: St. Charles, South Carolina 29134.
Name(s) of Petitioner(s): J.H. Haynesworth.
Type of Determination: Closing.
Date of Filing of Appeal Papers: September 16, 1985.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one more of these issues.
In the interest of expedition, in light of the 120-day decision schelule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitoners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 1, 1985.
(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.
Charles L. Clapp,
Secretary.

APPENDIX

[Docket No. A85-29; St. Charles, South Carolina 29134]

September 16, 1985—Filing of Petition.
September 23, 1985—Notice and Order of Filing of Appeal.
October 11, 1985—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
October 21, 1985—Petitioners' Participant Statement or Initital Brief [*see* 39 CFR 3001.115(a) and (b)].
November 11, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 26, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(b)].
December 3, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
January 14, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-23294 Filed 9-27-85; 8:45 am]
BILLING CODE 7715-01-M

[Docket No. A85-28; Order No. 634]

Ferndale, FL 32729 (Mr. & Mrs. C. L. Merritt, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 23, 1985.
Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A85-28.
Name of Affected Post Office: Ferndale, Florida 32729.
Name(s) of Petitioner(s): Mr. & Mrs. C. L. Merritte, *et al.*
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: September 13, 1985.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic Savings [39 U.S.C. 404(b)(2)(D)].
Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.
In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service many incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 30, 1985.
(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.
Charles L. Clapp,
Secretary.

APPENDIX

[Docket No. A85-28; Ferndale, Florida 32729]

September 13, 1985—Filing of Petition.
September 23, 1985—Notice and Order of Filing of Appeal.
October 8, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
October 18, 1985—Petitioner's Participant Statent of Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
November 7, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 22, 1985—(1) Petitioner's Reply Brief [*see* 39 CFR 3001.115(d)].
November 29, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
January 13, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-23293 Filed 9-27-85; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22440; File No. SR-OCC-85-16]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change

The Options Clearing Corporation ("OCC") on September 6, 1985, submitted a proposed rule change to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to adopt a new fee schedule for data transmission services. The Commission is publishing this notice to solicit public comment on the proposal.
OCC's proposal adopts the following fee schedule for data transmission services:
(A) Direct Data Service—CPU to CPU leased line transmission, $1,570/month.
(B) On-line leased line transmission, $785/month.
(C) Both A & B, $2,055/month.
(D) Direct Data Service—CPU to CPU dial-up from OCC to Clearing Member:
20 minutes/day, $750/month ($550 plus $200 dial charge).
40 minutes/day, $950/month ($550 plus $400 dial charge).
60 minutes/day, $1,150/month ($550 plus $600 dial charge).
(E) Dial-up on-line:
20 minutes/day, $400/month ($200 plus $200 dial charge).
40 minutes/day, $600/month ($200

plus $400 dial charge).
60 minutes/day, $800/month ($200 plus $600 dial charge).
(F) Microfiche, $.03/frame.[1]

OCC states in its filing that this fee structure reflects directly attributable costs of providing data transmission services plus a portion of related overhead expenses. OCC further states that this fee schedule reflects cost savings achieved when multiple services are provided to the same street address. OCC believes that the proposal is consistent with Section 17A of the Act because it allocates reasonable fees in an equitable manner among OCC's Clearing Members.

OCC's proposal has become effective under Section (19)(b)(3)(A) of the Act. Nevertheless, at any time within 60 days of the date the proposal was filed, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. and at OCC's principal office.

The Commission invites public comment on the proposal. Comments should refer to File No. SR-OCC-85-16. Please file six copies of comments with the Secretary of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, by October 21, 1985.

Dated: September 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-23253 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22441; File Nos. SR-OCC-85-17]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Options Clearing Corporation ("OCC") on September 6, 1985, submitted a proposed rule change to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposal deletes an amendment made to OCC's Restated Participant Exchange Agreement ("RPEA") in a recent OCC rule change. The Commission is publishing this notice to solicit public comment on the proposal.

Section 16 of OCC's RPEA includes OCC's agreement to maintain an office in the principal city in which each Participant Exchange is located. In File No. SR-OCC-85-6, OCC added a provision to Section 16 designating New York as the principal city for the National Association of Securities Dealers, Inc. ("NASD").[1] That change was meant to reflect the fact that the NASD's operations are located principally in New York, rather than in Washington, D.C. where the NASD's corporate offices are located, and to reflect the NASD's intent to not require OCC to maintain an office in Washington, D.C.

The NASD has agreed to provide OCC with a written waiver of the section 16 requirement for an OCC office in Washington, D.C. Therefore, the previous amendment to OCC's RPEA is no longer needed and OCC proposes to delete it. Accordingly, OCC's proposal deletes from OCC's RPEA the designation of New York as the NASD's principal city. OCC states in its filing that the five Participating Exchanges to the RPEA have agreed to the proposal.

OCC believes that the proposal is consistent with the Act because it promotes the prompt and accurate clearance and settlement of options to be traded through the NASD. OCC's proposal has become effective under seciton 19(b)(3)(A) of the Act. At any time within 60 days the proposal was filed, however, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of the proposal and all related documents, other than those that may be withheld under 5 U.S.C. section 552, are available to the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal offices. Please refer to File No. SR-OCC-85-17 and file six copies of comments on the proposals with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by October 21, 1985.

Dated: September 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-23254 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14732; File No. 812-6154]

Co-operative Bank Investment Fund; Application and Opportunity for Hearing

September 20, 1985.

Notice is hereby given that the Co-operative Bank Investment Fund ("Applicant"), 225 Franklin Street, Boston, Massachusetts 02110, filed an application on July 15, 1985, and an amendment thereto on September 12, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) (2) and (3), to the extent necessary to permit Applicant to establish one or more mutual investment funds for Massachusetts state chartered thrift banks. 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 all applicable provisions thereof.

According to the application, Applicant was organized as a corporation on January 7, 1985 pursuant to a special act of the Commmonwealth of Massachusetts, primarily to provide a mutual fund investment medium to Massachusetts co-operative banks and, to a lesser extent, Massachusetts savings banks. Applicant states that Massachusetts co-operative banks are state-chartered thrift banking institutions organized under Chapter 170 of the General Laws of Massachusetts. Only Massachusetts co-operative banks, Massachusetts savings banks (which are another form of Massachusetts-chartered thrift institutions,) and the Co-operative Banks Employees Retirement Association (a retirement association organized under Massachusetts law) are eligible to invest in Applicant. Applicant represents that such investors will be eligible to purchase from Applicant shares of beneficial interest, which shall not entitle the holders thereof to voting rights of any nature. Applicant contemplates that after the initial offering, it will continuously offer shares to all eligible banks and that each sale will not be limited as to size or dollar value.

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[1] While this per frame charge is a substantial increase from OCC's current $.01 per frame charge, OCC is eliminating the $.20 per fiche charge.

[1] *See* Securities Exchange Act Release No. 22087 (May 29, 1985), 50 FR 23568 (June 4, 1985).

The application indicates that the business of the Applicant will be conducted by a board of directors elected by Applicant's incorporators. The incorporators are the directors of the Co-operative Central Bank (the "Central Bank"), the statutory reserve bank and deposit insurer for Massachusetts co-operative banks. The Central Bank maintains a Reserve Fund and a Share Insurance Fund in connection with the foregoing functions. Applicant represents that the aggregate value of securities held in the portfolios of those funds, which are invested almost entirely in government securities, is approximately $200,000,000.

Applicant states that currently, all Massachusetts co-operative banks and savings banks which are not federally insured are making, or shortly will be making, application to the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for insurance of their deposit liabilities. Applicant states that when all Massachusetts co-operative banks become federally insured, the Share Insurance Fund will be rendered redundant except as to deposit liablities not covered by federal insurance. Accordingly, the application represents that as much as $75,000,000 may be returned to such banks from that Fund (and a larger amount to Massachusetts savings banks from their parallel state deposit insurer). The application states that the Applicant will provide a ready vehicle for the reinvestment of those monies with the same management which has provided conservative, prudent growth for the Share Insurance Fund and the Reserve Fund.

Applicant states that its initial operations will be performed through an open-end investment fund whose objective will be maximum current income consistent with liquidity of assets and safety of principal. It intends to invest the assets of that fund solely in certificates of deposit, bonds and other direct obligations of the United States, obligations guaranteed by the United States, bonds and notes of the Commonwealth of Massachusetts or any political subdivision thereof, federal agency obligations which have unexpired terms of 5 years or less, debt instruments that would be deemed eligible for treatment as legal liquidity for co-operative or savings banks by the Massachusetts Commissioner of Banks, and high-quality money market instruments of short maturity. Applicant further states that it may establish in the future other distinct investment funds with investment objectives different from those which the Applicant intends to adopt for its initial fund and that any such funds will be structured by the Applicant to offer conservative investment vehicles suitable for investment by thrift banks.

Applicant states that it is authorized to invest its assets in certain real estate mortgages on properties situated within Massachusetts and insured by the Federal Housing Administration. It may also invest in a variety of other investments, including direct obligations of the United States, obligations guaranteed by the United States, obligations guaranteed by the Federal National Mortgage Association, bonds and other evidences of indebtedness of corporations, and shares of common or preferred stock. Applicant represents, however, that no more than five percent of its assets may be invested in the securities of any one issuer, except for direct obligations of the United States, obligations guaranteed by the Federal National Mortgage Association, and obligations issued under certain federal programs or by certain federal agencies and instrumentalities. Applicant also represents that co-operative banks and savings banks are significantly restricted in their legal authority to invest in equity funds established by the Applicant, and the Applicant's investment in equity securities will be limited accordingly.

Applicant intends to register as an investment company within the provisions of section 3(a) of the Act. However, Applicant seeks exemption from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i) and 32(a) (2) and (3) of the Act because several aspects of Applicant's charter would not permit Applicant to operate in compliance with such provisions of the Act which provide certain voting rights for security holders of registered investment companies. Applicant states that it would be unable to meet the requirements of such Sections because the shares of beneficial interests to be issued by the Applicant will carry no voting rights and all such rights will be exercised by Applicant's incorporators. Applicant asserts that such arrangement will alleviate the danger that a few large banks would obtain complete control of the Applicant through large investments in Applicant and consequent domination of Applicant's Board of Directors.

Applicant also seeks exemption from section 24(d) of the Act to enable Applicant to utilize the exemption provided in section 3(a)(11) of the Securities Act of 1933. Applicant asserts that it believes that the considerations which led to the denial of the section 3(a)(11) exemption to investment companies generally are not present in the case of Applicant. Applicant further asserts that if an exemption is granted from section 24(d) compliance with section 22(d) is impracticable and exemption therefrom warranted because Applicant will not be required to deliver prospectuses or to employ an underwriter in connection with the distribution of its securities. Finally, Applicant asserts that an exemption from the provisions of section 22(e) of the Act, is necessary for the protection of the mutual interest of the investor banks.

The Applicant, purusant to its enabling legislation is defined to be a "bank" under Masschusetts law. The Masschusetts Commissioner of Banks (the "Commissioner") power under Massachusetts law with regard to organizations coming under the definition of "bank" is extensive. The Commissioner is required to make an examination at least once in every two calendar years of the books, securities, cash, assets and liabilities, and to ascertain the condition, of all "banks" under his supervision. He may also, whenever he considers it expedient, cause to be made any examinations or audits as he deems advisable. Applicant represents that the officers and employees of the central Bank are intended to function as officers and employees of the Applicant, making the substantial expertise of the Central Banks' management available to Applicant's investors.

The application states that, as a result of the aggregation of the investments of participating investors the Applicant should be able to provide its investors (a) substantial savings with regard to commissions and other expenses (b) economies of scale with regard to research, recordkeeping and the like and (c) greater protfolio diversification and resulting reduction of risk than would be the case for an individual bank investor. Applicant further asserts that in view of the extent of the Commissioner's supervisory powers, the form of the Applicant's organization, the nature of the prospective investors and the limits of their investments in Applicant, the identity of the incorporators, and the provisions in Applicant's charter which control its investment policies, Applicant's exemption from the provisions of section 13(a), 15(a), 16(a) and (b), 18(i), 22(d) and (e), 24(d) and 32(a)(2) and (3) of the Act is justified.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, 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, DC 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.

John Wheeler,

Secretary.

[FR Doc. 85-23312 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14731; File No. 811-4245]

Indiana Community Credit Corp.; Application for Order Declaring That Applicant has Ceased to be an Investment Company

September 20, 1985.

Notice is hereby given that Indiana Community Credit Corporation ("Applicant"), One North Capitol Avenue, Suite 700, Indianapolis, Indiana 46204, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on August 9, 1985, and an amendment thereto on September 9, 1985, requesting an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. 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 applicable provisions thereof.

Applicant states that it filed a notification of registration on Form N-8A on March 6, 1985, but has not filed a registration statement under either the Act or the Securities Act of 1933. Applicant represents that it was exempted from all provisions of the Act by a prior order of the Commission dated June 18, 1985 (Investment Company Act Release No. 14585), and has filed this application based on the prior order. Applicant represents that it has no investment adviser and no principal underwriter.

Applicant states that it intends to operate as a "credit corporation" under the proposed Indiana Business Development Credit Corporation Law. Applicant further states that in this capacity its purpose will be to assist in the development and rehabilitation of Indiana business and industry primarily through making loans and extending credit to small business concerns located in the State of Indiana. Applicant represents that it will be subject to governmental regulation and overview by the Department of Financial Institutions, the Indiana General Assembly, and the Governor of the State of Indiana, but will be exempt from Indiana securities laws and the Indiana Financial Institutions Act.

Applicant concedes that it might meet the definition of an investment company under the Act because the value of notes and order evidences of indebtedness issued to Applicant may exceed 40% of the value of Applicant's total assets. Despite this possibility, and in light of Applicant's proposed business activities, the Commission issued the prior order exempting Applicant from all provisions of the Act based upon its finding that such relief would be in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Applicant relies on this previous finding in seeking this order declaring that it has ceased to be an investment company. In support of this request, Applicant undertakes to limit its business activities to those specifically described in Investment Company Act Release No. 14528 (May 21, 1985). In addition, Applicant represents that it is not presently a party to any litigation or administrative proceedings, and that it is presently a corporation in good standing under Indiana law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, 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, DC 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.

John Wheeler,

Secretary.

[FR Doc. 85-23311 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/892]

Advisory Committee on International Intellectual Property; Meeting

The International Industrial Property Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Tuesday, October 22, 1985, in Room 1205 in the Department of State. The meeting will begin at 9:30 AM and will conclude by 1:00 PM, or before.

The meeting will be open to the general public. The following topics will be discussed:

1. Status Report—Revision of the Paris Convention for the Protection of Industrial Property.

2. WIPO Draft Treaty for the Protection of Integrated Circuits (WIPO Committee of Experts, Geneva, November 26-29, 1985).

3. WIPO Outline of a Proposed New Treaty on the International Registration of Trademarks (WIPO Committee of Experts, Geneva, December 11-13, 1985).

4. Status of Multilateral Efforts to Deal with the Problem of Counterfeit Goods.

5. Report on Meeting of World Intellectual Property Organization's Governing Bodies (Geneva, September 23-October 1).

6. Other Business.

The public attending may, as time permits and subject to the instructions of the Chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to, or at the meeting, for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. As access to the State Department is controlled, members of the general public who plan to attend the meeting must provide their name, affiliation, and address to Mrs. Bobbi Tinsley, Office of Business Practices, Department of State, telephone (202) 632-1486, prior to October 22, 1985. All attendees should use the *Main Entrance* (2201 C Street, NW.) of the Department of State.

Dated: September 18, 1985.

Harvey J. Winter,

Executive Secretary.

[FR Doc. 85-23228 Filed 9-27-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Under Sections 408, 409, 412, and 414 During the Week Ending September 20, 1985

Answers may be filed within 21 days from the date of filing.

Date filed and Docket No.	Parties	Subject	Proposed effective date
Sept. 19, 1985: 43406, R-1 through R-13	Members of International Air Transport Association	TC2 Europe Expedited, Resolutions TC2 Reso/P 0309, TC2 Reso/P 0310, TC2 Reso/P 0311.	Oct. 1, 1985 and Oct. 28, 1985.
Sept. 19, 1985: 43407, R-1	Members of International Air Transport Association	Amend fares from Argentina, TC12 MV/P 0170 (M.V. 954).	Oct. 1, 1985.
Sept. 19, 1985: 43408, R-1	Members of International Air Transport Association	Amend passenger adjustment factors for Italy, COMP MV/P 0276 (M.V. 951).	Oct. 1, 1985 and Apr. 1, 1986.
Sept. 19, 1985: 43410, R-1	Members of International Air Transport Association	Adding two new ULD rates from Europe to USA, TC12 MV/CO/01 (M.V. 953).	Oct. 1, 1985.
Sept. 19, 1985: 43412	Saudi Arabian Airlines Corporation, c/o William A. Nelson, Shea & Gould, 1627 K Street, N.W., Tenth Floor, Washington, D.C. 20006. The Flying Tiger Line Inc., c/o Joel Stephen Burton, Ginsburg, Feldman and Bress, 1250 Connecticut Avenue, Suite 800, Washington, D.C. 20036. Joint Application of Saudi Arabian Airlines Corporation and The Flying Tiger Line Inc., pursuant to Section 412 of the Act, for prior Department approval of a Cargo Operating Agreement for joint scheduled all-cargo service between New York, New York and the Kingdom of Saudi Arabia. The parties also request that the Agreement be immunized from the antitrust laws pursuant to Section 414 of the Act.		
Sept. 19, 1985: 43413	Texas Air Corporation, c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036. Application of Texas Air Corporation seeks approval to acquire more than 10% of the voting securities of Frontier Holdings, Inc. on the condition that shares representing voting power at and in excess of 10% of Frontier's voting securities be palced in a voting trust pending approval by the Department of TAC's acquisition of control of Frontier under Section 408 of the Act.		

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 85-23248 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations, Week Ended September 20, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Sept. 17, 1985	43401	Aerotours Dominicano, C. Por A., Harry A. Bowen, Bowen & Atkin, Suite 350, 2020 K Street, NW., Washington, D.C. 20006. Application of Aerotours Dominicano, C. Por A., pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for authority to engage in scheduled air transportation of passengers, property and mail between Santo Domingo, Dominican Republic and (a) New York/Newark, (b) Miami, and (c) San Juan. Answers may be filed by October 15, 1985.
Sept. 19, 1985	43409	Western Airlines, Inc., c/o James T. Lloyd, Preston, Thorgrimson, Ellis & Holman, 1735, New York Ave., N.W., Suite 500, Washington, D.C. 20006. Application of Western Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests the Department to issue it a certificate of public convenience and necessity to engage in scheduled air transportation of passengers, property and mail, as follows: "Between Oakland and San Jose, California and Phoenix and Tuscon, Arizona on the one hand, and Guaymas, Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Guadalajara, Manazanillo, Mexico City, Zithuatanejo, and Acapulco, Mexico, on the other hand." Conforming Applications, Motions to Modify Scope and Answers may be filed by October 17, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-23249 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

Application of Midway Airlines (1984), Inc., for Certificate Authority Under Subpart

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-9-50) Docket 43336.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Midway Airlines (1984), Inc., fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than October 10, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43336 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol A. Szekely, Special Authorities Division (P-47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-50 is available for inspection from our Documentary Services Division at the above address.

Dated: September 24, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-23250 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-06

Office of the Secretary

[Order 85-9-52]

Fitness Determination of GP Air, Inc.; Order to Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that GP Air, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with William C. Boyd, Chief, Service Analysis Division I, Room 5100, Office of Essential Air Service, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Objections shall be filed no later than October 16, 1985.

FOR FURTHER INFORMATION CONTACT: John Quay, Service Analysis Division I, Room 5100, Office of Essential Air Service, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 426-9813.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-52 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, DC 20590. Persons outside the metropolitan area may send a postcard request for Order 85-9-52 to that address.

Dated: September 24, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-23317 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

[Notice No. 85-13]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards [PRB] established by DOT under the Civil Service Reform Act (CSRA).

FOR FURTHER INFORMATION CONTACT: Diana L. Zeidel, Director of Personnel and Training, and Executive Secretary, DOT Executive Resources Board, (202) 426-4088.

SUPPLEMENTARY INFORMATION: The CSRA of 1978, which created the Senior Executive Service, requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, CSRA requires each agency to establish one or more PRB's, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRB's.

Issued in Washington, DC, on September 25, 1985.

Jon H. Seymour,

Assistant Secretary for Administration.

Office of the Secretary

Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs;
Alden C. Johanson, Deputy Director, Office of Budget;
Barclay W. Webber, Assistant General Counsel for Environmental, Civil Rights and General Law;
Diane R. Liff, Assistant General Counsel for Litigation;
JoAnn C. Collins, Coordinator for Minority Affairs;
John J. Collins, Jr., Assistant General Counsel for Legislation;
Alfonso B. Linhares, Director, Office of Technology and Planning Assistance;
Philip W. Haseltine, Deputy Assistant Secretary for Planning and Policy Analysis;
Vance Fort, Director, Special programs;
Joseph F. Canny, Director, Office of Transportation Regulatory Affairs;
John V. Coleman, Director, Office of Essential Air Service;
Patrick V. Murphy, Jr., Deputy Director, Office of Essential Air Service;
C. Shannon Roberts, Deputy Director, Office of Management Planning;
Angelo P. Picillo, Deputy Director, Office of Installations and Logistics;
Robert E. Jones, Director, Transportation Computer Center;
Gregory S. Dole, Associate General Counsel;
Robert E. Baker, Director, Office of Consumer and Community Affairs;
Jeffrey R. Miller, Chief Counsel, National Highway Traffic Safety Administration;
E. Tazewell Ellett, Chief Counsel, Federal Aviation Administration.

Office of the Inspector General

Paul A. Adams, Inspector General, Department of Housing and Urban Development;
John C. Layton, Inspector General, Department of Treasury;
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary;
Jennifer L. Dorn, Director, Office of Commercial Space Transportation, Office of the Secretary;
Jack Kroll, Assistant Inspector General for Policy, Planning and Resources, Veteran's Administration;
Raymond F. Randolph, Assistant Inspector General for Auditing, Small Business Administration;
Donald R. Trilling, Acting Manager of Industry Policy and Planning, Office of Commercial Space Transportation, Office of the Secretary;
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary;
Richard D. Morgan, Executive Director, Federal Highway Administration;
Don H. Clausen, Special Assistant to the Administrator, Federal Aviation Administration.

United States Coast Guard

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Lester P. Lamm, Deputy Administrator, Federal Highway Administration;
Leon C. Watkins, Director, Office of Civil Rights, Federal Aviation Administration;
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary;
Rex C. Leathers, Associate Administrator for Engineering and Operations, Federal Highway Administration;
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration;
RADM Henry H. Bell, Chief, Office of Personnel;
RADM William P. Kozlovsky, Comptroller.

Maritime Administration

Earnest Hawkins, Associate Administrator for Administration.
Richard E. Bowman, Associate Administrator for Maritime Aids;
Reginald A. Bourdon, Associate Administrator for Policy and International Affairs;
Thomas W. Pross, Jr., Associate Administrator for Shipbuilding, Operations and Research;
Gary S. Misch, Associate Administrator for Marketing and Domestic Enterprise;
Mary Owen McBride, Deputy Assistant Secretary for Public Affairs, Office of the Secretary;
Robert R. Collins, Special Assistant to the Administrator, Federal Railroad Administration;
John M. Mason, Chief Counsel, Federal Railroad Administration.

Federal Railroad Administration

Louis S. Thompson, Associate Administrator for Passenger and Freight Services;
William E. Loftus, Executive Director;
Joseph W. Walsh, Associate Administrator for Safety;
Raymond J. Rogers, Associate Administrator for Administration;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary;
Alfred A. DelliBovi, Deputy Administrator, Urban Mass Transportation Administration;
JoAnn C. Collins, Coordinator for Minority Affairs, Office of the Secretary.

Urban Mass Transportation Administration

Jeffrey R. Miller, Chief Counsel, National Highway Traffic Safety Administration;
Kenneth W. Butler, Associate Administrator for Budget and Policy;
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration.

Federal Highway Administration

Daniel Markoff, Associate Administrator for Administration;
Leon N. Larson, Regional Administrator, Region, 4;
Rex C. Leathers, Associate Administrator for Engineering and Operations;
R. Edward Quick, Director, Office of Civil Rights;
Richard B. Robertson, Associate Administrator for Planning and Policy Development;
Joseph M. O'Connor, Associate Administrator for Right-of-Way and Environment;
George R. Turner, Jr., Regional Administrator, Region 3;
Donald W. Shelton, Regional Representative, Region 6, Office of the Secretary;
Patricia S. Keyes, Regional Representative, Regions 7 and 8, Office of the Secretary;
Joseph A. Lasala, Chief Counsel, Urban Mass Transportation Administration;
Margarita Moncada, Director, Office of Contracts and Procurement;
Amparo Bouchey, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

Federal Aviation Administration

Albert P. Albrecht, Associate Administrator for Development and Logistics;
Paul K. Bohr, Director, Great Lakes Region;
Garland P. Castleberry, Director, Mike Monroney Aeronautical Center;
Franklin L Cunningham Director, Alaskan Region;
Joseph M Del Balzo, Director, Eastern Region;
E. Tazewell Ellett, Chief Counsel;
Charles R. Foster, Director, Northwest Mountain Region;
Brooks C. Goldman, Associate Administrator for Administration;
Edwin S. Harris, Jr., Director, Central Region;
Homer C. McClure, Director, Western-Pacific Region;
C. R. Melugin, Jr., Director, Southwest Region;
Donald R. Segner, Associate Administrator for Policy and International Aviation;
Quentin S. Taylor, Deputy Associate Administrator for Airports;
Leon C. Watkins, Director, Office of Civil Rights,
Charles E. Weithoner, Associate Administrator for Human Resource Management;
Robert E. Whittington, Director, New England Region;
Shirley J. Ybarra, Special Assistant to the Secretary, Office of the Secretary;
Benjamin B. Blackburn III, Regional Representative, Region 4, Office of the Secretary;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
John J. Collins, Jr., Assistant General Counsel for Legislation, Office of the Secretary;
Jeffrey N. Shane, Deputy Assistant Secretary for Policy and Program Development, Office of the Secretary.

Research and Special Programs Administration

George Nesterczuk, Deputy Administrator;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration;
Louis W. Roberts, Director, Transportation Systems Center;
Lester P. Lamm, Jr., Deputy Administrator, Federal Highway Administration.

National Highway Traffic Safety Administration

Howard M. Smolkin, Deputy Administrator;
Barry I. Felrice, Associate Administrator for Rulemaking;
George L. Parker, Associate Administrator for Enforcement;
Jeffrey R. Miller, Chief Counsel;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
Shirley J. Ybarra, Special Assistant to the Secretary, Office of the Secretary;
Bruce T. Barkley, Director, Office of Management Planning, Office of the Secretary;
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the Secretary.

[FR Doc. 23318 Filed 9-27-85; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 85-072]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Approval Notice.

SUMMARY: This notice contains a listing of Coast Guard approvals issued between 1 June 1985 and 31 August 1985. These approvals are for safety equipment and materials required by regulation to be used on certain merchant vessels and recreational boats, and also in Outer Continental Shelf activities.

FOR FURTHER INFORMATION CONTACT: Ms. Valarie Williams, Office of Merchant Marine Safety (G-MVI-3/14).

Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426–1444. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Certain regulations in Titles 33 and 46 of the Code of Federal Regulations require that various items of lifesaving, firefighting and other safety equipment and materials used on board merchant vessels and recreational boats, and in Outer Continental Shelf activities be approved by the Commandant, U.S. Coast Guard. This document notifies interested persons that certain approvals have been issued or revised during the period from 1 June 1985 to 31 August 1985. These actions were taken under the procedures in 46 CFR 2.75–1 to 2.75–50.

The statutory authority governing carriage of this equipment is in sections 3306(a), 4102, and 4302(a)(2) of Title 46, United States Code, section 1333 of Title 43, United Stated Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)).

Most of the items in this list meet specification regulations in 46 CFR Parts 160 to 164. The approvals listed in this document are generally issued for a period of 5 years from the date of issue, unless sooner withdrawn, suspended or terminated.

Self-Contained Breathing Apparatus

Approval No. 160.011/78/0, Model PA–80–FS–2216, one-half hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/79/0, Model PA–80–FS–4500, one-half hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/80/0, Model PA–80–FS–4500, 45 minute pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/81/0, Model PA–80–FS–4500, one hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Lifeboat & Liferaft Hatchet

Approval No. 160.013/8/0, Hatchet with Lanyard for Lifeboats and Liferafts, manufactured by Revere Supply Co., Inc., 603–607 W. 29th Street, New York, NY 10001.

Lifeboat Winch (Hydraulic-Powered)

Approval No. 160.015/137/1, Model W1403 survival capsule launching winch, manufactured by Whittaker Corporation, 5159 Baltimore Drive, La Mesa, CA 92041.

Approval No. 160.015/141/0, Type NL 24 UP (Hercules) lifeboat winch, manufactured by Northern Line Machine & Engr. Co., 1840 Marine View Drive, Tacoma, WA 98422.

Approval No. 160.015/149/0, Type USMW 7.4 lifeboat winch (metric design), manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.015/150/0, Type USMW 9.3 lifeboat winch (metric design), manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Chain Ladder Equivalent

Approval No. 160.017/60/0, Model Eric II embarkation ladder equivalent to chain ladder, manufactured by A.L. Don Company, Ft. Dock Street, Matawan, NJ 07747.

Emergency Drinking Water

Approval No. 160.026/60/0, Emergency Drinking Water in hermetically sealed cans contents 8½ oz. (260 ml), manufactured by J.W.D. Marketing Ltd., 6676 Stoney Cr., Delta, B.C., Canada.

Lifeboat Davit

Approval No. 160.032/250/0, Model NL–24–UP gravity pivot davit, manufactured by Northern Line Machine & Engr. Co., 1840 Marine View Drive, Tacoma, WA 98422.

Lifeboat

Approval No. 160.035/519/0, 8.0 m (26.25 ft.) x 2.54 m (8.33 ft.) x 1.14 m (3.74 ft.), manufactured by Harding Safety Inc., P. O. Box 1445, Mobile, AL 36633.

Hand Held Rocket Propelled, Parachute Red Flare Distress Signal

Approval No. 160.036/12/0, Ikaros Original hand held, rocket propelled, red parachute fare, manufactured by Hanssons Pyrotekniska A/B, Box 1133, S–436 00 Askim, SWEDEN.

Lifeboat First Aid Kit

Aproval No. 160.041/17/0, Lifeboat First Aid Kit Model, BQ0400M, manufactured by Datrex, 3795 NW 25th Street, Miami, FL 33142.

Jacknife (with can opener)

Approval No. 160.043/10, Type S702 jacknife (with can opener) dwg. No. 1160 dated 11 August 1950, manufactured by Camillus Cutlery Company, Camillus, New York 13031.

Emergency Provisions for Lifeboats

Approval No. 160.046/8/2, Emergency Provisions for lifeboats (and liferafts) in hermetically sealed foil laminate package, manufactured by Revere Supply Co., Inc., 605 W. 29th Street, New York, NY 10001.

Approval No. 160.046/9/2, Emergency Provisions for liferafts (and lifeboats) in hermetically sealed foil laminate package, manufactured by Revere Supply Co., Inc., 605 W. 29th Street, New York, NY 10001.

Inflatable Liferaft

Approval No. 160.051/165/0, 25-person, davit-launched inflatable liferaft, Type MK–II Uniraft, manufactured by Rubber Crafters of West Va., Inc., P.O. Box 556, Grantsville, WV 26147.

Approval No. 160.051/166/0, 20-person, davit-launched inflatable liferaft, Type MK–II Uniraft, manufactured by Rubber Crafters of West VA., Inc., P.O. Box 566, Grantsville, WV 26147.

Unicellular Plastic Foam Work Vest

Approval No. 160.053/7/1, Model No. 82117 or 82120, manufactured by Atlantic-Pacific, Box 27, Staten Island, NY 10314.

Approval No. 160.053/35/1, Model IWV–221–1 or IWV–220–1, manufactured by Stearns Manufacturing Co., P.O. 1498, St. Sloud, MN 56302.

Approval No. 160.053/58/1, Model No. 82117 or 82120, manufactured by Atlantic-Pacific, Box 27, Staten Island, NY 10314.

Approval No. 160.053/68/0, Model IFS–580, Adult X–Small, Type V PFD, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56302.

Unicellular Plastic Foam Life Preserver

Approval No. 160.055/139/0, Model 100W, Adult Small/Medium, Type V PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.055/140/0, Model 100W, Adult Large/X-Large, Type V PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.055/141/0, Model 100W, Youth (for person 50 to 90 lbs.) Type V PFD, manufactured by America's Cut, Inc., P.O. Box 2009, La Puente,CA 91746.

Approval No. 160.055/152/0, Model RRV–6145, child medium, Type V PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud MN 56302.

Launching Device of Inflatable Liferafts

Approval No. 160.063/13/0, Type FR–50–DM fixed-arm launching device with Type R–50H–1 (MK–I) winch, manufactured by Marine Safety Equipment Corp., P.O. Box 465, Farmingdale, NJ 07727.

Marine Buoyant Device

Approval No. 160.064/775/0, Model SSV–160 or ILV–460, Adult Super, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1136/1, Model IWV–222–1 or IWV–220–1, Adult Universal Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1741/0, Model U–1, Adult Universal, Type III PFD, manufactured by Fabrionics, Inc., P.O. Box 94, Camargo, IL 61919.

Approval No. 160.064/1771/0, Model Nos. SSV–113, –124, –126, –128, –114, or –140, Adult Small/Medium, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1772/0, Model Nos. SSV–113, –124, –126, –128, –114, or –140, Adult Large/X-Large, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1907/1, Model 900T, Toddler (for persons less than 30 lbs.), Type III PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/1960/0, Model Nos. 701 or 701A, Child Small (for persons 30 to 50 lbs.), manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2049/0, Model 300, Youth (for persons 50 to 90 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2050/0, Model 300, Adult Small, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2051/0, Model 300, Adult Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2052/0, Model 300, Adult Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2053/0, Model 300, Adult X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2142/0, Model 100W, Adult Small/Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2143/0, Model 100W, Adult Large/X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2144/0, Model 100W, Youth (for persons 50 to 90 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2149/0, Model Nos. 901, 902, and 903, Adult Small/Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2150/0, Model Nos. 901, 902, and 903, Adult Large/X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2249/0, Model BTM–100, Adult Small, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2250/0, Model BTM–100, Adult Medium, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2251/0, Model BTM–100, Adult Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2252/0, Model BTM–100, Adult X-Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2253/0, Model BTM–100, Adult XX-Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2254/0, Model BTM–100, Adult Universal, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2272/0, Model Nos. 901, 902, 903, and 906, Adult Universal, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2281/0, Model 671, Small/Medium, manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2282/0, Model 671, Large/X-Large, manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2343/0, Model GXS, Adult X-Small, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2344/0, Model GS, Adult Small, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2347/0, Model GXL, Adult X-Large, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2348/0, Model KS, Infant Child Small (for persons under 30 lbs.), manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2350/0, 23 × 23 × 3 ⅛, Model H–1, manufactured by Forespar, 2672 Dow Avenue, Tustin, CA 92680.

Approval No. 160.064/2372/0, Model BEB–1, Adult Small, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2373/0, Model BEB–1, Adult Medium, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2374/0, Model BEB–1, Adult Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2375/0, Model BEB–1, Adult X-Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2376/0, Model RRV–6145, Child Medium (for person 50 to 90 lbs.), manufactured by Stearns Manufacturing Company, P.O. Box 1498, 30th and Division Streets, St. Cloud, MN 56301.

Approval No. 160.064/2377/0, Model GV–1, Adult Small/Medium, manufactured by Fabrionics, Inc., Route 130 South, Camargo, IL 61919.

Approval No. 160.064/2378/0, Model GV–2, Adult Large/X-Large, manufactured by Fabrionics, Inc., Route 130 South, Camargo, IL 61919.

Approval No. 160.064/2379/0, Model Nos. 1106, 1108, 1109, and 1141, Adult Small/Medium, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2380/0, Model Nos. 1106, 1108, 1109, and 1141, Adult Large/X-Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2381/0, Model 900C, Child Small (for persons 30 to 50 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2445/0, Model Baby II, Infant (for persons under 30 lbs.), manufactured by Ero Industries, Inc., 5940 West Touchy Avenue, Chicago, IL 60648.

Approval No. 160.064/2448/0, Model 1206, Audit X-Small, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2449/0, Model 1206, Youth (for persons 50 to 90 lbs.), manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2450/0, Model 1206, Pee Wee (for persons 30 to 50 lbs.), manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Exposure Suit

Approval No. 160.071/26/0, Model 316-AU, Adult Exposure Suit, manufactured by Survival International, Inc., 7859 South 180 Street, Kent, WA 98032.

Fire Protective Systems

Approval No. 161.002/12/0, Audible and visual supervised photoelectric optical smoke detection system, Model ESDS-2, manufactured by The Ansul Company, One Stanton Street, Marinette, WI 54143.

Approval No. 161.002/13/0, Kidde Marine Smoke Detector, Model KMSD, manufactured by Walter Kidde, Div. of Kidde, Inc., Walter Kidde Drive, Wake Forest, N.C. 27587.

Approval No. 161.002/19/0, Ansul and Wormald Marine Multizone Fire Detection System consisting of model 962200211, manufactured by Wormald Data Systems, 2025 Royal Lane, Dallas, TX 75229.

Floating Electric Waterlight

Approval No. 161.010/8/2, Automatic Lite, SAVE-U-LITE, Model WL003, manufactured by Automatic Lite, 400 Gordon Drive, Suite 405, Lionville, PA 19353.

Approval No. 161.010/13/0, Automatic Lite, SAVE-U-LITE, Model U-80, manufactured by Automatic Lite, 400 Gordon Drive, Suite 405, Lionville, PA 19353.

Personal Flotation Device Light

Approval No. 161.012/4/0, Model 378-B incandescent Personal Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden, CT 06450.

Approval No. 161.012/5/0, Model 380 Personal Safety Strobe Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden CT 06450.

Approval No. 161.012/6/0, Model 378-C incandescent Personal Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden, CT 06450.

Pressure-Vacuum Relief Valve

Approval No. 162.017/120/1, PRES-VAC Type HS-M pressure vacuum relief valve with cast iron, bronze, stainless steel, or nodular cast iron bodies, manufactured by bodies, manufactured by PRES-VAC, Svanevang 3, 3450 Allerod, Denmark.

Approval No. 162.017/122/0, PRES-VAC automatic weight loaded pressure-vacuum relief valve, manufactured by PRES-VAC, Svanevang 3, 3450 Allerod, Denmark.

Water Spray Type Fire Extinguishing Systems

Approval No. 162.036/10, Bete water spray system for tank vessel pump rooms, nozzle Model Nos. N3, N3W, N5, and N5W, manufactured by Bete Fog Nozzle, Inc., 324 Wells Street, Greenfield, MA 01301.

Backfire Flame Arrester for Gasoline Engines

Approval No. 162.041/113/0, Volvo Penta flame control device, Model No. 866601, manufactured by Volvo Penta of America, P.O. Box 927, Rockleigh, NJ 07647.

Approval No. 162.041/178/0, Volvo Penta Model MB10A backfire flame arrester, manufactured by Volvo Penta of America, P.O. Box 927, Rockleigh, NJ 07647.

Oily Water Separators

Approval No. 162.050/1004/0, Sarex Model 100 GPM/OWS 22.7, manufactured by Separation and Recovery Systems, 1733 Kaiser Ave., Irvine, CA 92714.

Approval No. 162.050/1010/0, Bilgemaster I-2GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1011/0, Bilgemaster I-5GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1012/0, Bilgemaster I-10GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1013/0, Bilgemaster II-2GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1014/0, Bilgemaster II-5GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1015/0, Bilgemaster II-10GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1095/0, Framarine Model CPS-3 B15 consisting of primary settling chamber, manufactured by Quantek Inc., P.O. Box 33210, Tulsa, OK 74135.

Approval No. 162.050/1149/0, Facet Model 10WS-1/4.4-15 consisting of an inclined plate separator, manufactured by Facet Industrial Division, Facet Enterprises, Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1164/0, Hamworthy HS 1 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1165/0, Hamworthy HS 2.5 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1166/0, Hamworthy HS 5 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1168/0, Facet Model 3-OWS-400, manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1172/0, Facet Model OWS-400, manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1176/0, Model S1-1T consisting of a single tank with several "zones", manufactured by Sigma Treatment Systems, Inc., Merry Meadows, R.D. 1 Box 70, Chester Springs, PA 19425.

Approval No. 162.050/1178/0, Sarex Model VGS-5, manufactured by Separation and Recovery Systems, 1733 Kaiser Ave., Irvine, CA 92714.

Approval No. 162.050/5004/1, OILCON MK III Cargo Monitor replaces old (OILCON Cargo Monitor), manufactured by STC International Marine, INTELCO House, 302 Commonside East, Mitcham, Surrey, CR4 1YT, England.

Pilot Hoist

Approval No. 163.002/2/0, Electrically powered Pilot Hoist models PHL-EE-T and PHL-EE-S, manufactured by Chuo

Kogyo Ltd., No. 80 Yaraicho, Shinjuku-Ku, Tokyo, Japan.

Structural Insulation

Approval No. 164.007/64/0, "Delta Board" mineral wool type structural insulation, manufactured by Rock Wool Mfg., Co., P.O. Box 506, Leeds, AL 35094.

Bulkhead Panel

Approval No. 164.008/68/0, Hopeman Brothers "Beta 100" building unit, manufactured by Hopeman Brothers, Inc., P.O. Box 820, 435 Essex Ave., Waynesboro, VA 22980.

Approval No. 164.008/95/0, Type 33A mineral wool core, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Approval No. 164.008/96/0, Type 33C mineral wool core, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Approval No. 164.008/97/0, Type 45A bulkhead panel, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Noncombustible Material

Approval No. 164.009/276/0, "Kaowool Consort ATF" ceramic noncombustible material, manufactured by Babcock & Wilcox, Insulating Products Div., P.O. Box 923, 2102, Old Savannah Rd., Augusta, GA 30903.

Approval No. 164.009/277/0, Molded fiberglass duct insulation, manufactured by Gullfiber AB, 260050 Billesholm, Sweden.

Structural Ceilings

Approval No. 164.010/12/0, "Gamma 100" continuous ceiling, manufactured by Hopeman Brothers, Inc., 435 Essex Ave., P.O. Box 820, Waynesboro, VA 22980.

Retroreflective Material

Approval No. 164.018/2/0, Type 1, "Reflexite Polycarbonate Microprism Reflective Sheeting", manufactured by Reflexite Corporation, 199 Whiting Street, New Britain, CT 06051.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

September 25, 1985.

[FR Doc. 85–23292 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on October 17–18, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Sixth Meeting held on July 11–12, 1985; (3) Review Task Assignments From Previous Meeting; (4) Review the Fourth Draft Report on Minimum Operational Performance Standards for Airborne Thunderstorm Detection Equipment; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 19, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–23212 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–85–24]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and particpation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 21, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 24, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24773	T.A.R.	14 CFR 91.303	To allow petitioner to operate one Boeing 707–338C aircraft until hush kits are installed.

[FR Doc. 85–23209 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number HS-85-17]

Burlington Junction Railway; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Burlington Junction Railway (BJRY) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64 a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than fifteen employees who are subject to the statute, to seek an exemption from the twelve hour limitation.

The BJRY seeks this exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before November 16, 1985, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date of comments, during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on September 20, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-23251 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meetings of Art Advisory Panel.

SUMMARY: Closed meetings of the Art Advisory Panel will be held in Washington, DC.

DATE: The meetings will be held October 24, November 5 and 20, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566-9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that closed meetings of the Art Advisory Panel will be held on October 24, November 5 and 20, 1985 beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 85-23289 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension, a new collection and revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patrica Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 24, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extension

1. Department of Veterans Benefits.
2. Application for Conversion.
3. VA Form 29-358 and VA Form Letter 29-165.
4. On occasion.
5. Individuals or households.
6. 3,000 responses.
7. 750 hours.
8. Not applicable.

New

1. Department of Veterans Benefits.
2. Residential Appraisal Report.
3. VA Form 26-8975c (Test).
4. On occasion.
5. Individuals or households; Businesses or other for-profits; Small businesses or organizations.
6. 30,000 responses.
7. 90,000 hours.
8. Not applicable.

* * *

Revision

1. Department of Medicine and Surgery.
2. Application for Participation in the Veterans Administration Health Professional Scholarship Program.
3. VA Form 10–0003, 10–0003a and 10–0003b.
4. Annually.
5. Individuals or households; Businesses or other for-profit; Non-profit institutions.
6. 3,000 responses.
7. 3,000 hours.
8. Not applicable.

[FR Doc. 85–23201, Filed 9–27–85; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 10, 1985, at 2:30 p.m.
Thursday, October 24, 1985, at 2:30 p.m.
Thursday, November 7, 1985, at 2:30 p.m.
Thursday, November 21, 1985, at 2:30 p.m.
Thursday, December 5, 1985, at 2:30 p.m.
Thursday, December 19, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

This notice does not appear 15 days prior to the meeting due to delays in administrative processing.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552(c) (2) and (4)

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 23, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–23200 Filed 9–27–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

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).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2
Legal Services Corporation	3, 4, 5

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 11:00 a.m. (Eastern Time), Monday, September 30, 1985.

CHANGE IN THE MEETING: The following matter has been added to the agenda for the closed portion of the meeting:

"Amicus Curiae Participation"

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred W. Alvarez, Commissioner
R. Gaull Silberman, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued September 26, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-23392 Filed 9-27-85; 2:54 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:40 a.m. on Wednesday, September 25, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation with respect to administrative enforcement actions against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 25, 1985.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 85-23358 Filed 9-26-85; 11:31 am]

BILLING CODE 6714-01-M

3

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting—Tentative Agenda

TIME AND DATE: Meeting will commence at 8:00 a.m., Thursday, October 10, 1985, and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —September 6, 1985
3. Questioned Costs—Proposed 45 CFR 1630
   —Report from the Office of Monitoring, Audit and Compliance
   —Report from the Office of the General Counsel
   —Public comment
4. Recommendations to Board on propoed 45 CFR 1630 (Questioned Costs)
5. Private Attorney Involvement—45 CFR 1614
   —Report from the Office of the General Counsel
   —Public comment
6. Recommendations to Board on 45 CFR 1614 (Private Attorney Involvement)
7. Lobbying—45 CFR 1612
   —Report from the Office of the General Counsel
   —Public comment
8. Recommendations to full Board on 45 CFR 1612 (Lobbying)
9. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Office of the General Counsel, (202) 272-4010.

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-23411 Filed 9-26-85; 3:52 pm]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations.

TIME AND DATE: Meeting will commence at 2:00 p.m., or the conclusion of the Operations and Regulations Committee meeting, Thursday, October 10, 1985 and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes
   —September 5, 1985
3. Fiscal Year 1986 Budget
4. Modification of Budget Guidelines
5. Revision of the Audit and Accounting Guide.

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Executive Office, (202) 272-4040

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-23412 Filed 9-26-85; 3:52 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Tentative Agenda

TIME AND DATE: An executive session will be held at 8:00 p.m., Wednesday, October 9, 1985. The public portion of the meeting will commence at 10:00 a.m., Friday, October 11, 1985, and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A Room, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Personnel and Personal matters (closed)
2. Litigation and Investigation matters (closed)
3. Adoption of Agenda
4. Adoption of Minutes
   —September 6, 1985
5. Welcome from the President, New Hampshire Bar Association
6. Report from the President
7. Discussion and Action on Recommendation of the Committee on Operation and Regulations
   —45 CFR 1614 (Private Attorney Involvement)
   —45 CFR 1630 (Questioned Costs)
8. Discussion and Action on the Recommendation of the Committee on Audit and Appropriations
   —FY 1986 Consolidated Operating Budget
   —Budget Guidelines
   —Audit and Accounting Guide

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272–4040.

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–23413 Filed 9–26–85; 8:45 am]

BILLING CODE 6820-35-M

federal register

Monday
September 30, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-4, 85-AWA-5, 85-AWA-6, 85-AWA-7, 85-AWA-8, 85-AWA-9, and 85-AWA-10]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at 30 locations. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA.

Implementation of ARSA procedures at each of the affected locations would reduce the risk of midair collision and promote the efficient control of air traffic in terminal areas. The proposed locations are set forth under **"Docket Number and Comment Closing Date for Proposed ARSA Locations"** below.

DATES: Comments must be received on or before February 3, 1986, for Airspace Docket No. 85-AWA-4; on or before March 3, 1986, for Airspace Docket No. 85-AWA-5; on or before April 1, 1986, for Airspace Docket No. 85-AWA-6; on or before May 1, 1986, for Airspace Docket No. 85-AWA-7; on or before June 2, 1986, for Airspace Docket No. 85-AWA-8; on or before July 1, 1986, for Airspace Docket No. 85-AWA-9; and on or before January 2, 1986, for Airspace Docket No. 85-AWA-10.

For dates of public meetings, see Appendix 1.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. (specific number), 800 Independence Avenue SW., Washington, D.C. 20591.

Official dockets may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

Informal dockets may also be examined during normal business hours at the office of the Regional Air Traffic Division.

For addresses of public meetings, see Appendix 1.

FOR FURTHER INFORMATION CONTACT: Paul C. Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves 30 locations organized into seven groups. Each group is assigned a separate docket number and comment period. The locations included in each docket are listed alphabetically under **"Docket Number and Comment Closing Date for Proposed Area Locations"** below. The closing dates of the comment periods have been spaced at one-month intervals. This phasing of the comment periods limits the number of locations subject to a comment closing date at any given time and thereby provides a greater opportunity for public comment, especially for those commenters with an interest in more than one proposed location. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the specific airspace docket referenced and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. (specific number)." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing dates for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the appropriate docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Docket Number and Comment Closing Date for Proposed ARSA Locations

Airspace Docket No. 85-AWA-4—Comments for this docket must be received on or before February 3, 1986.

Beale Air Force Base, CA
Birmingham Municipal Airport, Birmingham, AL
Burlington International Airport, VT
Castle AFB, CA
Charlotte/Douglas International Airport, NC
Columbus Metropolitan Airport, GA
Mather Air Force Base, CA
McClellan Air Force Base, CA
Metropolitan Oakland International Airport, CA
Nashville Metropolitan Airport, TN
Sacramento Metropolitan Airport, CA

Airspace Docket No. 85-AWA-5—Comments for this docket must be received on or before March 3, 1986.

Adams Field, Little Rock, AR
General Mitchell Field Airport, Milwaukee, WI
Greater Buffalo International Airport, NY
Memphis International Airport, TN
Michiana Regional Airport, South Bend, IN
Salt Lake City International Airport, UT

Airspace Docket No. 85-AWA-6—Comments for this docket must be received on or before April 1, 1986.

Albuquerque International Airport, NM
Davis-Monthan Air Force Base, AZ
Greater Cincinnati International Airport, Covington, KY
Indianapolis International Airport, IN
Phoenix Sky Harbor International Airport, AZ
Standiford Field Airport, Louisville, KY
Tucson International Airport, AZ
Wichita Mid-Continent Airport, KS

Airspace Docket No. 85-AWA-7—Comments for this docket must be received on or before May 1, 1986.

Dallas Love Field, TX

Airspace Docket No. 85-AWA-8—Comments for this docket must be received on or before June 2, 1986.

Lafayette Regional Airport, LA

Airspace Docket No. 85–AWA–9—Comments for this docket must be received on or before July 1, 1986.

Raleigh-Durham Airport, NC

Airspace Docket No. 85–AWA–10—Comments for this docket must be received on or before January 2, 1986.

Dulles International Airport, Washington, DC
Tampa International Airport, FL

Meeting Procedures

In addition to seeking written comments on these proposals, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposals. The schedule of times and places of the hearings is listed in Appendix 1. In some instances, meetings on adjacent ARSA locations are combined in one proceeding for the convenience of the public. Also, an effort has been made not to schedule meetings at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed in Appendix 1. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants submitting handout materials should present an original and two copies of the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbia, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Related Rulemaking

This notice proposes ARSA designations at 30 of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Thirty-six candidates were previously proposed in Airspace Docket No. 85–AWA–1 (50 FR 27528), Airspace Docket Nos. 85–AWA–2 and 85–AWA–3 (50 FR 31472).

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport within the airport traffic area of the primary airport are excluded from the two-way radio communications requirement of Section 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposals

The FAA is considering amendments to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at 30 locations. Each location is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are set forth under **"Docket Number and Comment Closing Date for Proposed ARSA Locations,"** above, and depicted on charts in Appendix 2 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines

ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed ARSA implementation program which is included in the regulatory docket. The methodology and major findings of that evaluation are presented below.

a. Costs.

Costs which potentially may result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

Each of these cost factors is discussed further below:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

For the sites proposed in this notice the FAA does not expect to incur any additional air traffic controller staffing costs, controller training costs, or facility equipment costs. FAA believes that the additional traffic which will participate in radar services at ARSA's can be accommodated at current authorized staffing levels. Participation in TRSA's is already quite high, and the greater flexibility afforded controllers through the reduced separation standards will enable them to handle the additional traffic without requiring additional personnel beyond present authorizations. FAA expects to train its controller force in ARSA procedures during regularly scheduled briefing sessions. Airports where TRSA's are currently in operations already have automated terminal radar systems installed. Therefore, FAA does not expect to incur any additional training or equipment procurement costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner which will make more efficient use of existing resources, and consequently does not expect to incur any appreciable implementation costs.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

Chart revisions of the type required to depict an ARSA are made routinely during charting cycles, and are considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the ARSA program. Further, pilots will obtain charts depicting ARSA's as they are published during these charting cycles. Because pilots are required to use current charts, they also will not incur any additional costs.

Much of the need to provide public notification and pilot education about ARSA procedures will be met as a part of this rulemaking proceeding during the informal public meetings which will be held for each proposed ARSA location. However, should the decision be made to establish an ARSA through a final rule issued in this proceeding, the FAA will distribute a Letter to Airmen to all pilots residing in the vicinity of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular explaining ARSA's. The total one-time cost of distributing Letters to Airmen and the Advisory Circular is estimated to be approximately $50,000 for the entire ARSA program. The prorated one-time cost for those airports being considered in this rulemaking is approximately $11,000.

(3) Additional operating costs for circumnavigating or overflying an ARSA.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services will choose to avoid the mandatory participation airspace of an ARSA rather than participate. Delay costs will be incurred by these pilots equal to the additional aircraft variable operating cost and the value of lost crew and passenger time resulting from the deviation. Many pilots will elect to overfly the ARSA, and although this will not result in any appreciable delay, an additional fuel burn will result from the need to temporarily climb above the 4,000 feet AGL ceiling of the ARSA (which will be offset somewhat by the descent).

The unit delay costs used throughout this regulatory evaluation to develop total annual costs are presented in Table 1. For those aircraft expected to overfly the ARSA rather than deviate around it, FAA estimates that a single-engine piston airplane will burn about

an additional half gallon of fuel, a multi-engine piston airplane will burn about one additional gallon, and that the price of aviation gasoline is approximately $2.00 per gallon.

TABLE. 1—AVERAGE AIRCRAFT VARIABLE OPERATING COSTS AND VALUE OF PASSENGER TIME USED TO ESTIMATE ANNUAL DELAY COSTS [1] (1984 DOLLARS)

Aircraft type (abbreviation)	Aircraft hourly variable operating cost [2]	Average number Passengers (pax)/total hourly value of time [3]	Total hourly delay costs
Single-engine piston (SEP)	$39.22	2 pax/$44.42	$83.64
Multi-engine piston (MEP)	118.07	3 pax/$66.63	184.70
Multi-engine turboprop (METP)	354.32	3 pax/$66.63	420.95
Executive Jet (EXJ)	1,036.64	4 pax/$88.84	1,125.48
Air Carrier (AC)	2,588.77	90 pax/ $1,998.90	4,587.67
Helicopter (HELI)	138.27	3 pax/$66.63	204.90
Military Jet (MILJ)	1,853.87		1,853.87
Military Helicopter (MILH)	195.14		195.14
Military Transport (MILTRP) [4]	1,994.79		1,994.79

[1] One minute average delay per day = 6.083 hours delay per year. Delay time estimates for aircraft which alter flight paths to avoid the ARSA are based upon average cruising speeds of 120 KTS for single-engine piston; 190 KTS for multi-engine piston, 225 KTS for executive jets, and 110 KTS for helicopters.

[2] Aircraft variable operating costs include crew salaries for all aircraft except single and multi-engine piston.

[3] Based upon $22.21 per hour average value of passenger time.

[4] Variable operating cost of air carrier 4-engine turboprop transport used as proxy for military transport.

Source: *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*, FAA Office of Aviation Policy and Plans, September 1981 (Report #FAA-APO-81-3 and revision #APO-84-3). Values have been adjusted for inflation and are expressed in 1984 dollars.

The Office of Aviation Policy and Plans (APO) requested ATC personnel at each of the proposed ARSA sites to estimate, based upon their familiarity with local traffic patterns, the number of daily flight which might circumnavigate or overfly the ARSA. Air Traffic Operations Service personnel also provided input on these estimates. The estimated number of daily flights affected, extent of deviation, and type of aircraft, are presented for each site in Table 2, which follows at the end of this section and summarizes the various potential impacts of establishing an ARSA for each site. FAA estimates that the total annual circumnavigation and overflight costs for the candidate ARSA sites proposed in this notice will be approximately $144 thousand.

(4) Delay costs resulting from operations within an ARSA rather than a TRSA.

FAA recognizes that the potential exists for delay to develop at some locations following esablishment of an ARSA because of the additional traffic which the radar facilities will be handling. However, FAA believes that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and resources to take fullest advantage of the efficiencies which an ARSA will permit. Followup studies of the Austin and Columbus lead sites, completed by the FAA Office of Aviation Policy and Plans (APO) and by Engineering & Economics Research Inc. (EER), both indicated that delay was not a significant problem (the clearance delivery delay attributable to the ARSA at Austin was later alleviated through procedural changes and a redistribution of personnel).[1] Nevertheless, the FAA has attempted to estimate delay costs which might temporarily result from establishing ARSA's at the airports being considered in this proposal. These delay estimates should be regarded as the worst case situation which might follow the initial establishment of an ARSA. ATC personnel at each of the proposed sites, as well as Air Traffic Operations Service personnel, provided estimates of three categories of delay, *in comparison to the existing TRSA*, which might result from the ARSA: clearance delivery and/or departure delay for aircraft departures, sequencing delay during peak periods for arriving aircraft, and delay in establishing radar contact before entering the ARSA which might result from frequency congestion, controller overload, or greater participation of nontransponder equipped aircraft. The estimated number of daily flights affected, duration of delay, and type of aircraft, are presented for each site in Table 2. FAA estimates that the total annual delay costs for the candidate ARSA sites proposed in this notice will be approximately $565 thousand.

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[1] *An Analysis of the Impact of the Airport Radar Service Area (ARSA)*, FAA Office of Aviation Policy and Plans, November 1984 (Report =FAA-APO-85-1); and *National Airspace Review—Airport Radar Service Area Operational Confirmation Report*, Engineering & Economics Research, Inc. (EER), Report No. DOT/FAA/AT-84/2, October 1984.

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Table 2

Estimated Average Daily Flight Deviations, Overflights, Delay and Miscellaneous Impacts for Proposed ARSA Sites

Note: Aircraft abbreviations from Table 1.

Docket No./ Site Name	Daily Flight Deviations (NM) or Overflights (OV)	Daily Clearance Delivery and/or Departure Delay	Daily Arrival Sequencing Delay	Daily Radar Contact Delay	Miscellaneous
85-AWA-4					
Beale AFB	0	0	0	0	0
Birmingham	0	2 SEP/1 METP/ 2 HELI - 5 min.	2 SEP/1 METP/ 2 HELI - 5 min.	1 SEP - 1 min.	0
Burlington	0	0	0	0	0
Castle AFB	15 SEP - OV 10 SEP - 3 NM	0	0	0	9 NORDO
Charlotte	15 SEP/10 MEP - 6 NM	6 SEP/6 MEP - 1 min.	0	5 SEP/5 MEP - 1 min.	0
Columbus (Georgia)	0	0	0	0	0
Mather AFB	0	0	0	0	0
McClellan AFB	0	0	0	0	0
Oakland	0	0	0	0	0
Nashville	3 SEP - OV 2 SEP - 5 NM	4 SEP/1 MEP/ 5 HELI - 1 min.	0	0	0
Sacramento	0	0	0	0	0
85-AWA-5					
Adams Field (Little Rock)	4 SEP - 6 NM 1 MEP - OV (3 days per week)	0	0	2 SEP/1 MEP - 1.5 min. (3 days per week)	0
General Mitchell Field (Milwaukee)	12 SEP/8 MEP - 4 NM	5 SEP/5 MEP - 0.2 min.	0	0	0
Buffalo	6 SEP/2 MEP - OV 3 SEP/1 MEP - 5 NM	Primary: 7.5 SEP/5 MEP/ 12.5 HELI - 0.5 min. Satellite: 11 SEP/ 4 MEP - 4 min.	0	0	0
Memphis	7 SEP/1 MEP - 7.5 NM	3 SEP/2 MEP/4 METP/ 1 EXJ - 0.5 min.	0	0	0

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Table 2

Estimated Average Daily Flight Deviations, Overflights, Delay and Miscellaneous Impacts for Proposed ARSA Sites

Note: Aircraft abbreviations from Table 1.

Docket No./ Site Name	Daily Flight Deviations (NM) or Overflights (OV)	Daily Clearance Delivery and/or Departure Delay	Daily Arrival Sequencing Delay	Daily Radar Contact Delay	Miscellaneous
85-AWA-5 (cont.)					
Michiana Regional (South Bend)	0	0	0	0	0
Salt Lake City	9 SEP - 5 NM 1 MEP - OV	0	0	10 SEP/5 MEP- 4 min.	0
85-AWA-6					
Albuquerque	0	0	0	0	0
Davis-Monthan AFB	0	0	0	0	0
Greater Cincinnati	4 SEP/1 MEP - 5 NM 4 SEP/1 MEP - OV	0	0	3 SEP/1 MEP - 1 min.	0
Indianapolis	3 SEP - OV	0	0	0	0
Phoenix	0	10 SEP/11 MEP - 0.7 min.	0	20 MILH - 2 min.	0
Standiford Field (Louisville)	0	0	0	0	0
Tucson	0	0	0	0	0
Wichita	0	0	0	0	0
85-AWA-7					
Dallas Love Field	0	0	0	10 SEP - 2 min.	0
85-AWA-8					
Lafayette	10 SEP - 5 NM (5 days per week)	10 SEP/5 MEP - 1 min. (5 days per week)	0	0	0
85-AWA-9					
Raleigh-Durham	0	4 SEP/3 MEP/ 2 HELI - 2 min.	5 SEP/4 MEP/ 1 HELI - 3 min.	2 SEP/2 MEP - 2.5 min.	0
Dulles (Washington, D.C.)	0	4 SEP/2 MEP - 4 min. (4 days per week)	0	0	2 NORDO
Tampa	0	Primary: 17 SEP/13 MEP - 1.5 min. Satellite: 17 SEP/13 MEP - 1.5 min.	17 SEP/13 MEP - 1.5 min.	14 SEP/26 MEP - 2.5 min.	0

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(5) The need for some operators to purchase communications avionics. Because of the requirement that radio communications be maintained in the mandatory participation airspace of the ARSA, some operators who previously could operate without radios from satellite airports located within that portion of the proposed ARSA which will extend down to the surface will find it necessary to install two-way radios. FAA expects that the costs resulting from these aircraft will be minimal because in most instances the proposed ARSA provides airspace exclusions and cutouts for satellite airports within 5 nautical miles of the ARSA center. However, in a few instances, operators of nonradio equipped (NORDO) aircraft will need to install radios. FAA estimates that the average total cost of equipping a NORDO aircraft with an inexpensive 720 channel transceiver, including installation, is approximately $2,300. (This figure represents only an average cost estimate for a typical VHF communications installation. Other less expensive alternatives for giving an aircraft the communications capability necessary to operate within an ARSA are available.) The annual expense to an aircraft operator who financed the cost over a four-year period at a 15 percent interest rate would be $751. NORDO aircraft are shown in the "Miscellaneous" column of Table 2 for those proposed sites where ATC personnel have identified locally based aircraft which might be affected. FAA estimates that the total annual radio installation costs for affected aircraft at the candidate ARSA sites will be approximately $8,500.

(6) Miscellaneous costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. The exclusions in most cases alleviate adverse impacts on local-fixed based operators and airport operators, but ATC personnel at the proposed ARSA sites have attempted to identify where such potential problems may exist. For example, at some locations replacing a TRSA with an ARSA may necessitate relocating a student practice area further away from the flight school airport, and additional operating costs will be incurred travelling the greater distance to and from the practice area. Other miscellaneous operations which might be affected include glider and ultralight operations.

These impacts would be indicated in the "Miscellaneous" column of Table 2 for sites where they have been identified. However, no such impacts are anticipated at any of the candidate ARSA sites proposed in this notice. Respondents are requested to comment upon any special local operations which might be affected by an ARSA either during the public meetings or through written comments submitted to the docket.

Overall total-annual costs, by cost category, of establishing ARSA's at the airports proposed in this notice are summarized in Table 3 below. The maximum total annual cost of establishing ARSA's at these sites, if an ARSA is established at each site proposed, is estimated to be approximately $728 thousand. However, this maximum is expected to diminish significantly as controllers and pilots gain experience in ARSA operations. Delay will be reduced, and in many cases, traffic will ultimately flow more smoothly and expeditiously than in existing TRSA's.

Table 3.—Maximum Annual Costs of Establishing ARSA's at Proposed Sites (1984 dollars)

1. FAA controller and equipment costs	$0
2. Chart revision, pilot education (one time)	11,000
3. Circumnavigation and overflight	144,000
4. Departure, sequencing, and radar contact delay	564,500
5. Radio transceivers/miscellaneous	8,500
Total Costs	728,000

b. Benefits

Much of the benefit which will result from the ARSA program is nonquantifiable, and will result from simplifying and standardizing ARSA configurations and operating procedures. The standardization and simplicity of the ARSA concept is expected to alleviate many of the problems identified by the NAR task group. In addition, once experience has been gained in ARSA operations, traffic is expected to move more efficiently and expeditiously than it currently does within a TRSA.

Although many of the benefits of the ARSA program are nonquantifiable, FAA has attempted to make some preliminary estimates of the savings in time and money which might be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. These estimated savings may or may not offset the delay which some sites anticipate after the initial establishment of an ARSA, but are expected to eventually provide overall time savings which exceed delay as controllers gain experience with ARSA operating procedures. ATC personnel at Columbus, OH, and Austin, TX, where ARSA's have been in operation for approximately a year and a half, report that this has been their experience.

To develop these estimates of savings, FAA used procedures similar to those discussed in the previous section for estimating delay costs. Local ATC personnel, together with the Air Traffic Operations Service, estimated for each candidate ARSA site the number of daily operations and the types of aircraft involved which might save time, *in comparison to operations within a TRSA*, as a result of the reduced separation standards of the ARSA.

FAA estimates that the total annual value of time savings for the candidate ARSA sites proposed in this notice will be approximately $94 thousand. (The unit costs used to estimate the value of time savings are the same as those used to estimate delay costs presented in Table 1.)

Some of the benefits of the ARSA program cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of ARSA's at the sites proposed in this notice will contribute to these overall improvements.

ARSA's have the potential for reducing the number of near midair collisions (NMAC's). In its 1984 study of midair and near midair collision data, the Office of Aviation Safety found that approximately 15 percent of reported NMAC's occurred in TRSA airspace.[2] The study found that about half of all NMAC's occurred at altitudes between 1,000 and 5,000 feet, that over 85 percent of NMAC's occurred when visibililty was 5 miles or greater, and that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. Further, the majority of reported NMAC's occurring within or in the near vicinity of TRSA's involve either an air carrier or military aircraft as one of the aircraft (which partially reflects the practice of air carrier and military pilots to report NMAC

[2] *Selected Statistics Concerning Near Midair and Midair Collsions*, FAA Office of Aviation Safety—Safety Analysis Division (ASF-200), August 31, 1984. The data base used in this study is currently under revision to correct problems in reporting procedures which have recently been identified. Although the total numbers of reported NMAC's have been revised upward, the relative distribution of incidents which occur in various operating environments has not changed significantly.

incidents, when they do occur, more frequently than general aviation pilots). The mandatory participation requirements of the ARSA may help alleviate such conflicts where they currently are occurring in TRSA airspace. Further, the EER and APO studies of the ARSA confirmation sites (see note 1) indicate that NMAC's may be reduced by approximately 35 to 40 percent.

Although no quantifiable benefits can be attributed to a reduction in near midair collisions, near midair and actual midair collisions result from similar causal factors, and a reduction in near midair collisons suggests that a reduction in actual midair collisons, which can involve substantial losses, may also be expected as a result of the ARSA program.

The APO study of the ARSA confirmation sites (note 1) included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at the Columbus confirmation site, where recorded radar data were available, and focused on conditions of fairly heavy VFR activity because the ARSA will affect procedures used to handle VFR traffic in the terminal radar area. The analysis determined that there was no compression of traffic in the airspace immediately around, under, and over the ARSA, and in the absence of compression, the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk. Further, even under the pessimistic assumption that the changes in separation standards would completely eliminate the effectiveness of controller-initiated avoidance maneuvers, and the pilot would only have the benefit of radar traffic advisories, the study found that the mandatory pilot participation required in the ARSA still provided a 63 percent reduction in midair collision risk in comparison to the TRSA.

FAA has examined National Transportation Safety Board midair collision accident records for the period between January 1978 and October 1984. This review indicated that approximately one to two midair collisions occurred per year throughout the United States which either could have been prevented, or the probability of their occurrence would have been greatly reduced, had an ARSA, rather than a TRSA, been in effect where these accidents occurred. Because the circumstances observed at the Columbus confirmation site may not necessarily be found at other TRSA locations, the 75 percent reduction in midair collision risk measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that implementation of the ARSA program nationally may result in an average reduction in midair collision risk of only 50 percent at TRSA locations that are replaced with ARSA's.

Reducing by 50 percent the one to two midair collisions per year where an ARSA could have made a difference would result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $100 thousand, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to quantifiable benefits of as much as $100 million to $300 million, resulting from the prevention of a midair collision involving an air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to this improvement in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the proposal are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period. Both the Austin and Columbus confirmation sites went through initial adjustment periods, but now experience almost no delay as a result of ARSA procedures. Baltimore/Washington is currently progressing along a similar learning curve.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of candidate ARSA sites proposed in this notice typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits will be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located or operating at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Individual proposals exclude almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some

cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports which establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program.

Further, because the FAA expects that any delay problems which may initially develop following implementation of an ARSA will be transitory, and because the airports which will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type which use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to reads as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Airspace Docket No. 85-AWA-4

Beale AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of Beale AFB (lat. 39°08'12" N., long. 121°26'42" W.), and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Beale AFB from 127 °T(111 °M) bearing from the airport clockwise to the 007 °T (351 °M) bearing from the airport and that airspace extending upward from 2,600 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from 007 °T (351 °) bearing from the airport clockwise to the 127 °T (111 °M) bearing from the airport.

Birmingham Municipal Airport, AL [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Birmingham Municipal Airport (lat. 33°33'50" N., long. 86°45'16" W.), and that airspace extending upward from 2,400 feet MSL to 4,600 feet MSL within a 10-mile radius of Birmingham Municipal Airport from the 343 °T (343 °M) bearing from the airport clockwise to the 231 °T (231 °M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport from the 231 °T (231 °M) bearing from the airport clockwise to the 343 °T (343 °M) bearing of the airport.

Burlington International Airport, VT [New]

That airspace extending upward from the surface to and inlcluding 4,400 feet MSL within a 5-mile radius of the Burlington International Airport (lat. 44°28'17" N., long. 73°09'12" W.), and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of Burlington International Airport from the 360° T (346 °M) bearing from the airport clockwise to the 180 °T (166 °M) bearing from the airport and that airspace extending upward from 1,300 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 180 °T (166 °M) bearing from the airport clockwise to the 360 °T (346 °M) bearing from the airport excluding the airspace within Restricted Area R-6501.

Castle AFB, CA [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Castle AFB (lat. 37°22'49" N., long. 120°34'01" W.) excluding that airspace bounded by a 1-mile arc north of the Atwater Airport (lat. 37°20'05" N., long. 120°36'15" W.) and the 196 °T (181 °M) and the 229 °T (214 °M) bearing from Castle AFB south to the 5-mile radius of Castle AFB, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 126 °T (111 °M) bearing from Castle AFB clockwise to the 306 °T (291 °M) bearing from Castle AFB, and that airspace extending upward from 1,900 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 306 °T (291 °M) bearing from Castle AFB clockwise to the 126 °T(111 °M) bearing from Castle AFB.

Charlotte/Douglas International Airport, NC [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Charlotte/Douglas International Airport (lat. 35°12'52" N., long. 80°56'37" W.), and that airspace extending upward from 2,000 feet MSL to 4,700 feet MSL within a 10-mile radius of the Charlotte/Douglas International Airport.

Columbus Metropolitan Airport, GA [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of Columbus Metropolitan Airport (lat. 32°30'58" N., long. 84°56'20" W.), and that airspace extending upward from 1,700 feet MSL to 4,400 feet MSL within a 10-mile radius of Columbus Metropolitan Airport from the 069 °T (070 °M) bearing from the airport clockwise to the 325 °T (326 °M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 325 °T (326 °M) bearing from the airport clockwise to the 069 °T (070 °M) bearing from the airport, excluding the airspace within Restricted Area R-3002. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Mather AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Mather AFB (lat. 38°33'53" N., long. 121°26'42" W.) to the points where this 5-mile radius intersects the 5-mile radius of the McClellan AFB, CA, Airport Radar Service Area (ARSA), and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Mather AFB to the points where this 10-mile radius intersects the 10-mile radius of the McClellan AFB ARSA.

McClellan AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of McClellan AFB (lat. 38°40'00" N., long. 121°23'54" W.) to the points where this 5-mile radius intersects the 5-mile radius of the Mather AFB, CA, Airport Radar Service Area (ARSA) excluding that airspace 1,600 feet MSL and below from the 215 °T (198 °M) bearing from McClellan AFB at the 5-mile radius along this 215 °T (198 °M) bearing to the 187 °T (170 °M) bearing from Rio Linda Airport (lat. 38°40'34" N., long. 121°26'40" W.) to the 007 °T (350 °M) bearing from Rio Linda Airport to and along the 321 °T (304 °M) bearing from McClellan AFB to the 5-mile radius, and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of McClellan AFB to the points where this 10-mile radius intercepts the 10-mile radius of the Sacramento Metropolitan Airport, CA, ARSA and the Mather AFB ARSA.

Metropolitan Oakland International Airport, CA [New]

That airspace extending upward from the surface to but not including the base altitudes of the San Francisco, CA, Terminal Control Area (TCA) within a 5-mile radius of the Metropolitan Oakland International Airport (lat. 37°43'17" N., long. 120°13'11" W.), excluding that airspace within the San Francisco TCA, and that airspace extending upward from 1,500 feet MSL to but not including the base altitudes of the San Francisco TCA within a 10-mile radius of the Metropolitan Oakland International Airport, excluding that airspace within the San Francisco TCA and that airspace from the Oakland VORTAC 003 °T(347 °M) radial clockwise to the Oakland VORTAC 075 °T (059 °M) radial.

Nashville Metropolitan Airport, TN [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Nashville Metropolitan Airport (lat. 36°07'37" N., long. 86°40'53" W.) excluding that airspace within

a 1.5-mile radius of Cornelia Fort Airport (lat. 36°12'00" N., long. 86°42'10" W.), and that airspace extending upward from 2,100 feet MSL to and including 4,600 feet MSL within a 10-mile radius of Nashville Metropolitan Airport from the 018 °T (019 °M) bearing from the airport clockwise to the 198 °T (199 °M) bearing from the airport and that airspace extending upward from 2,400 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport from the 198 °T (199 °M) bearing from the airport clockwise to the 018 °T (019 °M) bearing from the airport.

Sacramento Metropolitan Airport, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento Metropolitan Airport (lat. 38°41'44" N., long. 121°36'01" W.) excluding that airspace 1,600 feet MSL and below within a 2-mile radius of Riego Flight Strip (lat. 38°45'15" N., long. 121°33'43" W.), and that airspace within a 2-mile radius of Natomas Field (lat. 38°38'18" N., long. 121°30'51" W.), and that airspace 1,600 feet and below east of a 002 °T(345 °M) bearing from Natomas Field, and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento Metropolitan Airport to the points where this 10-mile radius intercepts the 10-mile radius of McClellan AFB, CA, Airport Radar Service Area.

Airspace Docket No. 85–AWA–5

Adams Field, Little Rock, AR [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of Adams Field (lat. 34°43'48" N., long. 92°13'59" W.), and that airspace extending upward from 1,500 feet MSL to 4,300 feet MSL within a 10-mile radius of Adams Field from the 030 °T (026 °M) bearing from the airport clockwise to the 210 °T (206 °M) bearing from the airport and that airspace extending upward from 1,800 feet MSL to 4,300 feet MSL within a 10-mile radius of the airport from the 210 °T (206 °M) bearing from the airport clockwise to the 030 °T (026 °M) bearing from the airport.

General Mitchell Field Airport, Milwaukee, WI [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the General Mitchell Field Airport (lat. 42°56'49" N., long. 87°53'49" W.), and that airspace extending upward from 1,900 feet MSL to 4,700 feet MSL within a 10-mile radius of the General Mitchell Field Airport.

Greater Buffalo International Airport, NY [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Greater Buffalo International Airport (lat. 42°56'26" N., long. 78°43'57" W.) excluding that airspace within a 1-mile radius of the Buffalo Airpark (lat. 42°51'40" N., long. 78°43'00" W.), and excluding that Airspace within a 1-mile radius of the Lancaster Airport (lat. 42°55'20" N., long. 78°36'45" W.), and that airspace extending upward from 2,200 feet MSL to 4,700 feet MSL within a 10-mile radius of the Greater Buffalo International Airport exclusive of Canadian Airspace.

Memphis International Airport, TN [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Memphis International Airport (lat. 35°02'59" N., long. 89°58'43" W.), and that airspace extending upward from 1,600 feet MSL to 4,300 feet MSL within a 10-mile radius of the Memphis International Airport.

Michiana Regional Airport, South Bend, IN [NEW]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Michiana Regional Airport (lat. 41°42'15" N., long. 86°18'58" W.), and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL between the 5-mile radius and the 10-mile radius of the Michiana Regional Airport, excluding that airspace within a 1-mile radius of the Chain-O-Lakes Airport (lat. 41°39'45" N., long. 86°21'15" W.) and parallel lines connecting the northwest and southeast most outer edge of the 1-mile circle to the 5-mile circle and extending from the surface up to 2,000 feet MSL.

Salt Lake City International Airport, UT [New]

That airspace extending upward from the surface to and including 8,200 feet MSL within a 5-mile radius of the Salt Lake City International Airport (lat. 40°47'13" N., long. 111°58'05" W.) excluding the airspace within a 1-mile radius of the Salt Lake Skypark Airport (lat. 40°52'10" N., long. 111°55'35" W.), and that airspace extending upward from 5,400 feet MSL to and including 8,200 feet MSL within a 10-mile radius of the Salt Lake City International Airport, excluding that airspace east of a line from a point 10 miles from the airport on a bearing of 022 °T (007 °M) direct to a point 10 miles from the airport on a bearing of 140 °T (125 °M).

Airspace Docket No. 85–AWA–6

Albuquerque International Airport, NM [New]

That airspace extending upward from the surface to and including 9,400 feet MSL within a 5-mile radius of Albuquerque International Airport (lat. 35°02'30" N., long. 106°36'23" W.), and that airspace extending upward from 7,800 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 072 °T (061 °M) bearing from the airport clockwise to the 117 °T (106 °M) bearing from the airport and that a airspace extending upward from 6,900 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 117 °T (106 °M) bearing from the airport clockwise to the 034 °T (021 °M) bearing from the airport thence along a line south to a point 7 miles from the airport on the 072 °T (061 °M) bearing from the airport.

Davis-Monthan AFB, AZ [New]

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5-mile radius of Davis-Monthan AFB (lat. 32°09'54" N., long. 110°52'54" W.), to the points where the 5-mile arc joins a 5-mile arc from the Tucson International Airport, AR, (lat. 32°07'06" N., long. 110°56'35" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to 6,600 feet MSL within a 10-mile radius of Davis-Monthan AFB to the points where the 10-mile arc joins a 10-mile arc from the Tucson International Airport ARSA.

Greater Cincinnati International Airport, Covington, KY [New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Greater Cincinnati International Airport (lat. 39°02'52" N., long. 84°40'00" W.), and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the Greater Cincinnati International Airport.

Indianapolis International Airport, IN [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Indianapolis International Airport (lat. 39°43'28" N., long. 86°17'00" W.), and that airspace extending upward from 2,100 feet MSL within a 10-mile radius of the Indianapolis International Airport.

Phoenix Sky Harbor International Airport, AZ [New]

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of the Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.), and that airspace within a 10-mile radius of Phoenix Sky Harbor Airport extending upward from 4,000 feet MSL to and including 5,100 feet MSL between the 166 °T (153 °M) bearing from the airport clockwise to the 243 °T (230 °M) bearing from the airport, and extending upward from 2,300 feet MSL to and including 5,100 feet MSL between the 243 °T (230 °M) bearing clockwise to the 166 °T (153 °M) bearing from the Phoenix Sky Harbor Airport.

Standiford Field Airport, Louisville KY [New]

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Standiford Airport (lat. 38°10'40" N., long. 85°44'11" W.), and that airspace extending upward from 2,200 feet MSL to 4,500 feet MSL within a 10-mile radius of the Standiford Airport from the 269 °T (271 °M) bearing from the airport clockwise to the 081 °T (083 °M) bearing from the airport and that airspace extending from 1,700 feet MSL to 4,500 feet MSL within a 10-mile radius of the airport from the 081 °T (083 °M) bearing from the airport clockwise to the 269 °T (271 °M) bearing from the airport, excluding that airspace from the surface to 2,200 feet MSL within the area originating at a point (lat. 38°11'28" N., long. 85°42'01" W.) thence along a line bearing 014 °T (016 °M) to the Standiford 5-mile radius thence clockwise via the Standiford 5-mile radius to intercept a line bearing 089 °T (091 °M) from said point (lat. 38°11'28" N., long. 85°42'01" W.) thence via this line to the point of origin.

Tucson International Airport, AZ [New]

That airspace extending upward from the surface to 6,800 feet MSL within a 5-mile radius of the Tucson International Airport (lat. 32°07'06" N., long. 110°56'35" W.) to the points where the 5-mile arc joins a 5-mile arc from the Davis-Monthan AFB, AR, (lat. 32°09'54" N., long. 110°52'54" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to and including 6,800 feet MSL to the points where the 10-mile arc joins a 10-mile arc from the Davis-Monthan AFB ARSA.

Wichita Mid-Continent Airport, KS [New]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Wichita Mid-Continent Airport (lat. 37°39'00" N., long. 97°39'00" W.), and that airspace extending upward from 2,700 feet MSL to 5,300 feet MSL within a 10-mile radius of the Wichita Mid-Continent Airport.

Airspace Docket No. 85-AWA-7

Dallas Love Field, TX [New]

That airspace extending upward from the surface to but not including 5,000 feet MSL within a 5-mile radius of the Dallas Love Field Airport (lat. 32°50'49" N., long. 96°51'05" W.) excluding that airspace within the Dallas-Fort Worth, TX, (DFW) Terminal Control Area (TCA), Areas B and C, and excluding that airspace extending clockwise from a line bearing 340°T (333°M from lat. 32°54'25" N., long. 96°51'20" W., to a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., until intercepting the 5-mile radius of the airport, and that airspace extending upward from 2,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending clockwise from the point where it joins the DFW TCA, Area A., northwest of the Dallas Love Field Airport to a line bearing 340°T (333°M) from lat. 32°54'25" N., long. 96°51'20" W., excluding the DFW TCA, Area C, and that airspace extending upward from 3,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending clockwise from a line bearing 340°T (333°M) from lat. 32°54'25" N., long. 96°51'20" W., to the 10-mile radius to a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., to the 10-mile radius and that airspace extending upward from 2,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending from 5 miles southeast of the airport clockwise from a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., until joining the DFW TCA Areas D and C excluding the DFW TCA.

Airspace Docket No. 85-AWA-8

Lafayette Regional Airport, LA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Lafayette Regional Airport (lat. 30°12'14" N., long. 91°59'16" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Airspace Docket No. 85-AWA-9

Raleigh-Durham Airport, NC [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Raleigh-Durham Airport (lat. 35°52'19" N., long. 78°47'07" W.), and that airspace extending upward from 1,700 feet MSL to 4,400 feet MSL within a 10-mile radius of the Raleigh-Durham Airport.

Airspace Docket No. 85-AWA-10

Dulles International Airport, Washington, DC [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'39" N., long. 77°27'26" W.) and lying west of a line extending from the 048°T (057°M) bearing from the airport on the 5-mile arc to the 130°T (139°M) bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 149°T (158°M) bearing from the airport clockwise to the 038°T (047°M) bearing from the airport, excluding that airspace beyond 8 miles between the 234°T (243°M) bearing from the airport clockwise to the 272°T (281°M) bearing from the airport, and that airspace extending upward from 1,700 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 38°T (047°M) bearing from the airport clockwise to the 149°T (158°M) bearing from the airport, excluding that airspace overlying the Washington, DC, Terminal Control Area.

Tampa International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Tampa International Airport (lat. 27°58'31" N., long. 82°32'00" W.) and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Tampa International Airport.

Issued in Washington, DC., on September 23, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Divison.

Appendix 1—Public Meeting Schedule

The schedule for the informal airspace meetings is as follows:

Airspace Docket No. 85-AWA-4

Beale AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Birmingham Municipal Airport, AL, ARSA
Date: January 14, 1985
Time: 7:30 p.m.
Location: Alabama Air National Guard Base, Birmingham Municipal Airport, AL

Burlington International Airport, VT, ARSA
Date: December 10, 1985
Time: 7:00 p.m.
Location: Vermont Army National Guard, Hanger 690, Burlington International Airport, VT

Castle AFB, CA, ARSA
Date: November 27, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Merced City Council Chambers, Merced, CA

Charlotte/Douglas International Airport, NC, ARSA
Date: October 24, 1985
Time: 7:00 p.m.
Location: North Carolina Air National Guard Base, Operations and Training Building, Morrisfield Drive, Charlotte/Douglas International Airport, NC

Columbus Metropolitan Airport, GA, ARSA
Date: November 8, 1985
Time: 7:30 p.m.
Location: United Gas and Light Building, 1421 4th Avenue, Columbus, GA

Mather AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

McClellan AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Metropolitan Oakland International Airport, CA, ARSA
Date: November 14, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Francesco's Restaurant, 8520 Pardee Drive, Oakland, CA

Nashville Metropolitan Airport, TN, ARSA
Date: November 13, 1985
Time: 7:30 p.m.
Location: Tennessee Air Guard Administration Building, Main Auditorium, 801 Knapp Boulevard, Nashvile Metropolitan Airport, Nashville, TN

Sacramento Metropolitan Airport, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Airspace Docket No. 85-AWA-5

Adams Field, Little Rock, AR, ARSA
Date: February 4, 1986
Time: 7:00 p.m.
Location: Executive Inn, 707 Interstate 30, Little Rock, AR

General Mitchell Field Airport, Milwaukee, WI, ARSA
Date: November 6, 1985
Time: 7:00 p.m.
Location: Aero Services Milwaukee, Inc., 923 E. Layton Avenue, Milwaukee, WI

Greater Buffalo International Airport, NY, ARSA
Date: November 7, 1985
Time: 7:00 p.m.
Location: Maryvale Middle School, 1050 Marydale Drive, Cheetowaga, NY

Memphis International Airport, TN, ARSA
Date: December 11, 1985

Time: 7:30 p.m.
Location: Conference Room Memphis Air Route Traffic Control Center, 3229 Democrat Road, Memphis, TN

Michiana Regional Airport, South Bend, IN, ARSA
Date: January 22, 1986
Time: 7:00 p.m.
Location: South Bend Public Library, 122 W. Wayne, South Bend, IN

Salt Lake City International Airport, UT, ARSA
Date: January 15, 1986
Time: 7:00 p.m.
Location: State Aeronautics Hangar, Salt Lake City International Airport, 135 North 2400 West, Salt Lake City, UT

Airspace Docket No. 85-AWA-6

Albuquerque International Airport, NM, ARSA
Date: February 25, 1986
Time: 7:00 p.m.
Location: Sun Room, Terminal Building, Albuquerque International Airport, Albuquerque, NM

Davis-Monthan AFB, AZ, ARSA
Date: March 12, 1986
Time: 7:00 p.m.
Location: Granada Royale, 7051 S. Tucson Boulevard, Tucson, AZ

Greater Cincinnati International Airport, Covington, KY, ARSA
Date: February 26, 1986
Time: 7:00 p.m.
Location: Northern Kentucky University, Business Education-Psychology Center, Highland Heights, KY

Indianapolis International Airport, IN, ARSA
Date: December 11, 1985
Time: 7:00 p.m.
Location: Indiana Airway Facilities Sector Office, 1945 S. Banner Avenue, Indianapolis, IN

Phoenix-Sky Harbor International Airport, AZ, ARSA
Date: March 13, 1986
Time: 7:00 p.m.
Location: Air National Guard Theatre, 2001 S. 32nd Street, Phoenix, AZ

Standiford Field Airport, Louisville, KY, ARSA
Date: February 27, 1986
Time: 7:30 p.m.
Location: The Jewish Community Center, Dutchman's Lane, Louisville, KY

Tucson International Airport, AZ, ARSA
Date: March 12, 1986
Time: 7:00 p.m.
Location: Granada Royale, 7051 S. Tucson Boulevard, Tucson, AZ

Wichita Mid-Continent Airport, Wichita, KS, ARSA
Date: November 20, 1985
Time: 7:00 p.m.
Location: Aviation Education Center, 2021 South Eisehower, Wichita, KS

Airspace Docket No. 85-AWA-7

Dallas Love Field, TX, ARSA
Date: April 9, 1986
Time: 7:00 p.m.
Location: Executive Inn, Love Field, 3232 W. Mocking Bird Lane, Dallas, TX

Airspace Docket No. 85-AWA-8

Lafayette Regional Airport, LA, ARSA
Date: April 11, 1986
Time: 7:00 p.m.
Location: FAA Tower Building, 220 Tower Drive, Room 101, Lafayette, LA

Airspace Docket No. 85-AWA-9

Raleigh-Durham Airport, NC, ARSA
Date: April 7, 1986
Time: 7:30 p.m.
Location: North Carolina Army National Guard Support Facility, Conference Room, Raleigh-Durham Airport, NC

Airspace Docket No. 85-AWA-10

Dulles International Airport, Washington, DC, ARSA
Date: November 21, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Benjamin Franklin Intermediate School, Little Theater, 3300 Lee's Corner Road, Chantilly, VA

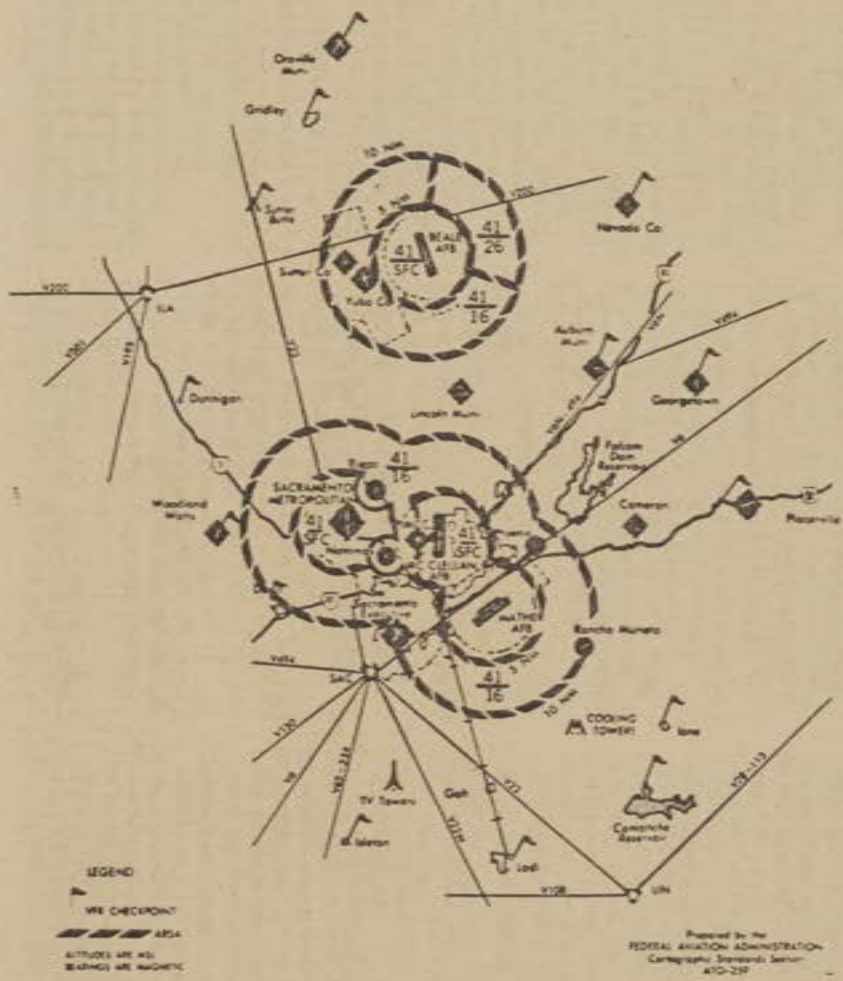
Tampa International Airport, FL, ARSA
Date: December 17, 1985
Time: 7:30 p.m.
Location: University of South Florida, Bayborough Campus, St. Petersburg, FL, and
Date: December 18, 1985
Time: 7:30 p.m.
Location: Hillsboro High School, Tampa, FL

BILLING CODE 4910-13-M

Appendix 2

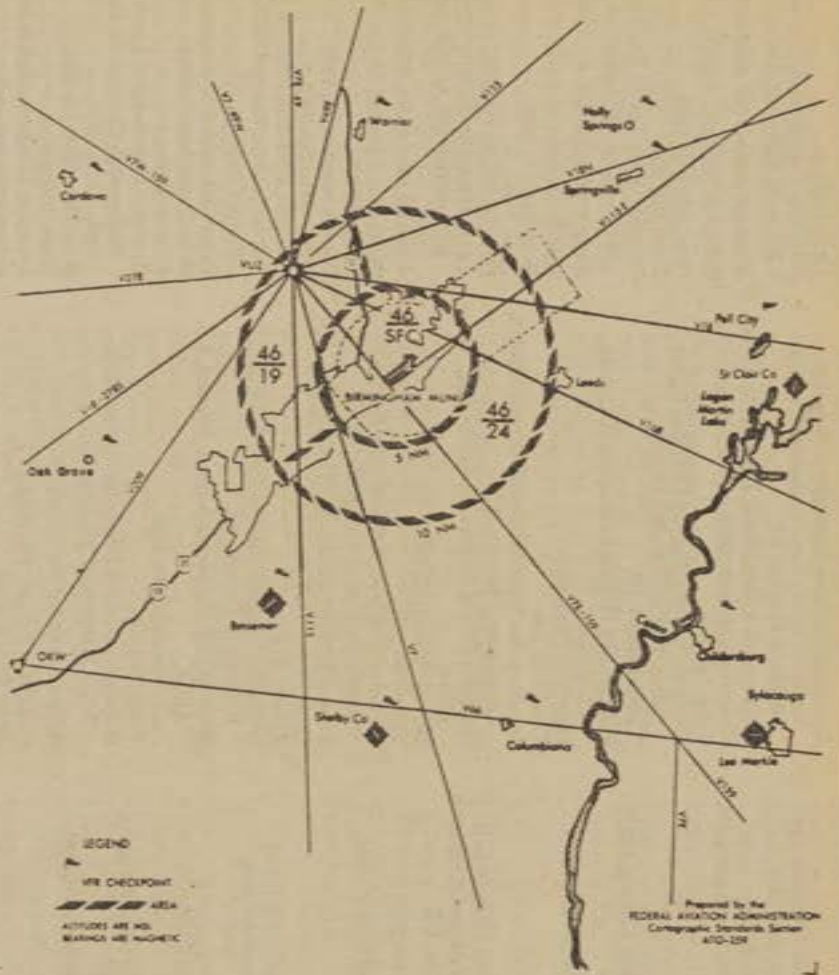
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

SACRAMENTO VALLEY, CALIFORNIA
BEALE AFB
FIELD ELEV. 113' MSL



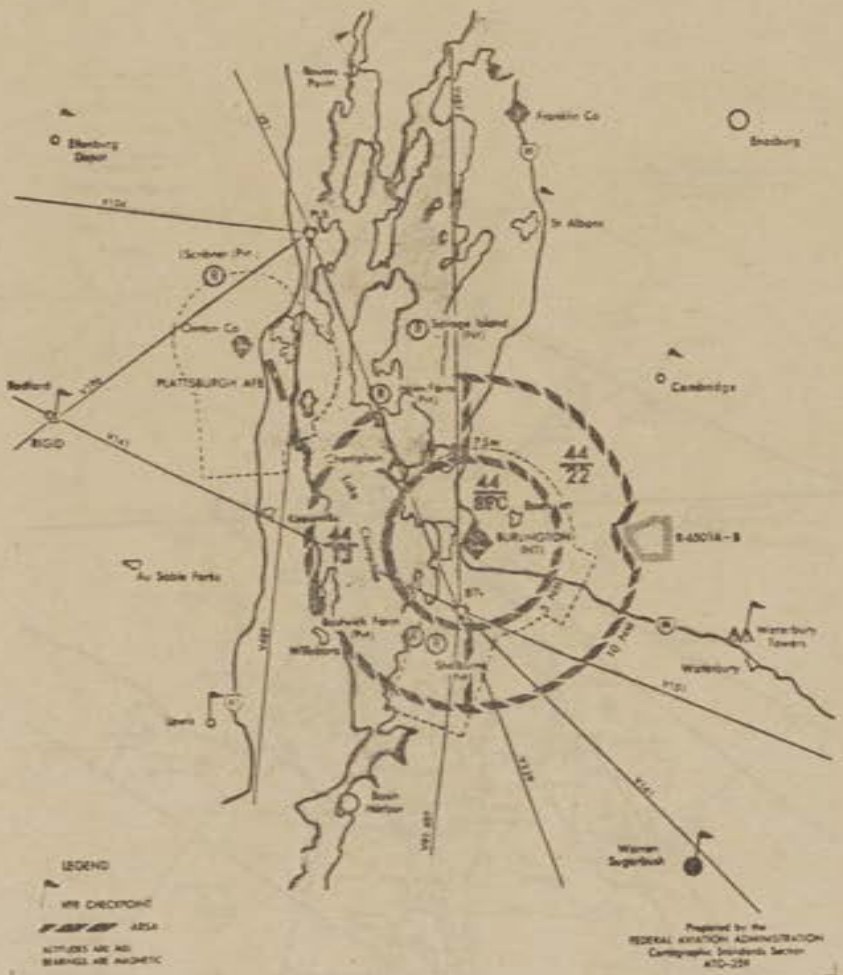
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

BIRMINGHAM, ALABAMA
BIRMINGHAM MUNI AIRPORT
FIELD ELEV. 644' MSL



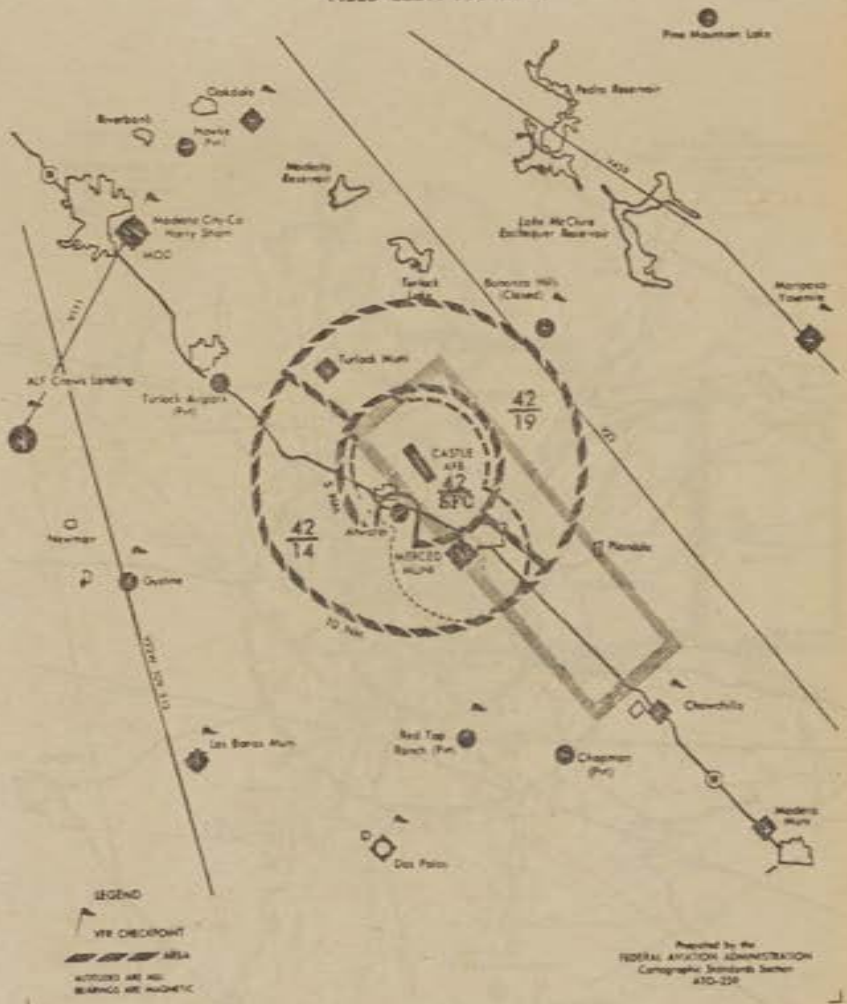
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

BURLINGTON, VERMONT
BURLINGTON INTERNATIONAL AIRPORT
FIELD ELEV. 334' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

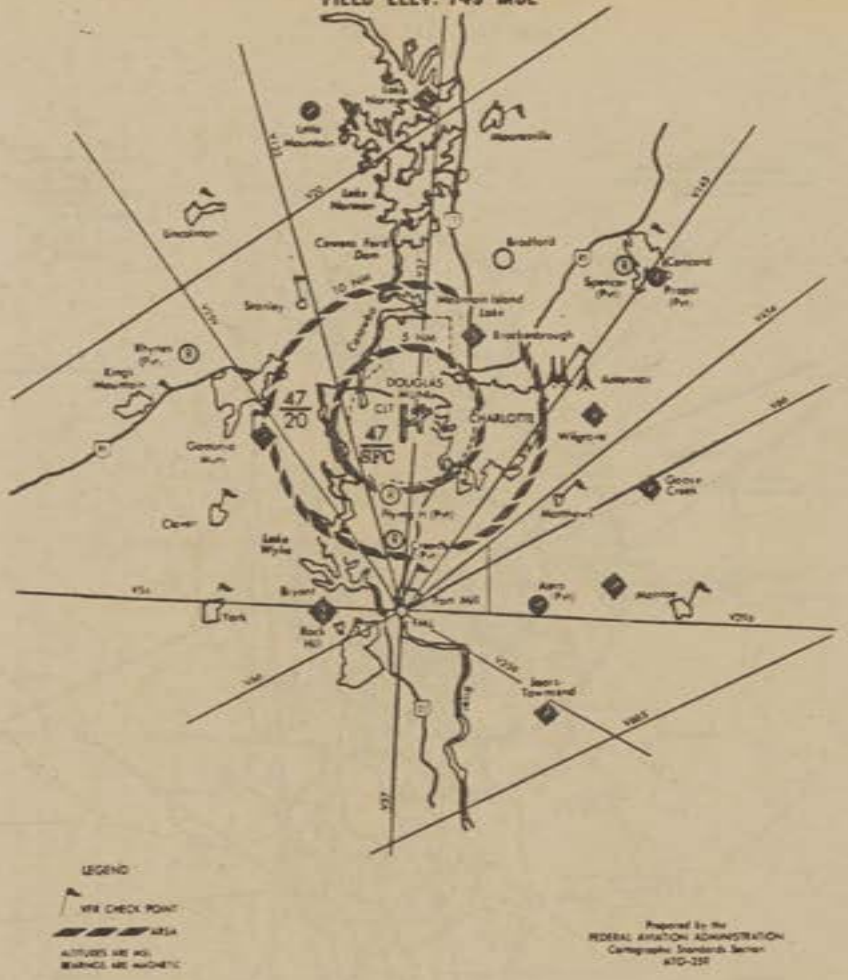
MERCED, CALIFORNIA
CASTLE AFB
FIELD ELEV. 188' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

CHARLOTTE, NORTH CAROLINA
CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT
FIELD ELEV. 749' MSL



AIRPORT RADAR SERVICE AREA

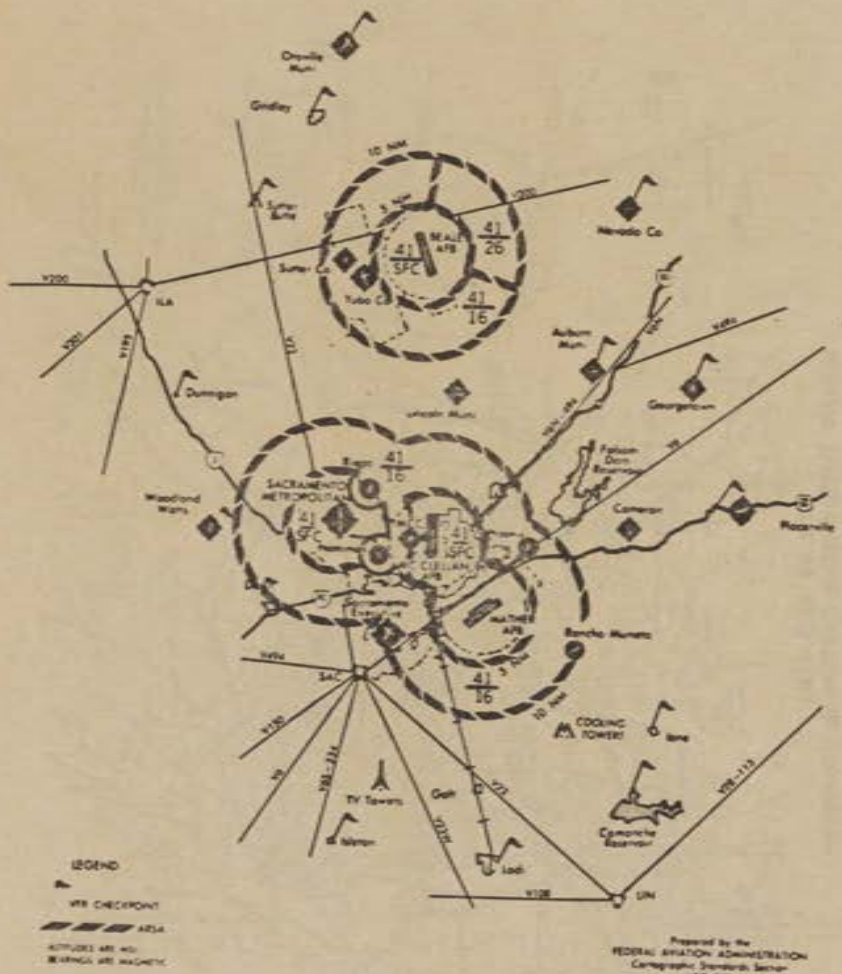
(NOT TO BE USED FOR NAVIGATION)

COLUMBUS, GEORGIA
COLUMBUS METRO AIRPORT
FIELD ELEV. 397' MSL



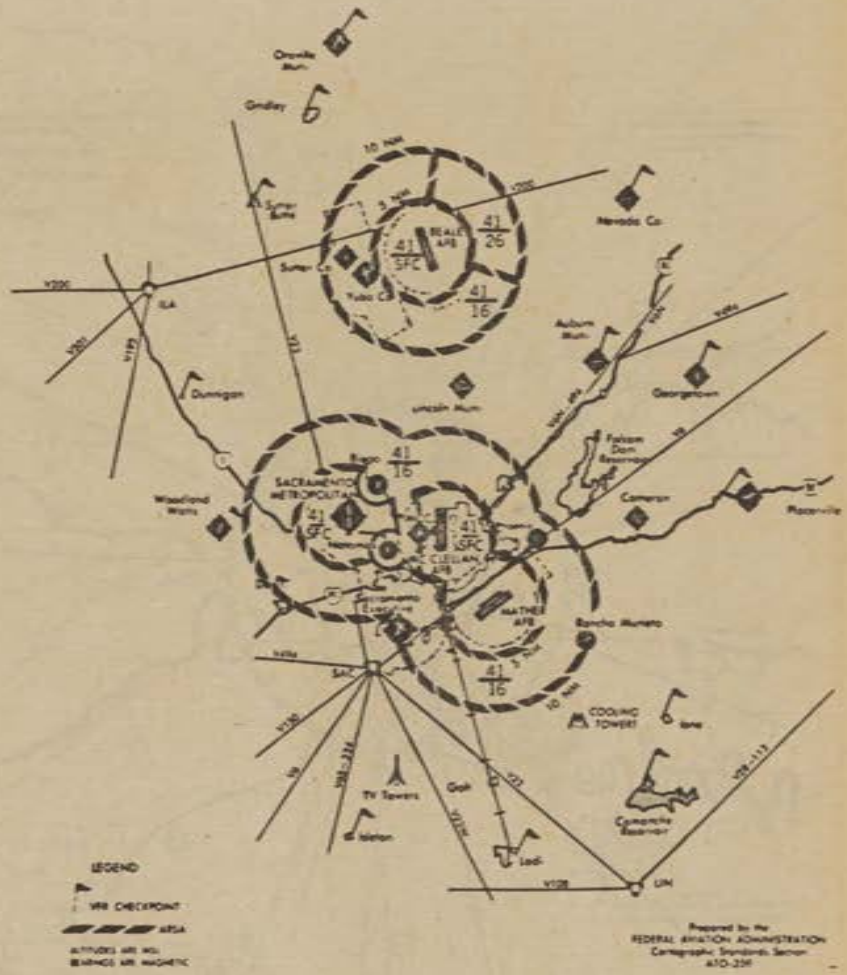
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

SACRAMENTO, CALIFORNIA
MATHER AFB
FIELD ELEV. 96' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

SACRAMENTO VALLEY, CALIFORNIA
McCLELLAN AFB
FIELD ELEV. 113' MSL



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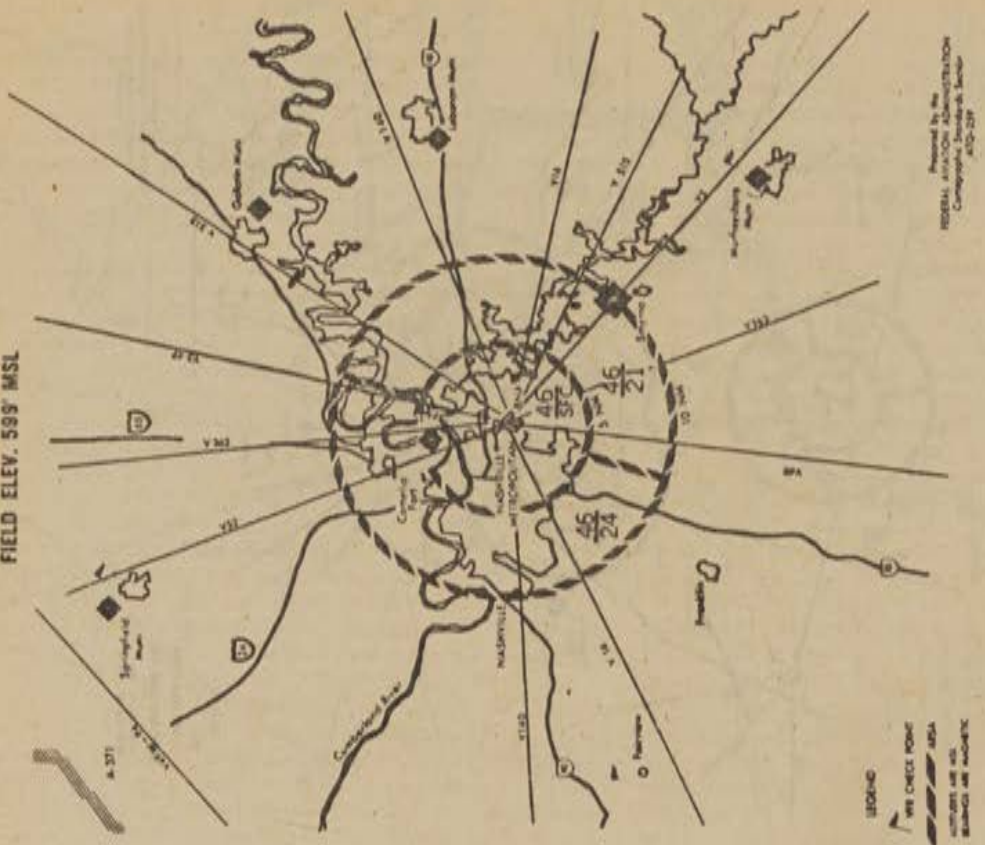
(NOT TO BE USED FOR NAVIGATION)

NASHVILLE, TENNESSEE
NASHVILLE METRO AIRPORT
FIELD ELEV. 599' MSL



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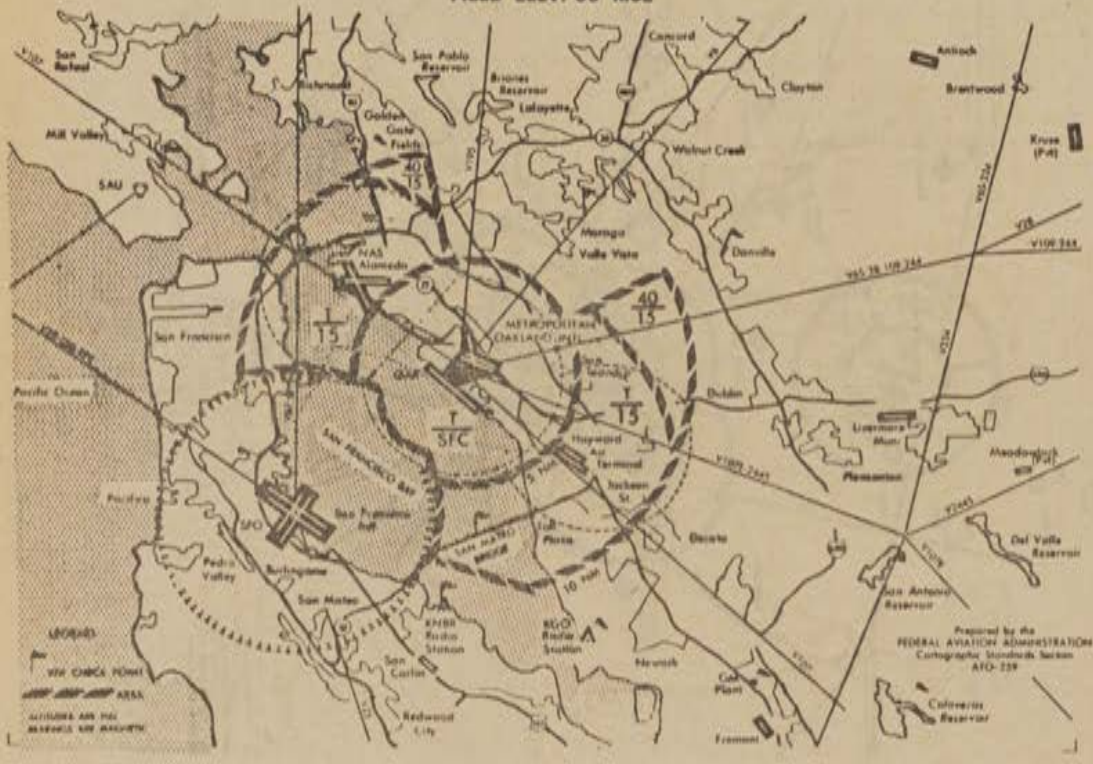
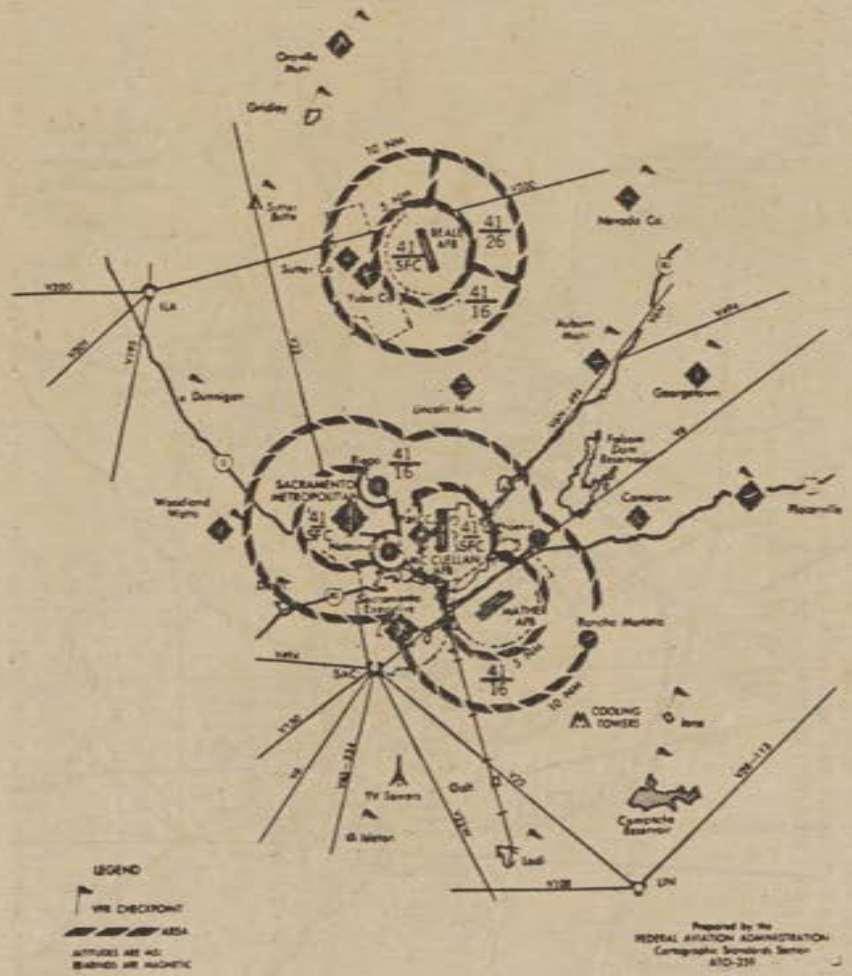
(NOT TO BE USED FOR NAVIGATION)

OAKLAND, CALIFORNIA
METROPOLITAN OAKLAND INTERNATIONAL AIRPORT
FIELD ELEV. 06' MSL



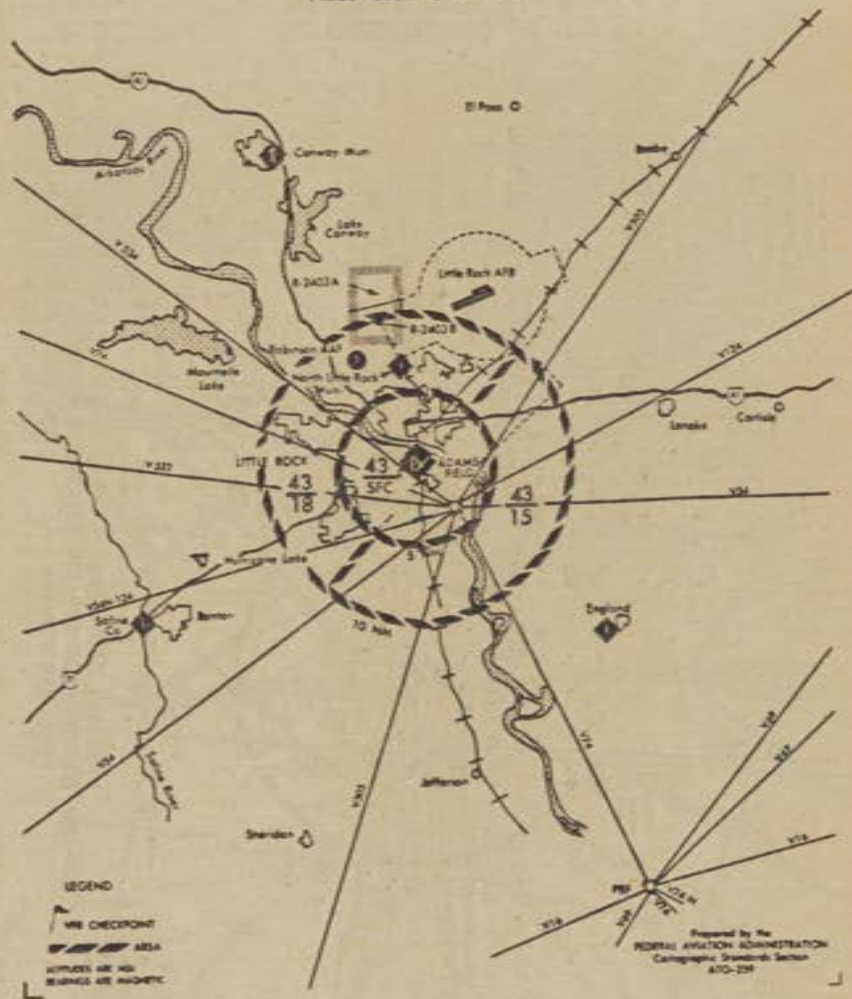
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

SACRAMENTO VALLEY, CALIFORNIA
SACRAMENTO METROPOLITAN AIRPORT
FIELD ELEV. 113' MSL



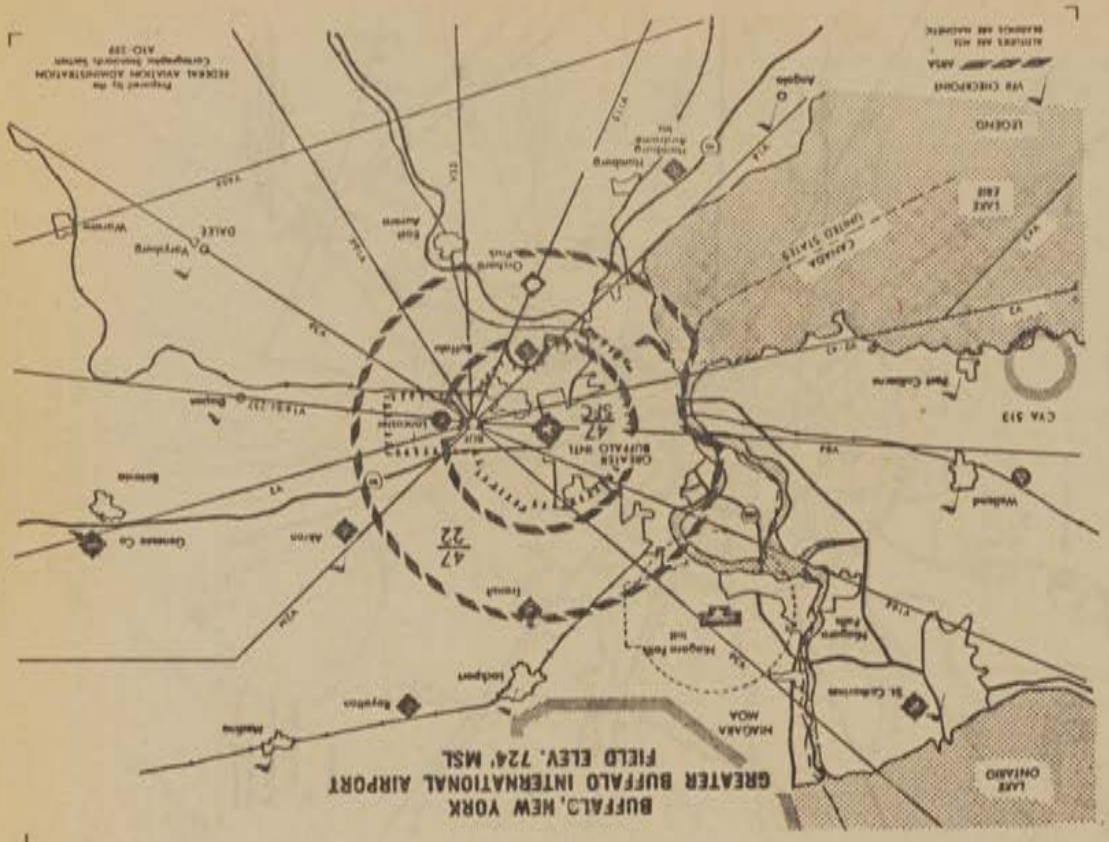
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

LITTLE ROCK, ARKANSAS
ADAMS FIELD
FIELD ELEV. 258' MSL



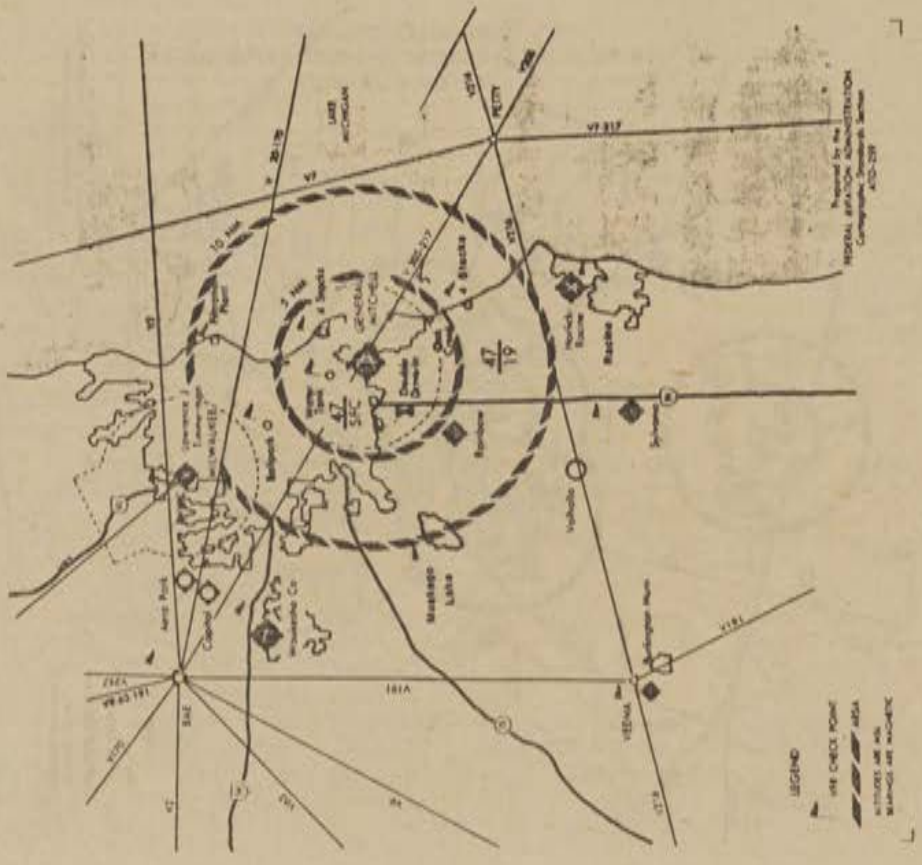
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

BUFFALO, NEW YORK
GREATER BUFFALO INTERNATIONAL AIRPORT
FIELD ELEV. 724' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

MILWAUKEE, WISCONSIN
GENERAL MITCHELL FLD
FIELD ELEV. 723' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

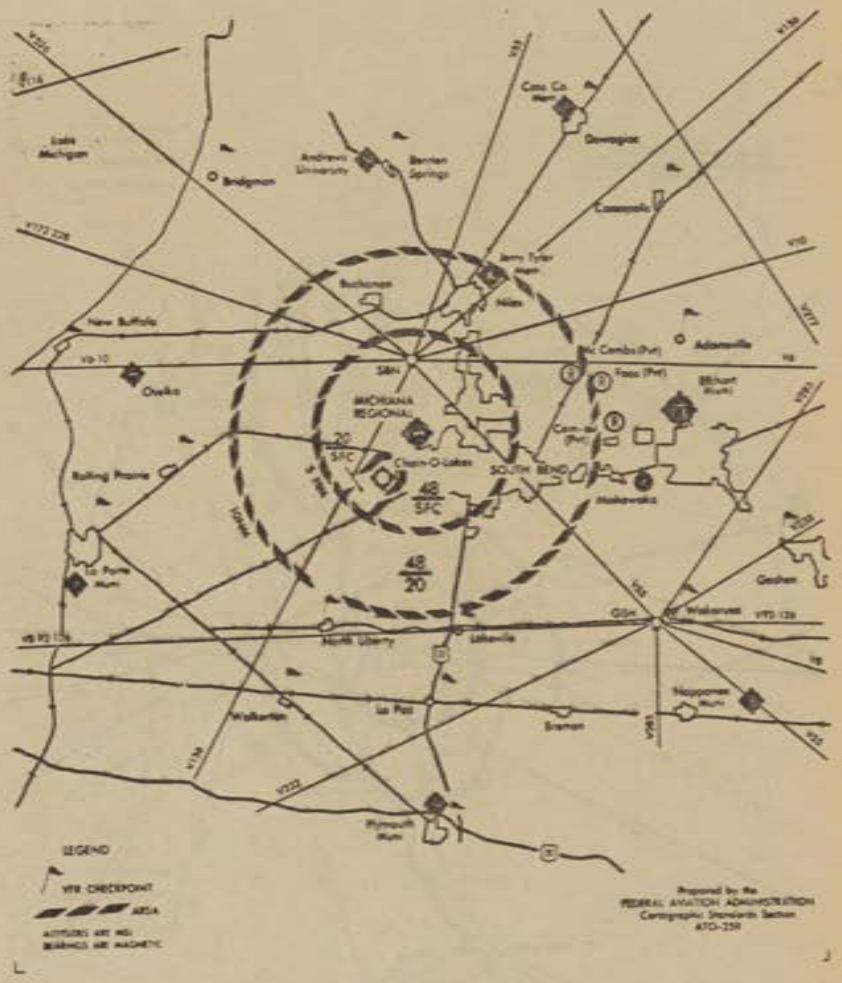
MEMPHIS, TENNESSEE
MEMPHIS INTERNATIONAL AIRPORT
FIELD ELEV. 332' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

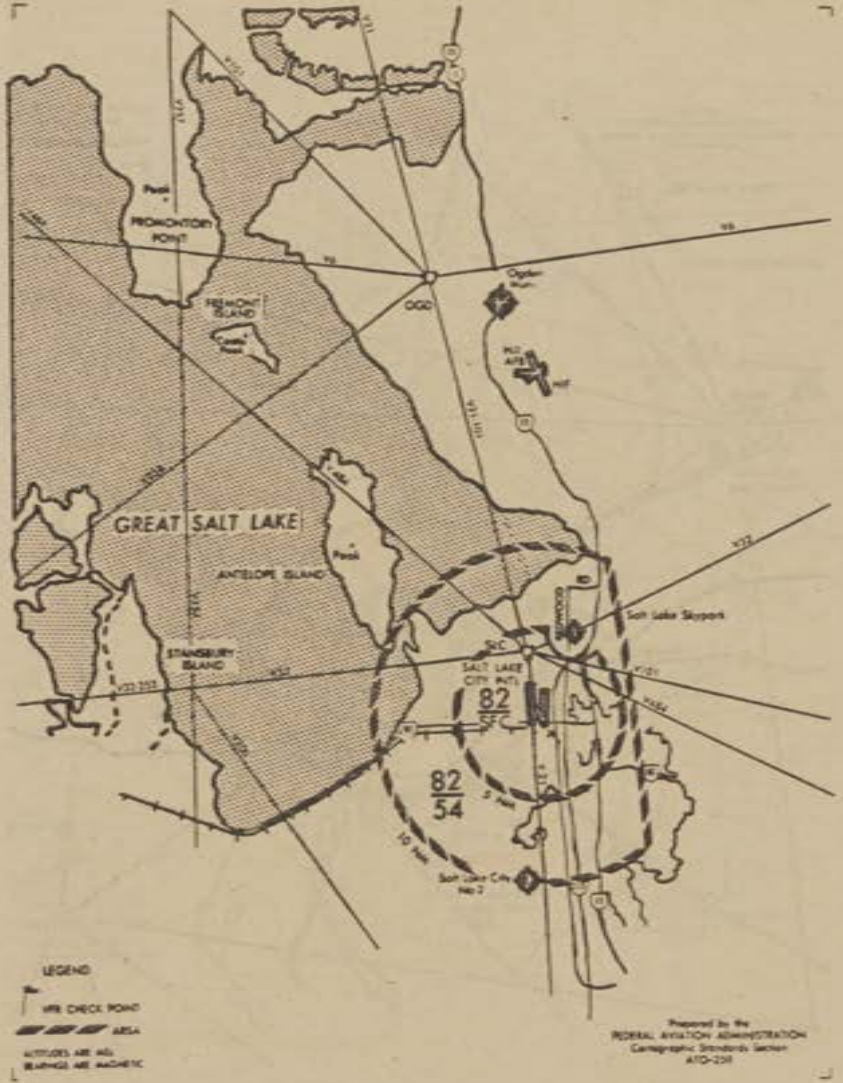
SOUTH BEND, INDIANA
MICHIANA REGIONAL AIRPORT
FIELD ELEV. 790' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

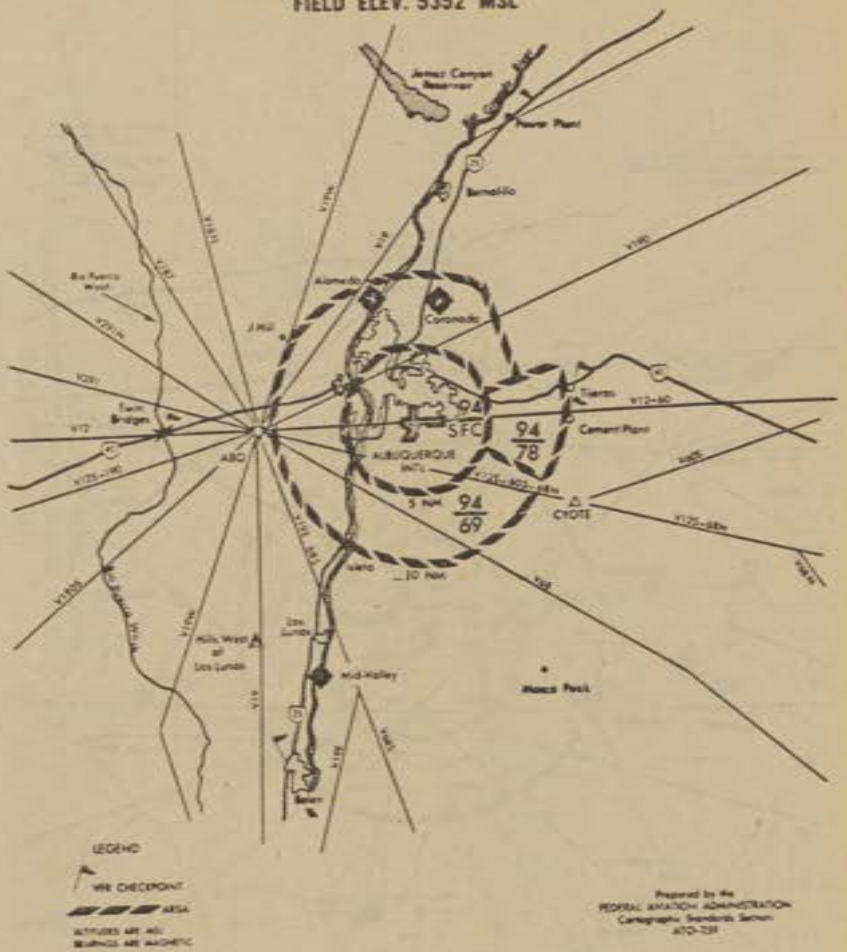
SALT LAKE CITY, UTAH
SALT LAKE CITY INTERNATIONAL AIRPORT
FIELD ELEV. 4227' MSL



AIRPORT RADAR SERVICE AREA

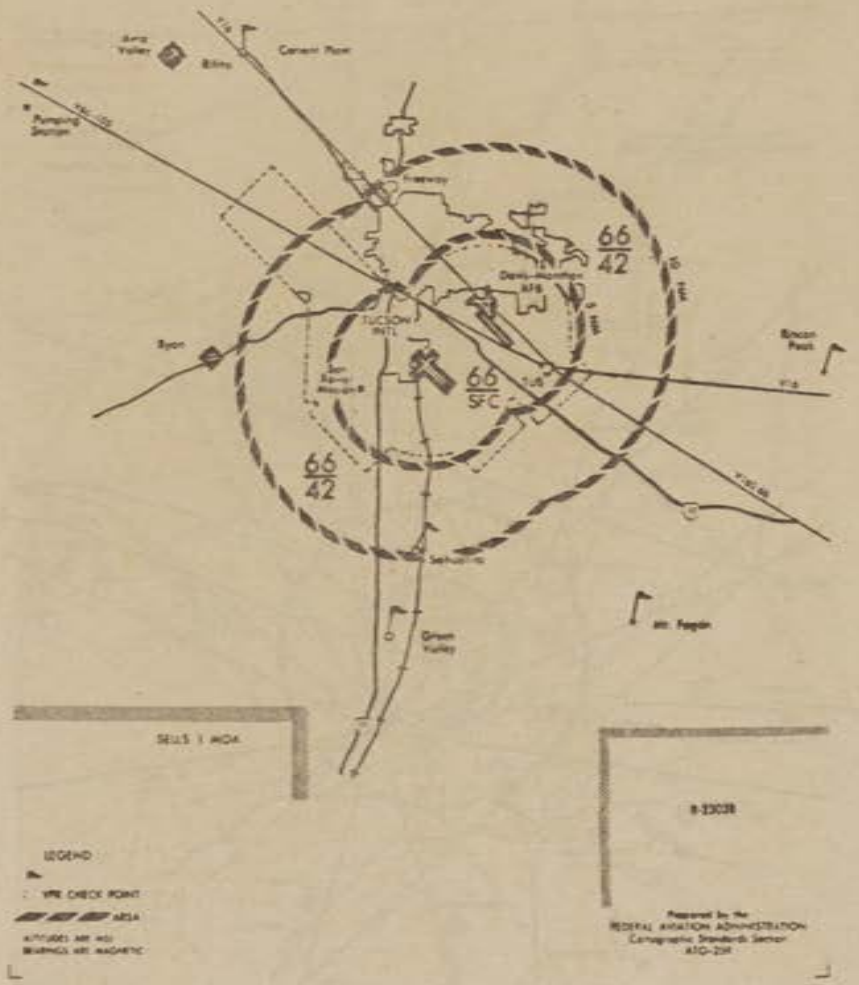
(NOT TO BE USED FOR NAVIGATION)

ALBUQUERQUE, NEW MEXICO
ALBUQUERQUE INTERNATIONAL AIRPORT
FIELD ELEV. 5352' MSL



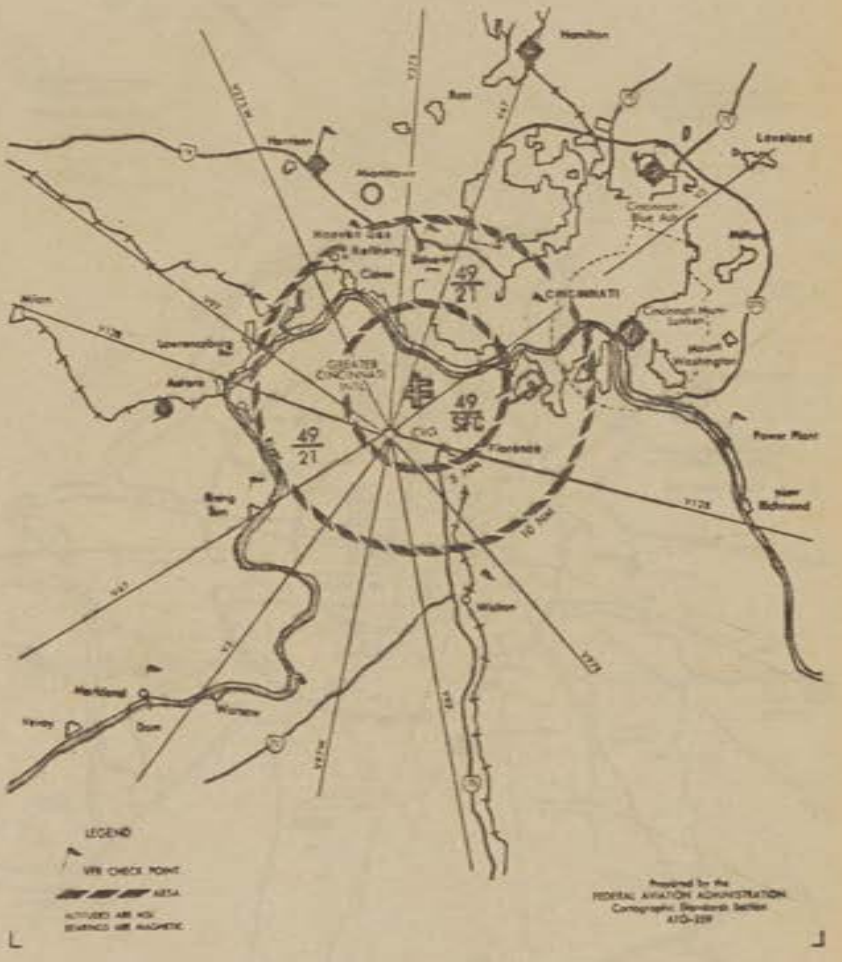
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

DAVIS-MONTHAN AFB, ARIZONA
FIELD ELEV. 2705' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

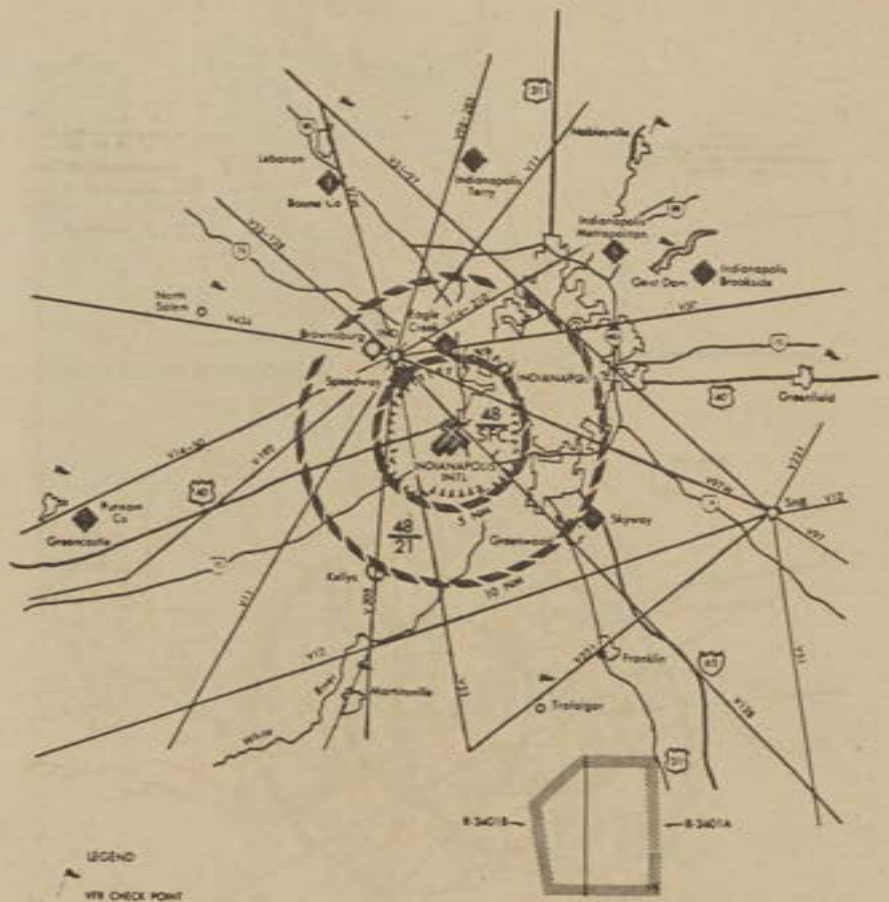
COVINGTON, KENTUCKY
GREATER CINCINNATI INTERNATIONAL AIRPORT
FIELD ELEV. 891' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

INDIANAPOLIS, INDIANA
INDIANAPOLIS INTERNATIONAL AIRPORT
FIELD ELEV. 797' MSL

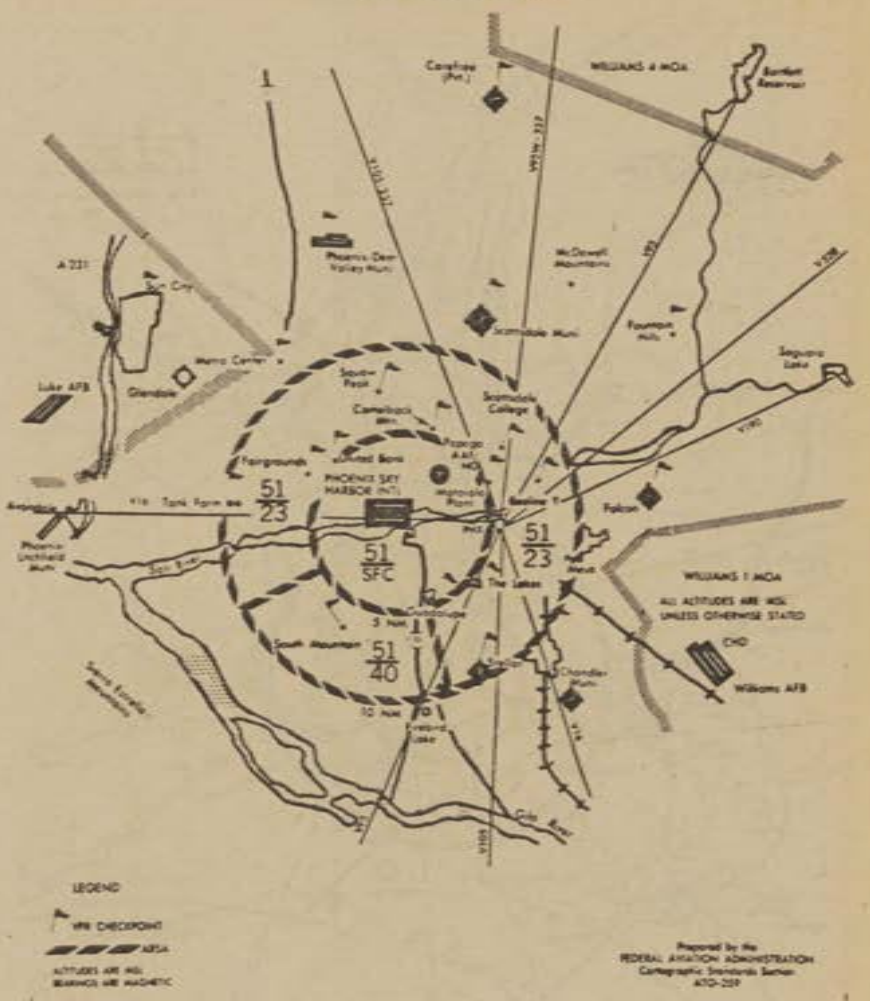


Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

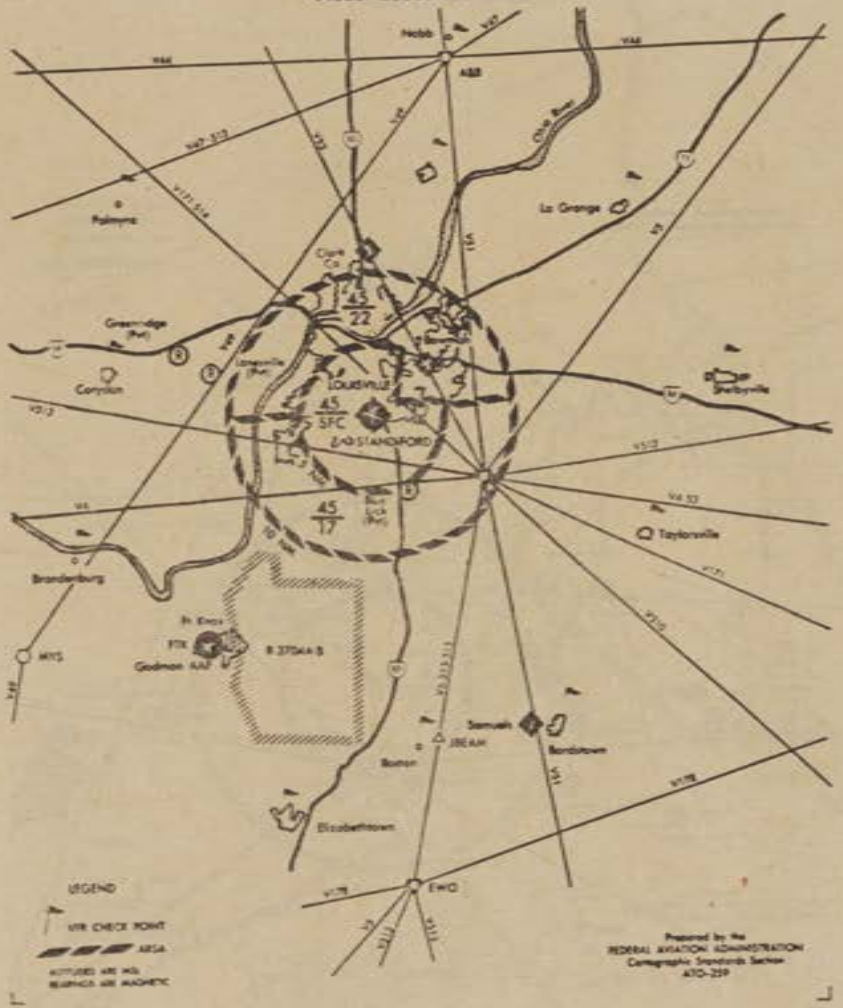
PHOENIX, ARIZONA
PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
FIELD ELEV. 1132' MSL



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

LOUISVILLE, KENTUCKY
STANDIFORD FIELD
FIELD ELEV. 497' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

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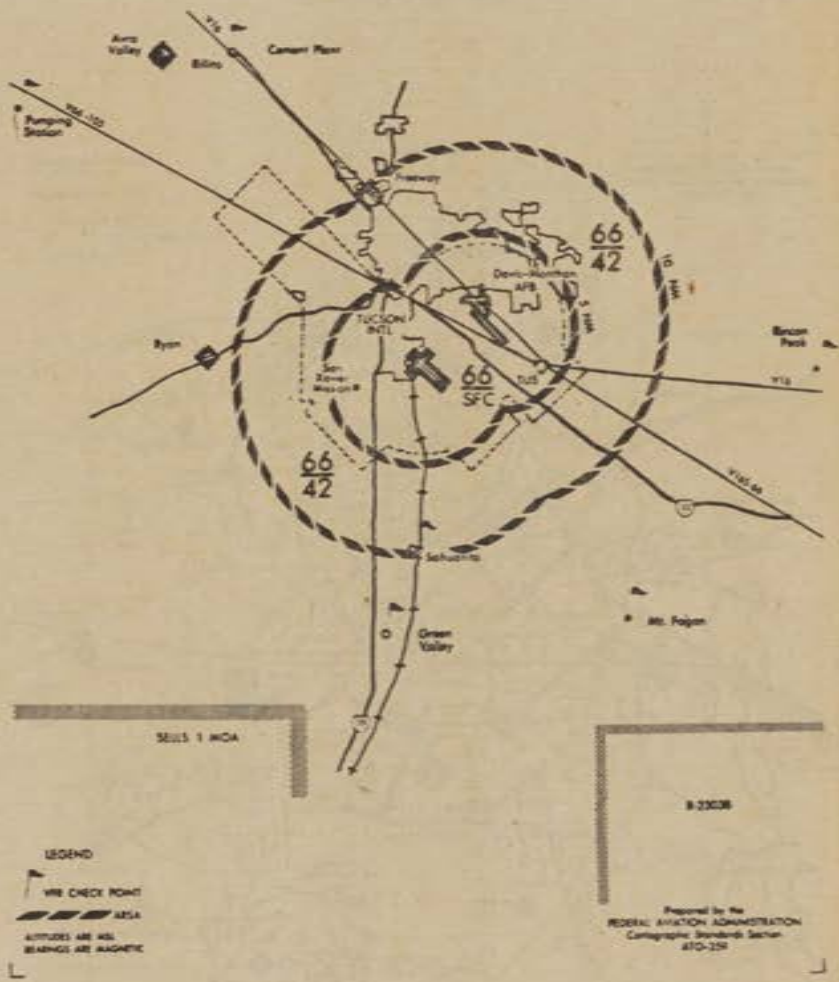
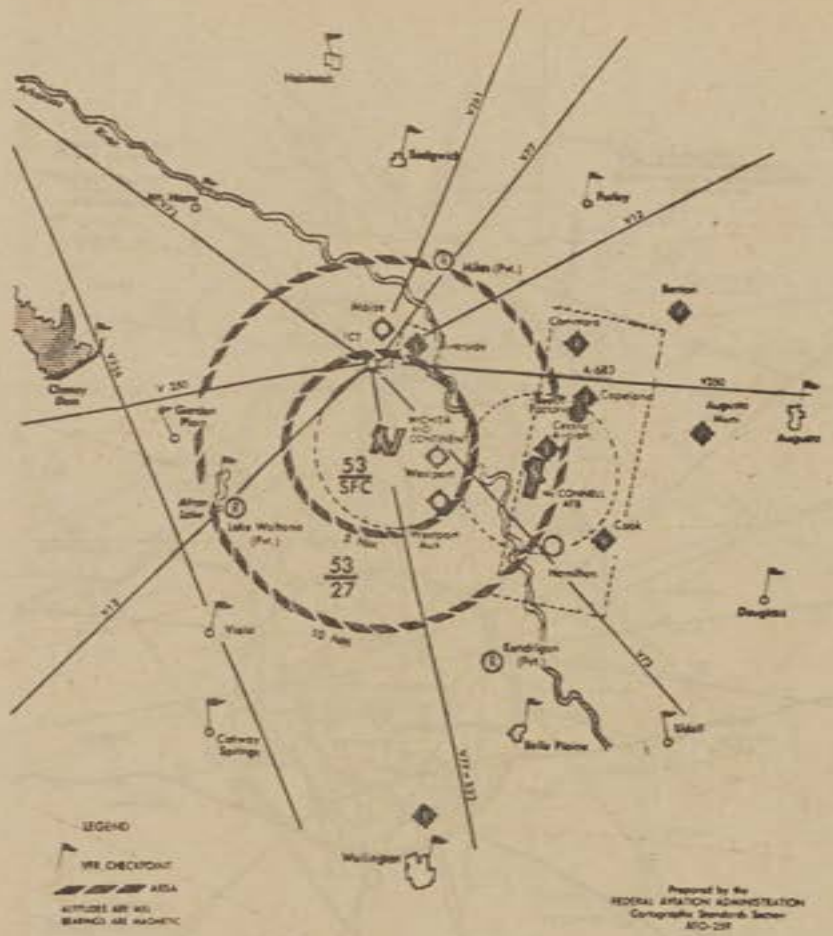
TUCSON INTERNATIONAL AIRPORT
FIELD ELEV. 2630' MSL



AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

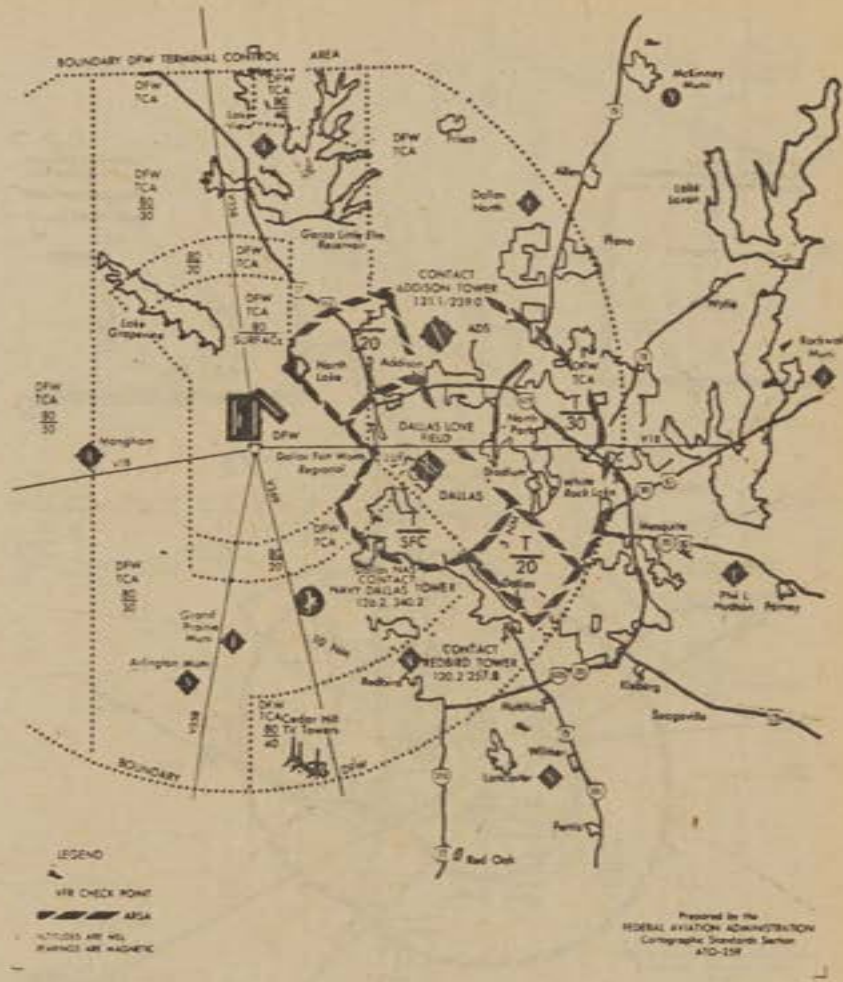
WICHITA, KANSAS
WICHITA MID-CONTINENT AIRPORT
FIELD ELEV. 1332' MSL

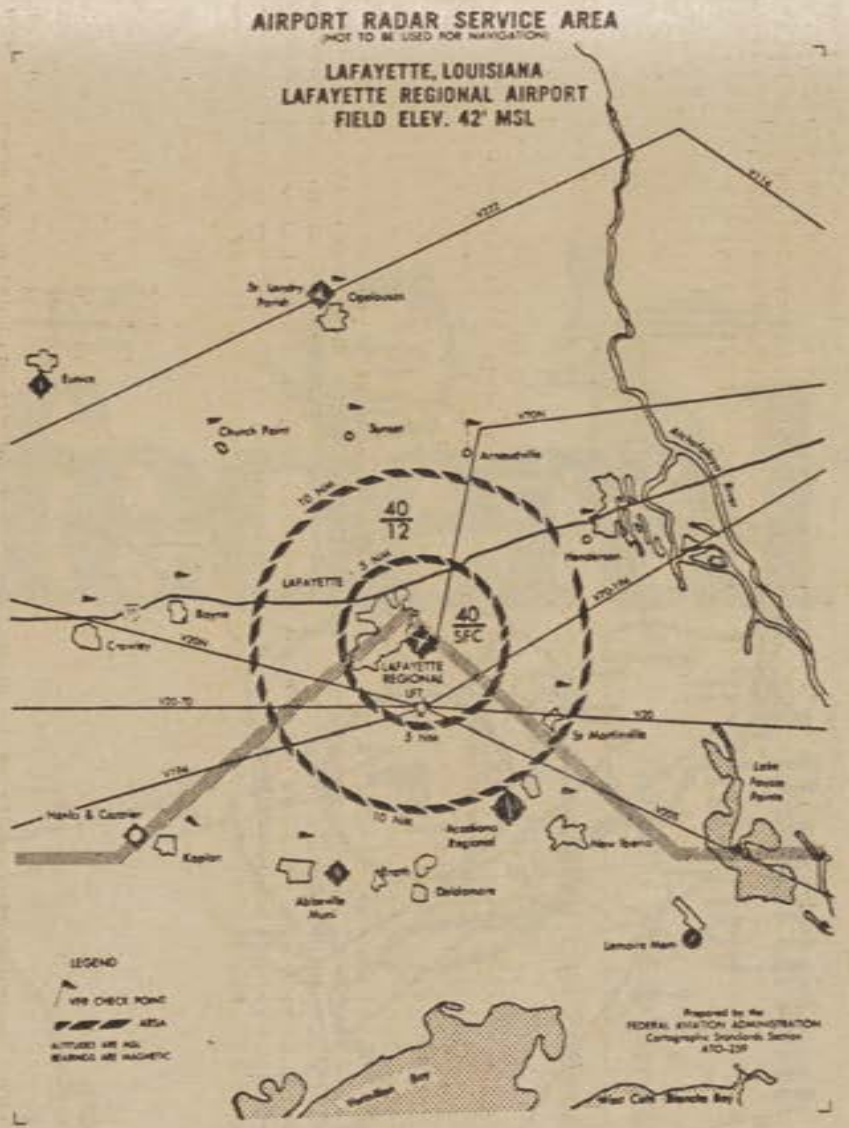


AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

DALLAS, TEXAS
LOVE FIELD
FIELD ELEV. 487' MSL




AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
LAFAYETTE, LOUISIANA
LAFAYETTE REGIONAL AIRPORT
FIELD ELEV. 42' MSL
40/12
40/SFC
LAFAYETTE REGIONAL
LEGEND
VFR CHECK POINT
AREA
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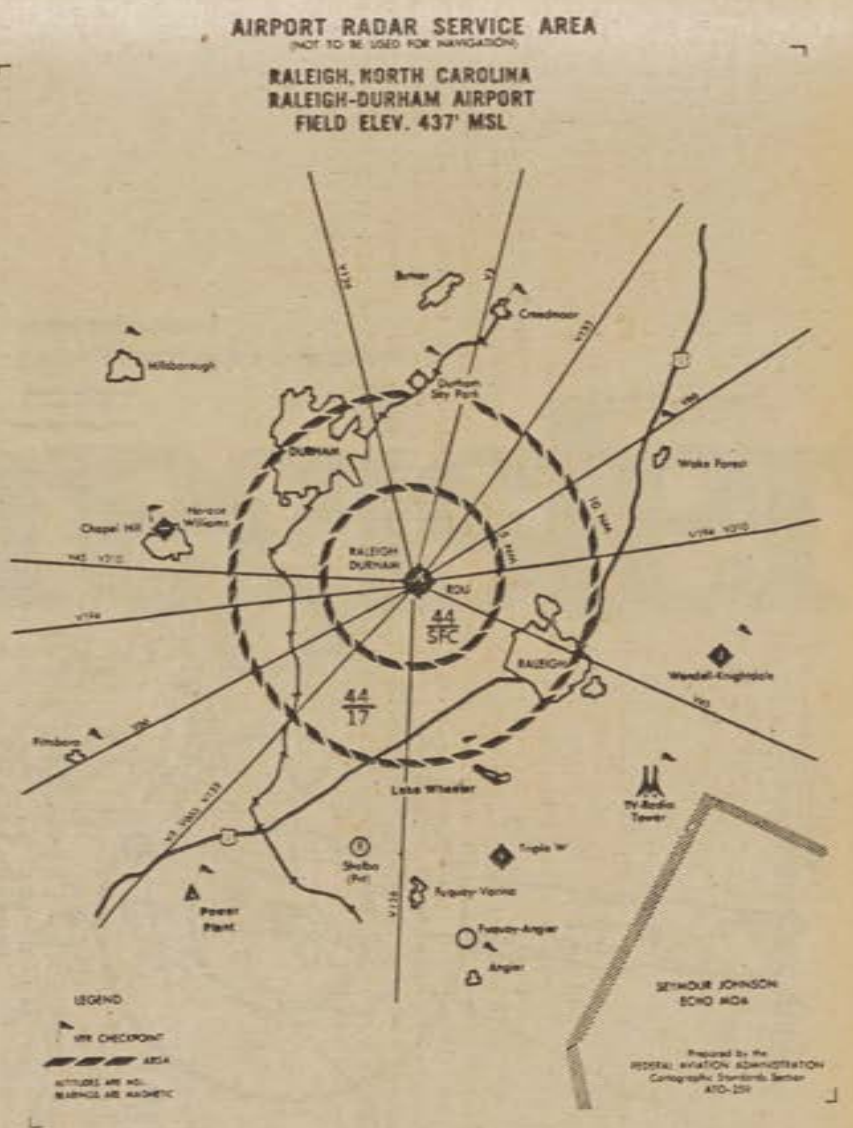
Cartographic Standards Section
ATO-230


AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
RALEIGH, NORTH CAROLINA
RALEIGH-DURHAM AIRPORT
FIELD ELEV. 437' MSL
44/SFC
44/17
RALEIGH DURHAM
RDU
LEGEND
VFR CHECKPOINT
AREA
SEYMOUR JOHNSON
ECHO MOA
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Cartographic Standards Section
ATO-230

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

WASHINGTON, DC

DULLES INTERNATIONAL AIRPORT

FIELD ELEV. 313' MSL



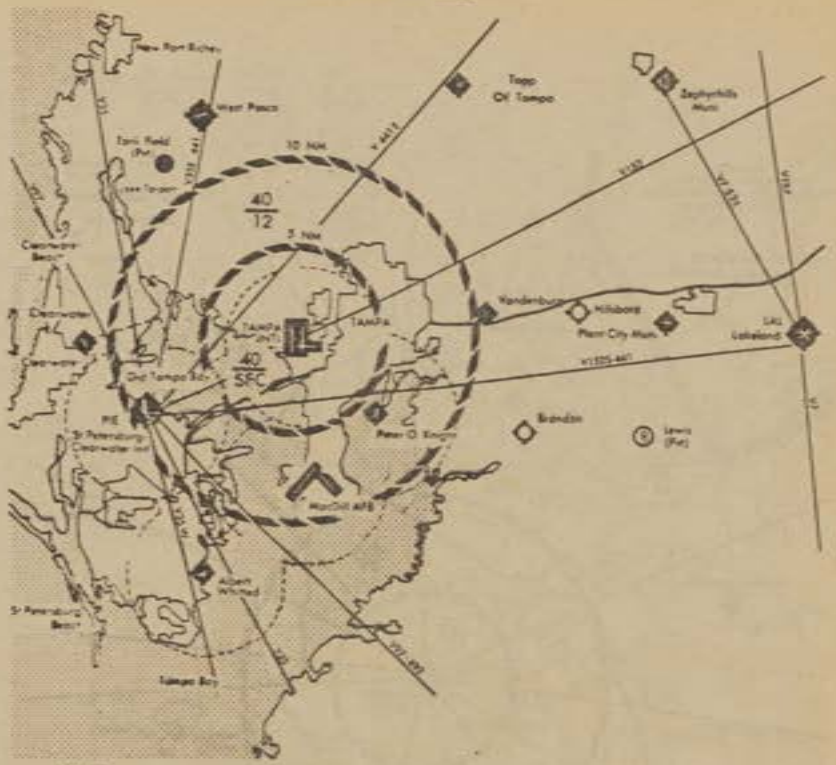
AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

TAMPA, FLORIDA

TAMPA INTERNATIONAL AIRPORT

FIELD ELEV. 27' MSL



[FR Doc. 85-23102 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-C

federal register

Monday
September 30, 1985

Part III

Department of the Interior

Fish and Wildlife Service

Division of Law Enforcement; Information No. 6; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Division of Law Enforcement; Notice of Information No. 6

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 6.

This is a schedule II Notice: Wildlife subject to this notice is subject to detention, refusal of clearance, seizure, and forfeiture if imported into the United States.

Subject

The Republic of the Philippines and all territories or dependencies.

Source of Foreign Law Information:

CITES Secretariat through Management Authority of the United States and the United States Department of State.

Action By Service:

Information supplied to the Management Authority of the United States indicates that there is an unresolved dispute within the government of the Republic of the Philippines as to the correct agency and person or persons authorized to sign wildlife export documents, including CITES permits or other official certificates. The CITES Secretariat states that it has not been notified of any change in the recognized Management Authority. The U.S. Department of State confirms that it is unable to verify the official Republic of the Philippines authority for permitting wildlife exports from that nation. Since it is not possible to determine the validity of documentation from the Philippines, and in accordance with the responsibility of the United States under CITES and other international wildlife conservation agreements, effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of live wildlife or of wildlife products may be imported into the United States from the Republic of the Philippines or any of its territories or dependencies. Shipments of wildlife or wildlife products which declare those areas as country of origin may not be imported into the United States.

EFFECTIVE DATE: Immediately upon publication.

EXPIRATION DATE: Until revoked.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, telephone: 202/343-9242.

Dated: September 24, 1985.

Robert A. Jantzen,

Director, Fish and Wildlife Service.

[FR Doc. 85-23221 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

Monday
September 30, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 355

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[DOCKET NO. 80N-0042]

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) anticaries drug products (drug products that aid in the prevention of dental cavities) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by November 29, 1985. New data by September 30, 1986. Comments on the new data by December 1, 1986. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Comments on the agency's economic impact determination by January 28, 1986.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 28, 1980 (45 FR 20666) FDA published, under §330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anticaries drug products, together with the recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 26, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by July 28, 1980.

In accordance with §330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, the Panel Chairman, four drug manufacturers' associations, ten drug manufacturers, one consumer, seven health care professionals, two health care professional societies, and one coalition opposed to fluoridation submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

FDA is issuing the tentative final monograph for OTC anticaries drug products in two segments. This document is the first segment to be published, and it contains the agency's responses to general comments on anticaries drug products, comments on the switch of prescription anticaries drug products to OTC status, comments on specific anticaries active ingredients, comments on dosages for anticaries active ingredients, and comments on the labeling of anticaries drug products.

The second segment of the tentative final monograph on OTC anticaries drug products will be published in a future issue of the Federal Register and will contain the agency's proposals regarding final formulation testing, i.e., "Laboratory Testing Profiles," for Category I active ingredients in dentifrice formulations, and issues relating to this testing. The agency stated in the advance notice of proposed rulemaking that these laboratory testing profiles represent a new concept with many technical issues yet to be resolved; therefore, they have not been included as part of the proposed monograph, although the recommendations are in the Panel's report (45 FR 20666). The agency held an open public meeting on September 26 and 27, 1983 regarding unresolved technical issues concerning the laboratory testing profiles and reopened the administrative record to include the proceedings of the public meeting and to allow comment on matters raised at the meeting (48 FR 38853). The agency will base its decisions concerning these testing profiles on the results of the meeting and other relevant information.

The advance notice of proposed rulemaking, which was published in the Federal Register on March 28, 1980 (45 FR 20666), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 355 (21 CFR Part 355), FDA states for the first time its position on the establishment of a monograph for OTC anticaries drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC anticaries drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC anticaries drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) have been revised to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). (See the Federal Register of September 29, 1981; 46 FR 47730.) The Court in *Cutler* held that the OTC drug regulations were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision has been deleted from the regulations, which now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category

III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the Federal Register. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA). Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC anticaries drug products (published in the **Federal Register** of March 28, 1980 (45 FR 20666)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' assess to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on The Comments

A. General Comments on Anticaries Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F. 2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F. 2d 887 (2d Cir. 1981).

2. One comment stated that FDA lacks statutory authority to prescribe exclusive lists of terms which indications for use for OTC drug products must be drawn and to prohibit labeling terminology which is truthful, accurate, not misleading, and intelligible to the consumer.

During the course of the OTC drug review, the agency has maintained that the terms that may be used in an OTC drug product's labeling are limited to those terms included in a final OTC drug monograph. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12). For example, the labeling proposed in this tentative final monograph has been expanded and revised in response to comments received. (See comments 26 and 27 below.)

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. In a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002), FDA announced that a hearing would be held to assist the agency in resolving this issue. On September 29, 1982, FDA conducted an open public forum at which interested parties

presented their views. The forum was a legislative type administrative hearing under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aids and stimulants (published in the Federal Register of June 13, 1978; 43 FR 25544).

After considering the testimony presented at the hearing and the written comments submitted to the record, in the Federal Register of April 22, 1985 (50 FR 15810), FDA proposed to change its exclusivity policy for the labeling of OTC drug products. As proposed, manufacturers may select one of the following options:

(1) The label and labeling would contain within a boxed area designated "APPROVED USES" the specific wording on indications for use established under an OTC drug monograph. The boxed areas would be required to be displayed in a prominent and conspicuous location. As under the present policy, the labeling in the boxed area would be required to be stated in the exact language of the monograph. However, with this option a statement that the information in the box was published by the Food and Drug Administration would appear either in the box or reasonably close by. At the manufacturer's option, the designation of the boxed area and the statement that the labeling was established by FDA could be combined.

(2) As a complete alternative to using the boxed area designated "APPROVED USES," the proposal would for the first time allow manufacturers an option to use other truthful and nondeceptive statements relating only to the indications established in an applicable monograph subject to the prohibitions in section 502(a) of the act against misbranding by the use of false or misleading labeling. If this alternative is selected, the manufacturer would not be able to use a boxed area or include a statement that the indications are endorsed by the Food and Drug Administration.

(3) As a third alternative, manufacturers could use both a boxed area with the monograph language and also, elsewhere in the labeling, use other non-monograph language that meets the statutory standards of truthfulness and accuracy.

Regardless, other aspects of OTC drug labeling, such as the statement of identity, warnings, and directions, would continue to be required to comply with the monograph, including following any exact language established in the monograph.

The proposal to change the exclusivity policy provides for 90 days of public comment. After considering all comments submitted, the agency will announce its final decision on this matter, in a future issue of the Federal Register.

3. One comment contended that the Panel's recommendation that sodium fluoride dental products be packaged in containers with child-resistant closures is not consistent with the Consumer Product Safety Commission's (CPSC) proposal, published in the Federal Register of March 19, 1980 (45 FR 17593), that all sodium fluoride drug preparations containing no more than 264 milligrams (mg) of sodium fluoride (120 mg fluorine) be exempt from child-protection packaging requirements for prescription drugs. The comment also noted that aqueous solutions of sodium fluoride are currently exempt from these requirements (16 CFR 1700.14). The comment stated that, while the CPSC's recommendation applies only to prescription drugs, it should be extended to apply to OTC fluoride dental drug products as well.

The Dental Panel recommended that certain fluoride dental rinses and gels, which had been previously restricted to prescription use, be made available OTC provided that they contain no more than 120 mg total fluorine per package, and that they are packaged in containers with child-resistant closures (45 FR 20673 and 20675). In the preamble to the Panel's report, the agency pointed out that CPSC, and not FDA, regulates child-resistant packaging and stated that it would make the CPSC aware of the Dental Panel's recommendations (45 FR 20666). The Panel's report was adopted before the CPSC published its proposed rule on March 19, 1980, but was not published until March 28, 1980.

FDA and CPSC representatives met on June 17, 1980 to establish a coordinated effort to deal with the Panel's recommendations that OTC anticaries fluoride dental rinses and gels be packaged with child-resistant closures in addition to limiting the amount of fluorine contained in a package to 120 mg (Ref. 1). CPSC explained that to implement the Panel's recommendation would require a reversal of exemptions to the requirement of child-resistant closures granted for aqueous solutions of sodium fluoride (16 CFR 1700.14) and the proposed extension of this exemption to all generic forms of sodium fluoride containing no more than 264 mg sodium fluoride (120 mg fluorine) per package in the Federal Register of March 19, 1980 (45 FR 17593). CPSC issued a final rule granting this proposed exemption to sodium fluoride drug preparations, including liquid and tablet forms, on November 26, 1980. Its decision was based on extensive data and information on fluoride toxicity that are fully discussed in the final rule (45 FR 78630). These data and information have been entered into the public administrative record for this rulemaking on OTC anticaries drug products (Ref. 1). The agency concurs with the CPS's findings that child-resistant closures for anticaries drug products containing no more than 120 mg fluorine are not necessary. FDA is proposing to limit the size of OTC packages containing fluoride rinses and gels to 120 mg fluorine per package and, therefore, will not request that CPSC consider proposing that fluoride rinses and gels included in this monograph be packaged with child-resistant closures.

Reference

(1) Memorandum coded M, Docket No. 80N-0042, Dockets Management Branch.

4. Three comments requested that dental rinse and nonabrasive dental gel packages be permitted to contain the same amount of fluorine (260 mg) as dentifrice packages instead of being limited to 120 mg of fluorine per package as stated by the Panel in its recommended monograph. Two of the comments argued that over 25 years of worldwide OTC use has confirmed the safety of dentifrice products containing 260 mg of fluorine. One of the comments maintained that dental rinse and nonabrasive gel packages containing 260 mg of fluorine might be safer than a comparable tube of fluoride dentifrice because the dental rinse and nonabrasive gel packages may also have child-proof safety closures. This comment added that it would take about 32 ounces (oz) of a 0.05-percent sodium fluoride dental rinse to contain 260 mg of fluorine, and that it would be as difficult to ingest 32 oz of a dental rinse from a bottle with a child-proof safety closure as it would be to ingest 9 oz of a fluoride dentifrice from a tube. Two of the comments pointed out that the same concentration (0.4 percent) of stannous fluoride is recommended for both the dentifrice and the nonabrasive gel, yet the gel package could contain a total of only 120 mg of fluorine and would require a child-proof safety closure, while the dentifrice package could contain a total of 260 mg of fluorine and would not require a child-proof safety closure. One of the comments stated that it is the prevailing conclusion of toxicologists that none of these dosage forms is any more hazardous than any other, and that the request to increase the allowable fluorine content in dental

rinses and nonabrasive gels was based on extensive pharmacological data.

The Panel stated that since 1958 the Council on Dental Therapeutics of the American Dental Association (ADA) has recommended for dental rinses and gels that no more than 120 mg of fluorine per package be dispensed at any one time because of its possible misuse. Experience during the past 20 years has borne out the safety of the Council's precautionary limit of fluoride for dental rinses and gels (45 FR 20673).

In addition, a significant distinction exists between dentifrices and nonabrasive dental gels and rinses. A dentifrice formulation contains an abrasive (45 FR 20671), while nonabrasive dental gels and rinses do not. As the Panel pointed out, the amount of fluorine available for pharmacological or toxicological action in a dentifrice is dependent upon the chemical reactivity of the fluoride ion with the abrasive (45 FR 20675–20677). Therefore, even if a 9-oz tube of a dentifrice containing 260 mg of fluorine were ingested, the entire 260 mg of fluorine is not available for absorption; only a part is available. In a 32-oz bottle of dental rinse or a 9-oz tube of a nonabrasive dental gel containing 260 mg of fluorine all of the 260 mg of fluorine is in solution and available for absorption. One study concluded that a dentifrice containing a given dose of a soluble fluoride would be 2.5 times safer than an aqueous solution, such as a dental rinse, containing the same dose of soluble fluoride (Ref. 1).

None of the comments submitted data to support the safety of more than 120 mg fluorine in nonabrasive dental gel and dental rinse products. The agency believes that the safety of dentifrices containing up to 260 mg fluorine can be attributed to the likelihood that the amount of dentifrice that contains a toxic dose of fluorine could not be ingested without vomiting (Ref. 2) and to the decreased amount of fluorine actually available for absorption because of the reactivity of fluorine with the abrasives in dentifrices.

Although the Panel recommended child-proof safety closures for dental rinses and gels, the CPSC states that these dosage forms, as well as tablets containing sodium fluoride, are exempt from regulations requiring child-proof safety closures as long as they contain 264 mg of sodium fluoride, which amounts to 120 mg of fluorine, or less per package. As discussed in comment 3 above, the CPSC's decision was based on the low toxicity potential of this amount of sodium fluoride and on the ADA's recommendation of 264 mg of sodium fluoride (120 mg fluorine) as the maximum amount to be dispensed at one time. The agency agrees with the recommendations of the ADA and the Panel and is proposing to limit the total amount of fluorine in packages of OTC dental rinses and nonabrasive gels to not more than 120 mg of fluorine per package.

References

(1) OTC Volume 080098.

(2) OTC Volumes 080018, 080098, and 080099.

5. Two comments had different views on the last sentence in the Panel's definition of fluoride at 45 FR 20671: "The deposition of fluoride in dental enamel has been shown to increase resistance to enamel solubility and therefore dental decay." Although acknowledging that the sentence is correct, one comment maintained that it was a commentary, not a definition, and should be omitted. The other comment stated that it was encouraging to find the statement included in the definition because it firmly established the clinical relationship between enamel solubility and tooth decay.

The definition discussed by the comments was not included in the Panel's recommended monograph, but was included in its report to reflect the Panel's intended meaning of fluoride in referring to OTC anticaries drug products. The agency acknowledges the definition in the Panel's report, but is adopting in this tentative final monograph the definition of fluoride recommended by the Panel in § 355.3: "The inorganic form of the chemical element fluoride in combination with other elements."

6. One comment suggested changing the first sentence in § 355.10, "The following ingredients are generally recognized as safe and effective for use in OTC anticaries drug products when marketed within the dosage limits forms established for each ingredient," to read as follows: "The following ingredients are generally recognized as safe and effective for use in OTC anticaries drug products when included in a suitable vehicle . . . and marketed within the dosage limits and in the forms established for each ingredient."

The sentence in § 355.10 was unclear as a result of a printing error. The agency proposes to word this sentence as follows in this tentative final monograph: "The active ingredient of the product consists of any of the following, within the established concentration and dosage form." This statement is compatible with the intent of the sentence suggested by the comment and consistent with other tentative final monographs.

7. One comment, while recognizing that the example list of inactive ingredients at 45 FR 20674 does not purport to be complete, suggested that binders, humectants, surfactants, and flavorants be added to the list.

As the comment noted, the types of inactive ingredients cited at 45 FR 20674 were intended as examples, not as a complete list. The agency believes that it is unnecessary to expand the list to include other examples of types of inactive ingredients.

8. One comment disagreed with the Panel's recommendation that a special panel is needed to review inactive ingredients in anticaries drug products. The comment stated that such ingredients are mostly found in cosmetics as well as drugs, and the current Cosmetic Ingredient Review sponsored by manufacturers of cosmetic products is fulfilling the need to examine more carefully the properties of certain ingredients.

The Panel stated that it did not undertake an extensive review of inactive ingredients because many of these ingredients are used in the formulation of many drug products other than those reviewed by the Panel. The Panel felt that it was not appropriate that inactive ingredients, except for abrasives, be dealt with specifically and solely in relation to dentifrices and dental care agents. Thus, the Panel recommended that the safety and the advisability of including specific inactive ingredients in drug products should be reviewed by an appropriate panel (45 FR 20674). The agency does not plan to establish a special panel to review inactive ingredients as part of the OTC drug review. The agency is aware of the Cosmetic Ingredient Review, which is a voluntary, industry-sponsored review to determine those cosmetic ingredients for which there is a reasonable certainty in the judgment of competent scientists that the ingredient is safe under its conditions of use (Ref. 1). Tentative and final reports on the ingredients reviewed are publicly available. The reports on inactive ingredients resulting from the Cosmetic Ingredient Review may be applicable to inactive ingredients used in OTC drug products, and the agency will consider these reports, as applicable, should questions arise regarding the presence of these inactive ingredients in OTC drug products. Under 21 CFR 330.1(e), an OTC drug product must contain only suitable inactive ingredients which are safe in the amounts administered and do not interfere with the effectiveness of the preparation or with suitable tests or assays to determine if the product meets

its professed standards of identity, strength, quality, and purity.

Reference

(1) Cosmetic Ingredient Review Procedures, Cosmetic Ingredient Review, 1110 Vermont Ave. NW., Washington, DC 20005.

9. One comment objected to the inclusion of 6 percent alcohol in a marketed 0.05-percent sodium fluoride dental rinse. The comment stated that the inclusion of alcohol in such products is unnecessary, that fluoride dental rinses employed in anticaries effectiveness studies did not contain alcohol, and that "it is generally accepted by the dental profession that daily rinses (containing alcohol) can be harmful to oral health, if continued over long periods." The comment urged FDA to take action against the inclusion of alcohol in fluoride dental rinses.

The OTC drug review regulations state that OTC drug products should contain "only suitable inactive ingredients which are safe in the amounts administered and do not interfere with the effectiveness of the preparation. . . ." (21 CFR 330.1(e)). The Panel considered alcohol to be an inactive ingredient in anticaries drug products containing fluoride (45 FR 20670) and did not take a position as to its value as an inactive ingredient in anticaries drug products or indicate that its presence in such drug products decreases their effectiveness. Although the Panel noted that inactive ingredients can have an irritating effect on the oral mucosa (45 FR 20674), it did not specifically indicate that such problems arise with daily use of dental rinses containing alcohol. The agency is unaware of significant reports of irritation or other adverse reactions due to fluoride dental rinse products containing 6 percent alcohol or of data that indicate that the presence of alcohol decreases the effectiveness of such products.

the Advisory Review Panel for OTC Oral Cavity Drug Products reviewed mouthwash drug products that contain alcohol and have antimicrobial claims and reviewed ethyl alcohol specifically as an antimicrobial active ingredient in mouthwashes (47 FR 22811–22873). That Panel recommended that ethyl alcohol be Category III as an antimicrobial mouthwash based on insufficient evidence of effectiveness, but stated that ethyl alcohol is safe for this use. Although the Oral Cavity Panel did not propose an antimicrobial mouthwash dosage for ethyl alcohol, it discussed concentrations well above 6 percent (i.e., 35 to 70 percent) for mouthwash use and noted that alcohol has been used safely in mouthwash products for many years (47 FR 22872).

The comment did not present any data or information to support its statement that the dental profession generally considers the daily use of mouthrinses containing alcohol harmful to oral health if continued over long periods or to demonstrate that daily rinsing over long periods with a product containing 6 percent alcohol is harmful to oral health. Therefore, the agency has no basis at this time for excluding alcohol as an inactive ingredient in fluoride dental rinse drug products.

10. A number of comments objected to the Panel's discussion of the relationship between sugar consumption and dental caries, and its recommendation that all processed foods be labeled with their percentage of sucrose and total monosaccharide and disaccharide content (45 FR 20672). The comments argued that the Panel had exceeded the scope of its authority by including this topic in its report. Some of the comments denied the primary importance of sugar in the etiology of dental caries and submitted data and cited numerous references to support their position (Refs. 1 and 2). One comment requested that the preamble to the tentative final monograph contain an explicit statement disavowing the Panel's conclusions on the etiology of dental caries and its recommendations on food labeling.

While the agency appreciates the Panel's concern with the etiology of dental caries, the Panel's comments concerning the role of sugar in the etiology of dental caries and the Panel's recommendation for mandatory labeling of sugar content on processed foods are outside the scope of the OTC drug review and thus will not be addressed in this tentative final monograph.

References

(1) Comment No. C00020, Docket No. 80N–0042, Dockets Management Branch.

(2) Comment Nos. C00011, C00017, and C00023, Docket No. 80N–0042, Dockets Management Branch.

11. One comment pointed out that the phrase "with an additive" was omitted from the Panel's statement at 45 FR 20672 concerning the caries-incidence liability of chewing gum. The comment indicated that the statement should read: "With reference to recommendation (4), the Panel believes that the evidence at this time is insufficient to allow any gum with an additive (on the market or proposed) to make the claim, 'does not promote tooth decay'."

The agency believes that, in the context of the Panel's discussion, the Panel intended the meaning conveyed by the comment's revised sentence.

B. Comments on the Switch of Prescription Anticaries Drug Products to OTC Status

12. A number of comments supported the Panel's recommendation that certain fluoride dental rinses and gels be switched from prescription to OTC status to aid in the prevention of dental caries. One comment, however, expressed concern that "people think if something is good, more is better. This is a bad idea since fluoride is a dangerous chemical and should be kept on a prescription basis."

The agency agrees with the Panel's recommendation to switch certain fluoride rinses and gels from prescription to OTC status. The benefits of having these anticaries products available OTC far outweigh the minimum risk involved. (See comment 13 below). Further, the Panel's recommended package size limitation and the labeling warnings and directions are sound control measures against potential misuse. The comment did not submit any data to support its statement that consumers will use excessive quantities of these products.

13. Several comments responded to FDA's request for comments and data on the issue of whether fluoride gels and rinses provide any added benefit to persons who also use a fluoride dentifrice daily, who live in areas where optimal levels of fluoride (i.e., approximately 1 part per million (ppm)) are present in the water supply, and who may also be given professionally applied fluoride treatments periodically.

One comment stated that the Council on Dental Therapeutics of the ADA has reviewed clinical studies that indicate that daily use of a 0.05-percent sodium fluoride rinse provides a reduction in caries that is additive to the daily use of a fluoride dentifrice and to water fluoridation. However, the clinical studies were not cited by the comment. another comment submitted a list of references on the topical application of fluoride and the use of fluoride rinses (Ref. 1). The comment, from a dentist, reported from personal experience that daily 0.05 percent sodium fluoride rinses were more effective than weekly 0.2 percent sodium fluoride rinses and concluded that the frequency of use of rinses is very important. The comment recommended a twice-daily use of a neutral sodium fluoride rinse. One comment stated that evidence in the literature shows that fluoridated water reduces dental caries by approximately 65 percent, whereas fluoride dentifrices

reduce them by approximately 35 percent. No supporting data were submitted by the comment.

One comment submitted a 30-month clinical study by Triol et al. (Ref. 2) conducted on schoolchildren (mean age 11.5 years) who lived in an area without optimal water fluoridation. The study was conducted to determine the additive caries-reducing effect obtained from the daily supervised use at school of a dentifrice containing 0.76 percent sodium monofluorophosphate and mouthrinses containing sodium flouride at 0.025, 0.05, and 0.1 percent concentrations. A nonfluoride mouthrinse was used as a contol. The study results showed that after 30 months, the use of each sodium flouride mouthrinse concentration combined with the sodium monofluorophosphate dentifrice reduced cavities when compared with the combined use of the sodium monofluorophosphate dentifrice and the control mouthrinse. Children who used a 0.025-percent and a 0.1-percent sodium fluoride mouthrinse with the fluoride dentifrice developed 9.2 and 7.8 percent fewer decayed, missing, and filled teeth, respectively, than did children who used a nonfuoride rinse. Daily use of the 0.05-percent sodium fluoride mouthrinse (the concentration recommended for OTC use by the Panel) produced modest additional benefits when used with fluoride dentifrice toothbrushing. Children in this group developed 11.1 percent fewer decayed, missing, and filled tooth surfaces during the 30-month evaluation period than children who used a nonfluoride rinse. Nearly the entire benefit resulted from a reduction in caries in interproximal (between-the-teeth) tooth surfaces. Because reduction of dental caries from the use of fluoride rinses results from the presence of the fluoride ion, the agency believes it is likely that similar findings would be produced by the use of gels or rinses containing other fluoride salts, such as stannous fluoride or acidulated phosphate fluoride, with the same concentration of fluoride.

The agency has reviewed other studies in which combinations of fluoride agents and methods have been used. Horowitz (Ref. 3) points out that there is increasing evidence that various combinations of fluoride agents produce additive anticariogenic effects. Although the mechanisms by which fluorides prevent dental caries are not fully understood, they probably vary, depending upon the agent used, its route of administration, its concentration, its frequency of use, the vehicle used to deliver it, and the age of the person who receives it (Refs. 4, 5, and 6). Several mechanisms may operate simultaneously, with one or another preeminent at different times because of local conditions at the tooth surface. It is thus logical to expect added benefits to accrue from the use of combinations of fluoride agents and methods, particularly those with different mechanisms of action.

Because the Triol study (Ref. 2) was intentionally done in a community where the drinking water contained less than 0.3 ppm of fluoride, it provides no information on additive benefits from the use of fluoride rinses in a community with a fluoridated water supply. However, at least three other studies strongly suggest that such benefits occur (Refs. 7 through 10). Driscoll et al. (Refs. 7 and 8) conducted a study on schoolchildren (mean age 12.8 years) who lived in a community with an optimally fluoridated water supply and used either 0.2 percent sodium fluoride rinse once a week or 0.05 percent sodium fluoride rinse once a day. A control group of children used a placebo rinse once a week. The 18-month interim results and 30-month final results of this study showed that both 0.2 percent and 0.05 percent sodium fluoride rinse solutions effectively reduced the incidence of dental caries. These reductions in caries were in addition to those already accrued from consuming optimally fluoridated drinking water.

It is likely that most of the children who participated in the study by Driscoll et al. (Refs. 7 and 8) were also using a fluoride-containing dentifrices at home. Because fluoride dentirfrices account for about 85 percent of all "toothpaste" sales, that assumption is reasonable. Therefore, in that study, the school-based daily and weekly fluoride mouthrinsing regimens may be regarded as being effective in reducing dental decay among children who live in a community with a fluoridated water supply and, for the most part, use a fluoride-containing toothpaste.

Kawall et al. (Ref. 9) conducted a 2-year study on schoolchildren (initially 9 years of age) who resided in an area with an optimally fluoridated water supply and used a 0.2-percent sodium fluoride rinse once a week. A control group of children was also included in the study. Results after 2 years showed that the fluoride rinse group had a 33.8-percent greater caries reduction than the control group. Radike et al. (Ref. 10) conducted a study on schoolchildren (8 to 13 years of age) who resided in a community with a fluoridated water supply and used a 0.1-percent stannous fluoride rinse once a day for 2 school years. A control group of children was also studied. After 2 years, two examiners independently observed caries reductions of 33 percent and 43 percent in decayed, missing, anf filled tooth surface scores for the group using the stannous fluoride rinse as compared with the control group. These studies show that mouthrinsing with flouride solutions, either daily or weekly as appropriate, provides additional protection against dental decay for persons living in a community with a fluoridated water supply.

As mentioned by one comment, the Council on Dental Therapeutics of the ADA recognizes the value of daily and weekly fluoride mouthrinsing for caries prevention in communities with fluoridated water (Ref. 11). Additionally, another ongoing study shows that children in an area without fluoridated water who rinse their mouth weekly in school with 0.2 percent sodium fluoride, ingest a tablet containing 1 mg of fluoride on school days, and receive fluoride dentifrice and toothbrushes for toothbrusing at home, demonstrate a pronounced reduction in dental decay (Refs. 12 through 15). After 8 years of this program, children 6 to 14 years of age in the program had 49 percent less dental decay than children of the same ages in the same area who had not participated in the program. Decay in mesiodistal tooth surfaces was lower by a striking 86 percent (Ref. 15).

Because rinsing daily with 0.05 percent sodium fluoride is at least as effective as weekly rinsing with 0.2 percent sodium fluoride, the agency concludes that the use of fluoride rinse concentrations combined with other fluroide programs is beneficial in reducing dental decay. Based on the cited studies, the agency concludes that beneficial additive effects occur from the combined use of fluoride rinses or gels and fluoride dentifrices in communities with either a fluoridated or nonfluoridated water supply. Therefore, in order to inform consumers that a decrease in the incidence of dental decay can result from the combined use of fluoride from different sources, the agency is proposing that the following statement be included under "Optional additional labeling statement" in § 355.50(f): "The combined daily use of a fluoride treatment" (select one of the following: "rinse" or "gel") "and a fluoride toothpaste can aid in reducing the incidence of dental cavities."

References

(1) Comment C00005, Docket No. 80N-0042, Dockets Management Branch.

(2) Triol, C. W., et al., "Anticaries Effect of a Sodium Fluoride Rinse and an MFP Dentifrice in a Nonfluoridated Water Area: A

Thirty-month Study," *Clinical Preventive Dentistry*, 2:13–15, 1980.

(3) Horowitz, H. S., "Combinations of Caries-preventive Agents and Procedures," *Journal of Dental Research*, 59:2183–2189, 1980.

(4) Brown, W. E., et al., "Effects of Fluoride on Enamel Solubility and Cariostasis," *Caries Research*, 11:118–141, 1977.

(5) Ericsson S. Y., "Cariostatic Mechanisms of Fluorides: Clinical Observations," *Caries Research*, 11:2–41, 1977.

(6) Mellberg, J. R., "Enamel Fluoride and its Anticaries Effects," *Journal of Preventive Dentistry*, 4:8–20, 1977.

(7) Driscoll, W. S., et al., "Caries-preventive Effects of Daily and Weekly Fluoride Mouthrinsing in an Optimally Fluoridated Community: Findings After Eighteen Months," *Pediatric Dentistry*, 3:316–320, 1981.

(8) Driscoll, W. S., et al., "Caries-preventive Effects of Daily and Weekly Fluoride Rinsing in a Fluoridated Community: Final Results After 30 Months," *Journal of Dental Association*, 105:1010–1013, 1982.

(9) Kawall, K., et al., "The Effect of a Fluoride Mouthrinse in an Optimally Fluoridated Community—Final Two Year Results," (abstract 646), *Journal of the American Dental Research*, 60:471, 1981.

(10) Radike, A. W., et al., "Clinical Evaluation of Stannous Fluoride as an Anticaries Mouthrinse," *Journal of the American Dental Association*, 86:404–408, 1973.

(11) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, p. 352, 1982.

(12) Horowitz, H. S., et al., "Evaluation of a Combination of Self-Administered Fluoride Procedures for Control of Dental Caries in a Non-Fluoride Area: Findings After 2 Years," *Caries Research*, 11:178–185, 1977.

(13) Horowitz, H. S., et al., "Evaluation of a Combination of Self-administered Fluoride Procedures for the Control of Dental Caries in a Nonfluoride Area: Findings After Four Years," *Journal of the American Dental Association*, 98:219–223, 1979.

(14) Horowitz, H. S., et al., "A Program of Self-Administered Fluorides in a Rural School System," *Community Dental Oral Epidemiology*, 8:177–183, 1980.

(15) Horowitz, H. S., et al., "Eight-year Evaluation of a Combined Fluoride Program in a Non-fluoride Area," (abstract 915), *Journal of Dental Research*, 61:280, 1982.

14. One comment stated that the Panel should have included systemic fluoride preparations among the Category I anticaries drug products because there is adequate experimental evidence supporting the effectiveness of systemic fluorides and because concern over toxicity could be handled by limiting the maximum amount of fluorine per package as has been done in the case of other fluoride-containing products. The comment contended that making systemic fluoride products available OTC could make it possible for a large segment of the population to enjoy the anticaries benefits of such products and urged the Panel to include systemic fluoride preparations in its review.

The agency did not include systemic fluoride preparations in the call-for-data notice for dentifrices and dental care drug products (38 FR 2781). No data on systemic fluorides were submitted to the Panel for review.

The Council on Dental Therapeutics of the ADA advises against the unrestricted distribution of systemic fluoride preparations (Ref. 1), and the agency concurs. Systemic fluoride preparations are usually prescribed for young children who live in areas where water supplies are deficient in fluorides. The ADA states that the ingestion of systemic fluoride preparations in addition to ingesting fluoridated water does not provide an additional substantial reduction in caries prevalence for adults or children, but may produce fluorosis in developing teeth of young children (Ref. 1).

Fluoridation of public water supplies has been safely and effectively used for many years to provide optimal levels of the fluoride ion to large segments of the population (Ref. 1). The optimal range of fluoride in drinking water to prevent caries is from 0.7 to 1.2 ppm. The need for additional systemic fluoride for any child depends on the fluoride concentration in drinking water and the age of the child (Ref. 1). Thus, professional supervision in the use of systemic fluoride preparations is necessary to assure that they are safely and effectively used. Although, as the comment points out, the maximum amount of fluoride per container could be limited to increase the safety of these products, consumers may not be aware of the extent to which their water supply is fluoridated and, therefore, may lack adequate knowledge to use systemic fluoride drug products effectively. Consequently, in this tentative final monograph the agency is not proposing labeling intended to inform consumers about the use of systemic fluorides.

However, the agency recognizes that Category I dental rinses have been used as fluoride supplements for ingestion in addition to their use as topical rinses. The ADA recommends a daily dosage of 2.2 mg sodium fluoride or 1 mg fluoride ion as a supplement for children 3 to 13 years of age in an area with less than 0.3 ppm in the water supply and 0.5 mg fluoride ion as a supplement for children 3 to 13 years of age in an area with between 0.3 to 0.7 ppm in the water supply (Ref. 1).

The agency concurs with the ADA's recommended dosage. The agency has determined that 5 milliliters (mL) of 0.02 percent or 10 mL of 0.01 percent flouride ion rinses included in the tentative final monograph will provide approximately 1 mg of fluoride ion and that 2.5 mL of 0.02 percent or 5 mL of 0.01 percent fluoride rinses will provide approximately 0.5 mg of fluoride ion. The agency concludes that systemic use of fluoride rinses as a supplement should be under professional supervision and is therefore including the following directions for use of these rinses as supplements in the professional labeling section of the tentative final monograph based on the ADA's dosage recommendations: Children 3 to under 14 years of age: as a supplement in areas where the water supply is nonfluoridated (less 0.3 part per million), clean the teeth with a toothpaste and rinse with 5 milliliters of 0.02 percent or 10 milliliters of 0.01 percent fluoride ion rinse daily, then swallow. When water supply contains 0.3 to 0.7 part per million fluoride ion, reduce the dose to 2.5 milliliters of 0.02 percent or 5 milliliters of 0.01 percent fluoride ion rinse daily.

Reference

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, pp. 344–368, 1982.

15. One comment requested that a neutral 0.2-percent sodium fluoride dental rinse be allowed to be marketed OTC. The comment explained that two programs in California enable elementary school children to participate in a weekly dental rinse program using 0.2 percent sodium fluoride. The comment pointed out, however, that California law requires that a dentist, physician, or pharmacist mix the 0.2-percent sodium fluoride solution, and, consequently, dentists participating in the program must spend much of their time mixing solutions rather than conducting dental screenings and providing dental education.

The agency understands that the technical aspects involved in mixing the 0.2-percent fluoride rinse are time-consuming and commends the comment's desire for dentists to devote more time to the dental care of school children. However, at this time, the agency is not aware of any data to show that a 0.2-percent sodium fluoride dental rinse, currently marketed by prescription only, can be safely marketed OTC. The Panel reviewed a number of studies attesting to the safety and effectiveness of a 0.05-percent sodium fluoride solution used daily as a rinse (45 FR 20686–20687) and, based on these data, recommended that the 0.05-percent sodium fluoride solution be switched from prescription to OTC marketing status. Without safety data for the 0.2-percent sodium fluoride dental rinse, the agency has no basis for granting the comment's request.

C. Comments on Specific Anticaries Active Ingredients

16. Several comments objected to the Panel's discussion of the claim "does not promote tooth decay" and to the Panel's recommendation that the evidence at this time is insufficient to allow any sucrose-containing chewing gum to make this claim (45 FR 20672). The comments pointed to the Panel's statement that during the Panel deliberations the Bureau of Drugs (now the Center for Drugs and Biologics) decided that products making noncariogenic claims (such as "does not promote tooth decay") should be reviewed by the Bureau of Foods (now the Center for Food Safety and Applied Nutrition) because noncariogenic claims are not considered drug claims (45 FR 20669). Two comments (Refs. 1 and 2) argued that the Panel's recommendation on noncariogenic claims was thus extraneous to this OTC drug rulemaking and should be deleted, along with certain portions of the Panel's discussion about the cariogenicity of foods (45 FR 20672).

The chairman of the Dental Panel requested that two paragraphs be added to the report stating that the Panel had discussed at length the action of ingredients designed to negate the cariogenic effects of sugars. The chairman commented that the Panel had concluded that dicalcium phosphate dihydrate is safe, but that an additional clinical study would be needed to prove effectiveness (Ref. 3).

Some comments also objected to the Panel's classification of phosphates, including dicalcium phosphate dihydrate and calcium sucrose phosphate, in Category II as anticaries agents (45 FR 20689). One comment stated that phosphate compounds are chemical additives to foods and should not be included in the proposed OTC monograph. Another comment contended that calcium phospate dihydrate and calcium sucrose phosphate have a history of safe use. According to the comment, this Category II classification contradicts a Department of Commerce report prepared by the Federation of American Societies of Experimental Biology which states that phosphates, especially calcium phosphates, are safe as food ingredients (Ref. 4). The comment also pointed out that many of the phosphates are on the GRAS list (food substances generally recognized as safe). The comments argued that a Category III classification (based on insufficient effectiveness data) for these phosphate ingredients would be more appropriate than the Panel's Category II classification (Refs. 4 and 5).

The agency agrees that noncariogenic claims (such as "does not promote tooth decay") are not drug claims. Of course, any noncariogenic claims made on food product labeling must not be false or misleading. However, these claims will not be reviewed as part of this OTC drug rulemaking. As the Panel chairman has pointed out, the Panel spent a considerable amount of time during its deliberations discussing the role of sugar in dental health and the action of substances intended to negate the cariogenic effects of sugars. The Panel report does include a discussion of the Panel's views on these issues; however, the agency will not delete or add segments to the Panel's report as requested by the comments.

The Panel placed phosphates in Category II as anticaries agents (i.e., ingredients which aid in the prevention of dental cavities) based on lack of marketing and on lack of evidence of effectiveness (45 FR 20689). Calcium phosphate (mono-, di-, and tribasic) is listed in 21 CFR 182.1217 as a multiple purpose GRAS food substance. In the **Federal Register** of December 18, 1979 (44 FR 74845), FDA proposed to affirm that dicalcium phosphate is generally recognized as safe as a direct food ingredient under certain conditions. Although phosphates have been added to foods, they have never been marketed as anticaries drug products. Therefore, they are not appropriately included in the OTC drug review program. Thus, the agency will not consider dicalcium phosphate dihydrate, calcium sucrose phosphate, or any other phosphate, in this OTC anticaries drug rulemaking. Any OTC anticaries drug product containing a phosphate as an active ingredient is a new drug as defined in 21 U.S.C. 321(p) and under 21 U.S.C. 355 may not be marketed without an approved new drug application.

References

(1) Comment C00021, Docket No. 80N-0042, Dockets Management Branch.

(2) Comment C00026, Docket No. 80N-0042, Dockets Management Branch.

(3) Comment C00002, Docket No. 80N-0042, Dockets Management Branch.

(4) Comment C00029, Docket No. 80N-0042, Dockets Management Branch.

(5) Comment C00024, Docket No. 80N-0042, Dockets Management Branch.

17. One comment contended that the Panel's listing of hydrogen fluoride as an inactive ingredient (45 FR 20670) was misleading. The comment stated that, although no marketed product contains hydrogen fluoride as its sole anticaries ingredient, in a proper formulation this ingredient would be active against caries because hydrogen fluoride readily yields ionic fluoride in solution.

The agency agrees that hydrogen fluoride, in an appropriate formulation, could be considered an active anticaries ingredient and recognizes that a marketed product containing hydrogen fluoride as an active ingredient in combination with sodium fluoride, available only by prescription, was submitted to the Panel for review (Refs. 1 and 2). The product is a dental rinse containing the ingredients sodium fluoride and hydrogen fluoride, buffered to pH 3, with an effective fluoride ion concentration of 1.23 percent. In this formulation hydrogen fluoride contributes approximately 50 percent of the total fluoride ion content, and sodium fluoride contributes the other 50 percent. The agency is unable to ascertain why the Panel classified the ingredient hydrogen fluoride as inactive and why it did not classify in its report the combination dental rinse containing hydrogen fluoride and sodium fluoride. It is possible that the Panel did not classify the product based on the manufacturer's statement in its submission that "we do not believe that this product can or should be considered in the Over-the-Counter (OTC) category. It is intended and sold for use only by the dental profession . . . ." It is also possible that the Panel may have considered the hydrogen fluoride present in the product as a pharmaceutic aid to adjust the acidity (pH).

A dental rinse containing ionic fluoride derived from hydrogen fluoride in an appropriate formulation that is similar to the Category I acidulated phosphate fluoride dental rinse formulation with an effective fluoride ion concentration of 0.02 percent may be safe and effective as an OTC anticaries drug product. However, such a product with an appropriate formulation was not submitted to the Panel or to the agency.

The Panel recommended specific formulation parameters (buffers, pH, and the effective fluoride ion concentration) for the Category I acidulated phosphate fluoride rinse in § 355.10(b)(1) of its recommended monograph because of the importance of these parameters in defining a safe and effective fluoride dental rinse (45 FR 20685, 20686, and 20690). The agency believes that specific parameters would be equally important to define the formulation for a rinse containing ionic fluoride derived from hydrogen fluoride, particularly in view of the fact that hydrogen fluoride as an unbuffered single active ingredient is an extremely

irritating, corrosive, and toxic chemical (Ref. 2).

The agency is therefore proposing a Category III classification for a fluoride dental rinse containing ionic fluoride derived from hydrogen fluoride in an appropriate formulation at an acceptable fluoride ion concentration (0.02 percent) in this tentative final monograph.

References

(1) OTC Volum 080012.

(2) Windholz, M., editor, "The Merck Index," 10th Ed., Merck and Co., Rahway, NJ, pp. 695-696, 1983.

D. Comments on Dosages for OTC Anticaries Drug Products

18. One comment stated that the directions for use of anticaries dentifrices need not specify either a minimum or a maximum dose, as recommended by the Panel (45 FR 20674), because the user has no means of determining the weight or the volume of a dose of dentifrice. The comment added that the clinical determinations of effectiveness have almost invariably been made according to the user's ad libitum application of dentifrice to the toothbrush.

The Panel's statement at 45 FR 20674 was as follows:

> The label [of an OTC anticaries drug product] should include a clear statement of the usually effective minimum and, where applicable, maximum doses (or concentration if more appropriate) per time interval. . . . The Panel will recommend specific directions for use under each drug statement in later sections of this document.

The Panel's statement apparently was intended as a general, not a specific, recommendation because, in its recommended directions for use in § 355.50(d)(1) of its monograph, the Panel did not specify a minimum or a maximum dose for anticaries dentifrices. The Panel recommended that consumers brush their teeth thoroughly at least once daily or as directed by a dentist or physician, without specifying any quantity of dentifrice to be used. Thus, the comment and the Panel are in agreement. The agency is proposing directions for use as recommended by the Panel.

19. One comment requested that the monograph provide for the marketing of a sodium fluoride dental rinse concentrate which, when diluted with water, would provide an aqueous solution containing 0.05 percent sodium fluoride. The comment explained that as marketed in the undiluted, concentrated form, the level of sodium fluoride in the product would exceed the Panel's recommended 0.05 percent concentration, but the total fluorine content of the product would not exceed the Panel's recommended limitation of 120 mg total fluorine. The comment noted that the Panel's recommended monograph allows marketing of a powder or effervescent tablet form of stannous fluoride which, when mixed with water according to the product's directions for use, results in a 0.1-percent stannous fluoride solution. The comment stated that there appears to be no valid reason why a concentrated dental rinse bearing adequate directions for mixing with water to produce a 0.05-percent sodium fluoride aqueous solution should be treated differently from a similar stannous fluoride dental rinse "concentrate."

The agency agrees with the comment that a sodium fluoride dental rinse concentrate can be marketed OTC provided the product is clearly labeled as a concentrate, adequate directions for the proper dilution of the product to a 0.05-percent solution are clearly stated, and the package does not contain more than 120 mg total fluorine. Therefore, the agency is proposing that the anticaries active ingredient statement in § 355.10(b)(3) be revised to include a sodium fluoride dental rinse concentrate as follows: Sodium fluoride concentrate containing adequate directions for mixing with water before using to result in a 0.02-percent or 0.05-percent aqueous solution with a pH of approximately 7. Concentrates can be marketed as solutions, powders, or tablets; and the agency is proposing that the statement of identity include terms that describe these concentrated product forms. (See comments 25 and 26 below.)

In order to alert consumers that dental rinse products in concentrated form (solutions, powders, and effervescent tablets) must be diluted or dissolved in water before using, the agency is proposing the following warning for these dosage formulations: "Do not use before mixing with water. Read the directions carefully."

Based on § 355.10(b)(5) of the Panel's recommended monograph, the agency is also proposing that stannous fluoride may be marketed as a dental rinse in concentrated form to be mixed with water immediately before using, provided it is marketed in a stable form (such as effervescent tablets, powders, or in a nonaqueous solution (e.g., anhydrous glycerin)). The labeling requirements proposed in this document for sodium fluoride concentrates (i.e., statement of identity, warnings, and directions) are also applicable to and are proposed for stannous fluoride concentrates.

20. Noting the Panel's recommendations to make low-fluoride dentifrices available OTC, one comment requested that FDA determine what higher levels of fluoride concentration now become appropriate for dispensing on prescription or for use only under professional surveillance.

The Panel recommended that certain fluoride dental rinses and gels that have previously been restricted to prescription use be made available OTC, provided that they contain no more than 120 mg total fluorine per package (45 FR 20666). This rulemaking proceeding for OTC anticaries drug products establishes which anticaries drugs are generally recognized as safe and effective for OTC use and the concentration or dosage at which they can be safely used OTC. Fluoride concentrations higher than those established in the final monograph are intended for use only under professional supervision. This OTC drug rulemaking proceeding is not the appropriate forum for determining what these higher levels are. If a manufacturer wishes to market a prescription product with a higher fluoride concentration, the manufacturer must file an NDA to obtain appropriate approval.

21. One comment requested that a 0.02-percent sodium fluoride acidulated phosphate fluoride dental rinse formulation and a 0.02-percent sodium fluoride neutral (nonacidulated) dental rinse formulation be classified as Category I OTC anticaries drug products based on data that were submitted to the Panel but, due to an oversight, were not reviewed (Refs. 1 and 2). The comment also submitted additional data to the agency (Refs. 3 through 6). The comment recommended that the directions for use of these products state that adults and children 6 years of age and older should rinse twice daily with 10 mL of a 0.01-percent fluoride ion solution for 30 seconds or 60 seconds.

The agency has reviewed the available data and tentatively determined that it supports a Category I classification for 0.02 percent sodium fluoride (0.01 percent fluoride ion) in an acidulated phosphate fluoride dental rinse and for 0.02 percent sodium fluoride in a neutral dental rinse (pH of approximately 7).

The agency's tentative decision to place 0.02 percent sodium fluoride in an acidulated phosphate fluoride dental rinse in Category I is based on one published and two unpublished controlled double-blind clinical studies that demonstrate a significant reduction of caries in children who used this dental rinse. A 26-month study by Finn

et al. (Ref. 7) included 593 children; 453 children completed the clinical trial. There was a significant reduction in caries for those children who rinse twice daily with either one of the acidulated phosphate fluoride dental rinses containing 0.01 percent or 0.02 percent fluoride ion at pH 3.5 twice daily when compared with the children who rinsed with the placebo twice daily ($p<0.05$). No statistically significant differences resulted between 0.01 percent and 0.02 percent acidulated phosphate fluoride ion rinses ($p<0.05$).

A 37-month unpublished study (Ref. 1) included 817 children; 523 children completed the clinical trial. There was a significant reduction in caries for those children who had rinsed with 0.02-percent sodium fluoride in an acidulated phosphate fluoride dental rinse at pH 3.5 when compared with the children who rinsed with the placebo ($p<0.05$).

A 24-month unpublished study (Ref. 1) included 1,214 children; 817 children completed the clinical trial. There was a significant reduction in caries for those children who rinsed with either one of the acidulated phosphate fluoride dental rinses containing 0.01 percent or 0.02 percent fluoride ion at pH 3.5 when compared with the children who rinsed with the placebo ($p<0.05$).

The agency's tentative decision to place 0.02 percent sodium fluoride in a neutral dental rinse (pH of approximately 7) in Category I is based on one unpublished in vitro study and two published clinical studies (Refs. 3, 4, and 5). The unpublished study contains in vitro data concerning the effect of a neutral 0.02=percent sodium fluoride dental rinse on sound and presoftened human enamel using the Intraoral Caries Test System (Ref. 3). These data demonsrate an increased fluoride uptake with the neutral sodium fluoride rinse when compared with a placebo.

The study by Englander et al. (Ref. 4) concerns the effectiveness of 1.1 percent sodium fluoride gels. Although the study does not provide specific information about the effectiveness of the 0.01-percent fluoride ion neutral dental rinse, it does compare similar fluoride dental products at pH 4.5 and 7, suggesting that pH is not a significant factor in determining the effectiveness of a fluoride anticaries product.

The study of Forsman (Ref. 5) supports the anticaries effectiveness of the 0.011-percent fluoride ion (0.025 percent sodium fluoride) neutral dental rinse by demonstrating that the twice-daily use of a weaker dental rinse (0.011-percent fluoride ion) is more effective in preventing caries when compared with the weekly use of a more concentrated dental rinse of 0.090 percent fluoride ion (0.2 percent neutral sodium fluoride). In addition, one comment from a dentist also reported that a 0.05-percent sodium fluoride rinse (weaker solution) proved to be more effective than the weekly use of a 0.2-percent rinse (Ref. 6). Forsman's study supports the dentists's finding that increased frequency of rinsing is a significant factor in a rinse's efficacy. Based upon the available data, frequent use of low concentration rinses is safe and as effective as less frequent use of higher concentration rinses.

It is well known that the availability of the fluoride ion is the major determining factor in the effectiveness of all fluoride anticaries dental products. The studies demonstrate that 0.01 percent fluoride ion in an acidulated phosphate rinse is equally available and equally effective in a neutral rinse. In addition, the Panel did not distinguish between the safety and effectiveness of acidulated (0.02 percent fluoride ion) and neutral dental rinses containing 0.022 percent fluoride ion derived from 0.05 percent sodium fluoride. It recommended that both the acidulated and neutral forms of these rinses be Category I. The studies indicate that the amount of available fluoride ion, rather than the difference in the pH of these rinses between pH 3 and pH 7, is the determining factor in the efficacy of these dental rinses.

The Panel recommended that 10 mL of a 0.02-percent acidulated phosphate fluoride ion (2 mg fluoride ion) with a pH of 3.0 to 4.5 or 10 mL of a 0.05-percent sodium fluoride aqueous solution with a pH of approximately 7 be used once daily as a rinse. The comment recommended that 10 mL of a 0.01-percent acidulated phosphate fluoride ion and a 0.01-percent neutral fluoride ion derived from sodium fluoride (1 mg fluoride ion) be used twice daily as a rinse. The total daily dosage recommended by the comment for the 0.01-percent rinse is equivalent to the total daily dosage recommended by the Panel for a 0.02-percent rinse, i.e., 2 mg fluoride ion daily. Therefore, the agency proposes the following directions for the 0.01-percent acidulated phosphate and neutral fluroide ion rinses: "Adults and children 6 years of age and older: use twice a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor."

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 8).

References

(1) OTC Volume 080135.

(2) OTC Volume 080136.

(3) Comment No. CP, Docket No. 80N-0042, Dockets Management Branch.

(4) Englander, H.R., et al., "The Clinical Anticaries Effect of Repeated Topical Sodium Fluoride Applications by Mouthpieces," *Journal of the American Dental Association*, 75:638–644, 1967.

(5) Forsman, B., "The Caries Preventing Effect of Mouthrinsing with 0.025% Sodium Fluoride Solution in Swedish Children," *Community Dental Oral Epidemiology*, 2:58–65, 1974.

(6) Comment No. C00005, Docket No. 80N-0042, Dockets Management Branch.

(7) Finn, S.B., et al., "The Clinical Cariostatic Effectiveness of Two Concentrations of Acidulated Phosphate-fluoride Mouthwash," *Journal of the American Dental Association*, 90:292–295, 1975.

(8) Letter from W.E. Gilbertson, FDA, to Joseph Clark, Warner-Lambert Company, coded LET008, Docket No. 80N-0042, Dockets Management Branch.

E. Comments on Labeling of Anticaries Drug Products

22. Two comments objected to the warning for dental rinses and gels recommended by the Panel in § 355.50(c): "Do not swallow. Developing teeth of children under 6 years of age may become permanently discolored if excessive amounts of fluoride are repeatedly swallowed." One comment stated that fluoride dental rinses should not be recommended for use by children under 6 years of age, because children in this age group are most prone to develop tooth discoloration. The comment added that when a dentist or physician recommends a fluoride rinse for a child under 6 years of age, specific use instructions are provided, thus making such a warning unnecessary. The comment stated that the phrase "excessive amounts are swallowed" would raise unnecessary concerns, because infrequent accidental swallowing of the recommended amount of fluoride used in mouthrinsing would not be expected to cause permanent tooth discoloration, and the phrase "permanently discolored" would excessively alarm parents and discourage rather than encourage use of the product. The second comment stated that the warning would give consumers the mistaken impression that fluoride gels and rinses are less safe than dentifrices. The comment recommended, instead, that the following statement appear in the directions for fluoride gels,

rinses, and dentifrices: "Do not swallow. Repeated swallowing of excessive amounts of fluoride by children under 6 may permanently discolor developing teeth."

Because fluoride dental rinses and gels are recommended only for use in adults and children 6 years of age and older, the agency believes that a warning about discoloration of developing teeth in children under 6 years of age is not needed on the OTC market package. However, the agency's proposed directions for dental rinses and gels state that a dentist should be consulted before using these products in children under 6 years of age.

The warning recommended by one comment is not needed for fluoride dental rinses and gels as stated above, nor is it needed for fluoride dentifrices because these products have a long history of safe use. Studies have shown that the amount of toothpaste swallowed by children, even those 3 to 6 years of age, is less than 0.5 gram (g) per brushing, which is well below a toxic range (45 FR 20682). However, the agency believes that it would be helpful to the consumer to include the statement "Do not swallow" in the directions for use of fluoride rinses and gels. Therefore, the agency is proposing that the directions for fluoride rinses and gels include the statement "Do not swallow the" (insert dosage form, "rinse" or "gel," as applicable).

23. Two comments urged that adequate warnings about the harmful effects of fluoride be included in the labeling of all dental drug products containing fluoride. The comments contended that such information is necessary because fluoride from toothpastes, gels, and rinses is absorbed into the body and accumulates in body tissues; that absorbed fluoride rapidly enters into the general circulation, resulting in high blood fluoride levels that pose a particular risk to the child who is allergic and otherwise intolerant to fluoride; and that nausea and vomiting may result in young children who swallow fluoride toothpaste or rinses. The comments submitted a number of references to support their contentions (Refs. 1 and 2).

The agency has reviewed the Panel's evaluation of the safety data on fluoride drug products as well as the Panel's recommended labeling of these products and concludes that the recommended labeling is adequate and that additional warnings are not necessary. The Panel considered both animal and human studies in determining the safety of fluorides used in anticaries drug products (45 FR 20682–20684) and evaluated the possibility that these products might cause adverse effects on teeth or cause irritation of the oral mucosa. Attention was given especially to information related to adverse drug effects in both adults and children (45 FR 20682). The metabolism of fluoride involves rapid absorption of 90 percent or more of soluble fluoride, with perhaps half this fluoride reappearing in the urine, and the rest stored in bone and teeth (Ref. 3). Urinary excretion is prompt and sensitive even to low doses of fluoride. There is no evidence that fluoride is stored in soft tissues.

The Panel reviewed a number of studies that have been conducted to determine the amount of fluoride ingested during toothbrushing with a fluoride-containing dentifrice (45 FR 20682). These studies, which utilized a variety of testing procedures, indicate that the majority of individuals, including children aged 3 to 6 years, swallow less than 0.5 g of toothpaste per brushing (Refs. 4 through 9). The greatest amount swallowed was reported as slightly over 1 g (Refs. 8 and 9). Studies by several investigators, however, showed the amount swallowed to be substantially less (Refs. 4 through 7). These amounts can be considered well below a toxic range. A study of recorded cases of acute fluoride poisoning indicate that a range of 5 to 10 g of sodium fluoride can be considered a lethal dose for a 70-kilogram (kg) man (45 FR 20682).

Dental fluorosis occurs only when excessive fluorides are ingested regularly during the period of tooth development (45 FR 20682). Although developing teeth of children under 6 years of age may show objectionable dental fluorosis from repeated ingestion of excessive amounts of fluoride, epidemiological and clinical findings indicate that the formative state of the teeth of children 6 years of age and older (excepting third molars) is too advanced to be affected by excessive daily fluoride ingestion (45 FR 20685). Although it is conceivable that a child under 6 years of age could, by swallowing excessive amounts of fluoride-containing toothpaste and consuming fluoridated water, have a total daily fluoride intake in the range that produces dental fluorosis, there is a lack of any documentation that dental fluorosis has increased significantly following the extremely widespread use of fluoride-containing dentifrices for over 20 years.

Concerning allergy or intolerance to fluorides, CPSC stated in the Federal Register of November 26, 1980 (45 FR 78632) that there is a relatively low incidence of adverse reactions (about 1 percent) associated with normal dosages of sodium fluoride. These reactions, which include gastrointestinal hemorrhages, eczema, dermatitis, and urticaria type reactions, cease upon termination of sodium fluoride therapy. CPSC also noted that there is "no scientific rationale for predicting a greater incidence of adverse reactions in children, whether due to intolerance or other factors. In fact, human experience data and the medical literature indicate very few adverse reactions, particularly in children."

The agency concludes that the adverse reactions reported from studies in children, toxicity studies in animals, and other available data are not of a sufficiently serious nature or sufficient number to warrant additional warnings on harmful effects in the labeling of dental drug products containing fluoride. This conclusion is supported by the long history of safe use of fluoride dentifrices which the Panel believed precluded the need for warnings against unsafe use, side effects, and adverse reactions. The Panel recommended, and the agency is proposing in this tentative final monograph, that children under 6 years of age should be supervised in the use of anticaries dentifrice products. The agency is proposing labeling for fluoride dental rinses and gels for use only in adults and children 6 years of age and older. The labeling directions state that a dentist or doctor should be consulted before using these products in children under 6 years of age. The agency's proposed directions for fluoride dental rinses and gels also include the statement "Do not swallow the" (insert dosage form, "rinse" or "gel," as applicable). (See comment 22 above.) The agency believes that these specific directions for use of dentifrices, gels, and rinses are adequate and will result in the safe use of these OTC anticaries drug products.

References

(1) Comment No. C00022, Docket No. 80N-0042, Dockets Management Branch.

(2) Comment No. C00027, Docket No. 80N-0042, Dockets Management Branch.

(3) Dunning, J. M., "Principles of Dental Public Health," 2d Ed., Harvard University Press, Cambridge, MA, pp. 367–403, 1970.

(4) Ericsson, Y., "Fluoride in Dentifrices: Investigations Using Radioactive Fluorine," *Acta Odontologica Scandinavica*, 19:41–77, 1961.

(5) Duckworth, R., and S. Joyston-Bechel, "The Distribution of Dentifrice Fluoride During and After Toothbrushing," *Advances of Fluorine Research*, 4:113–119, 1966.

(6) Barnhart, W. E., et al., "Dentifrice Usage and Ingestion Among Four Age Groups," *Journal of Dental Research*, 53:1317–1322, 1974.

(7) Glass, R. L., et al., "Fluoride Ingestion Resulting from the Use of a Monofluorophosphate Dentifrice by Children," *British Dental Journal*, 138:423–426, 1975.

(8) Hargreaves, J. A., G. S. Ingram, and B. J. Wagg, "A Gravimetric Study of the Ingestion of Toothpaste by Children," *Caries Research*, 6:237–243, 1972.

(9) Hargreaves, J. A., G. S. Ingram, and B. J. Wagg, "Excretion Studies on the Ingestion of a Monofluorophosphate Toothpaste by Children," *Caries Research*, 4:256–268, 1970.

24. One comment objected to the labeling statement for stannous fluoride rinses and gels recommended by the Panel in § 355.50(e)(2): "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist." The commenter stated that no warning on staining is necessary for stannous fluoride gels because there have been no reports of discoloration in the more than 5 years that the commenter has marketed a 0.4-percent stannous fluoride gel, and because no warning on staining is required for a stannous fluoride dentifrice. No supporting data were submitted by the commenter. The commenter mentioned the Panel's discussion on stannous fluoride dentifrices, in which the Panel stated that the frequency and intensity of staining with the level of tin present in these formulations does not appear to present any significant problem; therefore, no warning on staining is required for stannous fluoride dentifrice formulations (45 FR 20685). The commenter contended that, because the amount of stannous ion in a gel and a dentifrice are the same and the mode of application (with a toothbrush) of both formulations is identical, there should be no warning on staining for stannous fluoride gels.

The majority of the studies that the Panel reviewed concerning the incidence and degree of staining of tooth surfaces from the use of stannous fluoride dealt with stannous fluoride dentifrices. The Panel found that the presence of the stannous ion in stannous fluoride dentifrices may cause some staining of plaque and debris accumulation on the teeth (45 FR 20685). After considering all the available data on staining caused by stannous fluoride, the Panel concluded that because stannous fluoride dentifrices had been marketed for a long time with little consumer complaint, the staining apparently was not a significant problem. The Panel, therefore, decided that a labeling statement regarding staining need not be included in the labeling of stannous fluoride dentifrices. However, the Panel recommended that stannous fluoride gels and rinses should bear a labeling statement regarding staining because they had been available only by prescription, and had no prior marketing history of consumer use and acceptance.

In the interest of consumer awareness, the agency believes that all stannous fluoride dental products (i.e., dentifrices, rinses, and gels) should bear the labeling statement regarding staining. Studies have shown that stannous fluoride, whether formulated as a dentifrice or rinse, causes staining of tooth surfaces. Comparisons between subjects who used a control dentifrice and a stannous fluoride dentifrice in a 3-year study showed that after 6 months, a higher incidence and more pronounced staining occurred in the stannous fluoride group (Ref. 1). Two different studies were conducted in subjects who used a control dentifrice, a stannous fluoride dentifrice, or a sodium monofluorophosphate dentifrice. The results of one study showed that, initially, the amount of brown stain on teeth was similar in all subjects, but the group using the stannous fluoride dentifrice had a significantly larger increase in staining during the 2-year study period ($p < 0.001$) than the groups using sodium monofluorophosphate or control dentifrices (Ref. 2). The second study was conducted over a 3-year period and showed that the sodium monofluorophosphate and control groups had a higher percentage of subjects completely free of staining than did the stannous fluoride group. The degree of staining was also greater in the stannous fluoride group. The results indicated that the high degree of brown-black staining was specifically due to the stannous flouride dentifrice (Ref. 3).

The agency is not aware of any controlled studies that evaluated staining caused by dental gels; however, it is very likely that staining would occur from the use of gels similar to that which occurs from the use of dentifrices. A 2-year study that was conducted using a stannous fluoride mouthrinse and a control mouthrinse showed that after 8 months, some yellow pigmentation was present on the teeth of children who exhibited poor oral hygiene. This stain occurred in both the control and stannous fluoride groups, but was somewhat more noticeable in the stannous fluoride group. The results of the 2-year examination were similar to the 8-month examination (Ref. 4). Although there are few studies on the incidence of staining with stannous fluoride rinses and gels, the agency believes that because stannous fluoride, the active ingredient, causes staining of teeth, the staining would occur whether the stannous fluoride product is formulated as a rinse, gel, or dentifrice. Additionally, because of the difference in the composition and use of dentifrices from that of rinses and gels, the agency believes that the incidence and degree of staining may be greater with stannous fluoride gels and rinses than with stannous fluoride dentifrices. A dentifrice contains an abrasive to help clean the teeth (and thus helps to remove plaque and stain); rinses and gels do not contain an abrasive. Dentifrices are brushed on the teeth and the mouth is usually rinsed with water after use. However, stannous fluoride gels and rinses are brushed on the teeth, or swished around in the mouth, and then remain on the teeth for one minute before being spit out. The mouth is not rinsed with water. The residue is left in the mouth and no food or drink is supposed to be taken for 30 minutes. Stannous fluoride gels and rinses would remain on the teeth for a longer time than stannous fluoride dentifrices.

It is believed that staining occurs when the stannous (tin) component of the compound reacts with oxygen and/or sulfur in dental plaque (Ref. 5). The amount of staining has been associated with the degree of oral hygiene of the individual, i.e., individuals with poor oral hygiene have a higher incidence of staining than those whose oral hygiene is good (Refs. 3, 6, and 7). Subjects with less than adequate toothbrushing skills had more tooth staining than those who were conscientious in their toothbrushing habits (Ref. 3). Thus, the importance of good toothbrushing techniques should be encouraged not only to promote good oral health, but also to prevent or lessen the occurrence of any tooth staining. The agency believes that consumers should be aware that staining of the teeth can be caused by stannous fluoride dentifrices, rinses, and gels, and that proper brushing or a dental prophylaxis should remove the stains. Therefore, the agency is proposing that the labeling statement "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist," be included under "additional labeling statements" in this tentative final monograph and be applicable to all stannous fluoride dental products.

References

(1) Jackson, D., and P. Sutcliffe, "Clinical Testing of a Stannous Fluoride-Calcium Pyrophosphate Dentifrice in Yorkshire School

Children," *British Dental Journal*, 123:40–48, 1967.

(2) Fanning, E. A., et al., "The Effects of Fluoride Dentifrices on the Incidence and Distribution of Stained Tooth Surfaces in Children," *Archives of Oral Biology*, 13:467–469, 1968.

(3) Naylor, M. N., and R. D. Emslie, "Clinical Testing of Stannous Fluoride and Sodium Monofluorophosphate Dentifrices in London School Children," *British Dental Journal*, 123:17–23, 1967.

(4) Radike, A. W., et al., "Clinical Evaluation of Stannous Fluoride as an Anticaries Mouthrinse," *Journal of the American Dental Association*, 86:404–408, 1973.

(5) Muhler, J. C., "Stannous Fluoride Enamel Pigmentation—Evidence of Caries Arretsment," *Journal of Dentistry for Children*, 54:157–161, 1960.

(6) Horowitz, H. S., and S. R. Chamberlin, "Pigmentation of Teeth Following Topical Applications of Stannous Fluoride in a Nonfluoridated Area," *Journal of Public Health Dentistry*, 31:32–37, 1971.

(7) Hyde, E. J., and J. C. Muhler, "Pigmentation of Teeth Treated with Stannous Fluoride and its Association with Caries Incidence and Oral Hygiene," *Journal of the Canadian Dental Association*, 29:514–520, 1963.

25. One comment pointed out that some current dentifrice products containing abrasives are formulated so that they appear transparent or translucent and are called gels by the manufacturers. The comment contended that, because consumers are accustomed to calling these products "gels," this term should continue to be used for such products. Two comments suggested using the term "nonabrasive dental gel" in §§ 355.3(d), 355.10(c), 355.20(b), and 355.50(a), (d)(4), and (e)(1) and (2) in place of the term "dental gel" to reflect the intended use of the product more accurately and to eliminate the possibility of consumers confusing the product with an abrasive-containing gel dentifrice.

The agency agrees that currently marketed transparent or translucent dentifrice products that contain abrasives should be permitted to continue to identify themselves as a "gel" because this term is widely used and understood by consumers. However, the agency does not believe that the term "gel" needs to be included in the monograph to describe these dentifrice products. The agency is proposing the terms "toothpaste" or "dentifrice" as optional alternatives in the applicable statement of identity and believes these terms accurately reflect product identity and are recognized by consumers as referring to products used to clean the teeth. (See comment 26 below.)

Although the agency is concerned that consumers may not be able to distinguish between abrasive-containing "gel" dentifrices and nonabrasive dental gels based on the similar physical appearance of these products, it disagrees with the coment's recommendation to use the term "nonabrasive dental gel" in the statement of identiy, § 355.50(a), to differentiate between gel dentifrices, which contain abrasives, and dental gels, which do not contain abrasives. The meaning of "nonabrasive" and "abrasive" may not be clear to many consumers, and the term "abrasive" might even discourage some consumers from using dentifrices. The agency agrees that the Panel's recommended statement of identity for nonabrasive dental gels may be confusing to consumers, particularly in the context of the extensive use of the term "gel" to describe abrasive-containing toothpastes. The agency also recognizes that nonabrasive dental gels have not been widely marketed and that consumers are not familiar with the use of the term "dental gel" to identify such products. The agency is therefore proposing to revise the statement of identity for nonabrasive dental gels to read: (select one or both of the following: "anticavity" or "fluoride") "treatment gel," in this tentative final monograph. In addition, the agency believes that the labeling statement proposed for nonabrasive dental gels in § 355.50(e)(1) of this tentative final monograph, "This is a(n) (select one or both of the following: "anticavity" or "flouride") "treatment gel, not a toothpaste. Read directions carefully before using," will also help consumers to clearly distinguish between a gel dentifrice and a nonabrasive dental gel. (See comment 36 below).

As for the comments' suggestion to use the term "nonabrasive dental gel" in the definition in § 355.3(g) and in the headings in §§ 355.10(c), 355.20(b), and 355.50(d) and (e), the agency has replaced the term "dental gel" with the term "treatment gel" throughout the monograph in the headings to be consistent with the statement of identity for these drug products.

26. One comment requested use of the term "fluoride" as an optional alternative to "anticavity," and the term "toothpaste" as an optional alternative to "dentifrice" in the labeling of anticaries drug products, because these terms most clearly reflect product identity and are well recognized by consumers.

The agency agrees with the comment that the terms "fluoride" and "toothpaste" accurately reflect product identity and are terms that are recognized by consumers. Accordingly, these terms are included as optional alternatives in the statement of identity proposed in § 355.50(a) of the tentative final monograph as follows: (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse concentrated solution," "treatment rinse powder," or "treatment rinse effervescent tablets").

27. Several comments pointed out that the Panel's recommended indication for anticaries drug products in § 355.50(b), "Aids in the prevention of dental caries (decay or cavities)," is confusing and unduly restrictive with its parenthetical qualifier. The comments recommended three separate, allowable statements of indications to recognize the three ways of referring to dental caries, i.e., "Aids in the prevention of dental caries," "Aids in the prevention of dental decay," and "Aids in the prevention of dental cavities."

The agency agrees with the comments' recommendation to provide alternative terminology to recognize the different ways of referring to dental caries. The agency believes that "cavities" and "decay" are the terms that are better understood by consumers, whereas "caries" is a scientific term requiring further explanation and should be followed by the word "cavities" or "decay" in parentheses. Therefore, the agency is proposing in this tentative final monograph that the required indication read as follows: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)").

28. One comment stated that fluoride dental gels closely resemble fluoride dentifrices in terms of consistency of the products, method of application, and type of containers used. Because of these similarities, the comment suggested that dental gels should carry the same directions as dentifrices with regard to use by children 2 years of age and older. The comment recommended the following directions for dental gels: "Adults and children 2 years of age and older, children under 6 years of age should be supervised in the use of this product. Place (product name) on a clean toothbrush; brush gel over teeth surfaces. Push the slurry around the mouth and spit out excess. Do not swallow. Do not eat or drink for 30 minutes."

The Panel recommended that dental gels, i.e., fluoride gels that do not contain abrasives, not be used in children under 6 years of age because of

safety considerations. Children under 6 years of age are at a greater risk of developing adverse effects such as fluorosis (a permanent, mottled discoloration of the teeth) if excessive amounts of fluoride are repeatedly swallowed. Children under 6 years of age also have not developed control of their swallowing reflex and are not able to hold the fluoride preparation in their mouth and then expectorate properly. The Panel concluded that although children in this age group may inadvertently swallow dentifrice while brushing, the amount swallowed per average brushing is well below a toxic range. In addition, there is a lack of documentation that dental fluorosis has increased significantly following widespread use of fluoride dentifrices for approximately 20 years (45 FR 20673). (See comment 23 above.)

Dental gels are intended to be used in addition to, rather than as a substitute for, dentifrices. An excessive amount of fluoride may be ingested by a child under 6 years of age who may not have the ability to expectorate properly and who uses two fluoride products (i.e., dentifrice and gel) in addition to consuming fluoride from other sources such as fluoridated water, food, or fluoride supplements. The Panel was concerned that children under 6 years of age not be exposed to excessive fluoride; therefore, it recommended that gels and rinses be used only in children 6 years of age and older. The agency agrees with the Panel's reasoning; therefore, the Panel's recommended directions for fluoride gels are being proposed in this tentative final monograph as requested by the comment.

29. One comment requested deletion of the Panel's recommended age-restriction statements in the directions for dentifrices in § 355.50(d)(1) as follows: "adults and children 2 years of age and older" and "children under 6 years of age should be supervised in the use of this product." The comment stated that restriction of dentifrices to adults and children 2 years of age and older is unnecessary from a safety consideration and is inconsistent with the recommendation of the ADA that children be instructed in toothbrushing as early as possible and be allowed to use any approved dentifrices as soon as they are competent to do so. The comment added that references cited by the Panel at 45 FR 20673 establish that the ingestion of dentifrices by children is slight enough to justify the unsupervised use of fluoride dentifrices by all children who have been properly instructed in the use of a dentifrice.

The agency concurs that children should be instructed in brushing their teeth at an early age. However, many children 2 years of age and certainly children under 2 years of age cannot reasonably be expected to have the manual dexterity to brush properly, nor the mouthrinsing skills to expectorate properly. In a study by Ericsson and Forsman (Ref. 1) reviewed by the Panel, it was found that most 2-year-old children and some 3-year-old children could not perform mouthrinsing with water, but instead quickly swallowed the fluid. Children under 2 years of age would be more likely to swallow the dentifrice and thus increase their chance of developing dental fluorosis, a condition that can develop in children under 6 years of age who repeatedly swallow excessive amounts of fluoride.

The agency does not agree with the comment that children under 6 years of age need not be supervised in the use of a dentifrice once properly instructed in its use. The agency interprets the Panel's statement to mean that all children under 6 years of age should be properly instructed and supervised in the use of a dentifrice, but the amount of supervision may vary, depending on a child's skills. If a child has fairly good toothbrushing skills, parents may allow unsupervised brushing, but may wish to check the child's toothbrushing techniques periodically.

The age-restriction statements recommended by the Panel in § 355.50(d)(1) are not intended to discourage the use of dentifrices by children, but are intended to help parents and children use these products safely and effectively. Therefore, the Panel's age restriction recommendations are being proposed in this tentative final monograph.

Reference

(1) Ericsson, Y., and B. Forsman, "Fluoride Retained from Mouthrinses and Dentifrices in Preschool Children," *Caries Research*, 6:237–243, 1972.

30. One comment stated that it would be logical to classify fluoride dentifrices and fluoride brush-on gels in the same category with regard to label copy, warnings, restrictions, and total fluoride content per container based on a comparison of the similarities and differences between these products as shown in the following chart:

	Fluoride dentifrices	Fluoride gels
Consistency	Paste or gel	Gel.
Application	Brush on	Brush on.
Control of amount used	Amount on brush	Amount on brush.
Container	Squeeze tube with small orifice.	Squeeze bottle with small orifice.
Container closure	Screw cap	Child proof.
Abrasives	Yes	No.

The agency acknowledges the similarities described by the comment, but concludes that fluoride dentifrices and fluoride dental gels differ in too many important respects, notably their formulations, intended uses, and methods of use, to permit the same labeling and fluoride content per container. An abrasive-containing fluoride dentifrice is intended for use in cleaning the teeth as well as aiding in the prevention of dental cavities; a nonabrasive fluoride dental gel is intended only to aid in the prevention of dental cavities and is applied after the teeth have been cleaned with an abrasive-containing dentifrice. A fluoride dental gel, to be effective, must remain on the teeth for 1 minute and then be expectorated, and the user should not eat or drink for 30 minutes after using. These time requirements do not apply to the effective use of a fluoride dentifrice. Children under 6 years of age should not use a fluoride dental gel; however, children from 2 to under 6 years of age may use a fluoride dentifrice with supervision. A fluoride dentifrice may be used more than once a day, whereas a fluoride dental gel is used only once a day. With regard to total fluorine content per container, dentifrices may contain no more than 260 mg of fluorine; dental gels are restricted to no more than 120 mg of fluorine. (See comment 4 above.)

31. Several comments recommended that § 355.50(f), which contains the ADA's product approval statement for anticaries dentifrice products, "(Product name) has been shown to be an effective decay-preventive dentifrice that can be of significant value when used in a conscientiously applied program of oral hygiene and regular professional care," be expanded to allow the use of this labeling for dosage forms other than dentifrices (e.g., dental rinses and gels) that may be approved by ADA in the future as decay-preventive products. One comment requested that the ADA Council's Seal of Acceptance also be permitted on the label because the public recognizes the significance of the Seal used in conjunction with the statement.

The agency agrees that the labeling of dentifrices and anticaries product dosage forms other than dentifrices may include, where the product has been approved by the ADA, the ADA's

product approval statement and seal. However, under the proposed policy regarding the exclusivity of labeling terms (see comment 2 above), the agency will not include a section entitled "other allowable statements" (under which the ADA's statement was included in the Panel's recommended monograph) in final monographs for OTC drug products. As with other statements differing from the wording in the monograph, the ADA's approval statement and seal may appear on product labeling subject to the prohibitions in 21 U.S.C. 352(a) against false or misleading labeling. Therefore, § 355.50(f) is not being proposed in this tentative final monograph.

32. One comment contended that the Panel's recommendation that labeling should state the principal intended action of the active ingredient as well as the indication for use of the product (45 FR 20674) is redundant for anticaries drugs because the indication statement serves the same purpose.

The Panel's use of the term "principal intended action" is consistent with the labeling requirements for OTC drugs in 21 CFR 201.61(b), which provides that the statement of identity shall employ terms descriptive of general pharmacological categories or principal intended actions; for example, "antacid," "analgesic," "decongestant," "antihistamine", etc. The agency does not believe that the proposed statement of identity in § 355.50(a) (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse concentrated solution," "treatment rinse powder," or "treatment rinse effervescent tablets,") is redundant of the agency's proposed indication statement in § 355.50(b)(1) "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)")." Thus, the agency is proposing that both the statement of identity and the indication statement be included in the labeling of anticaries drug products.

33. One comment disagreed with the Panel's recommendation that the labels of OTC anticaries drug products should state the quantity of each active ingredient (45 FR 20674) because this is not required by law. The comment added that stating the quantity of each active ingredient in fluoride dentifrices may be misleading to consumers because the three principal active ingredients (sodium fluoride, stannous fluoride, and sodium monofluorophosphate) must be included in different quantities (because of their differing molecular weights) to achieve the same level of fluoride. The comment stated that a consumer who is unfamiliar with the chemical background would assume that 0.76 percent sodium monofluorophosphate, for example, provides several times the quantity of the active moiety (fluoride) provided by 0.22 percent sodium fluoride, whereas both sources provide the same quantity of fluoride.

The agency recognizes that the three active ingredients, sodium fluoride 0.22 percent, sodium monofluorophosphate 0.76 percent, and stannous fluoride 0.4 percent, are needed in different quantities to achieve the same level of fluoride in a fluoride dentifrice and that most consumers would not be familiar with these differences. The agency also recognizes that although section 502(e) of the act (21 U.S.C. 352(e)) requires disclosure of all active ingredients, there is no requirement that quantities of active ingredients in OTC drug products be listed except for specific drugs designated in the act. The three OTC anticaries active ingredients are not designated in the act. Therefore, the agency agrees with the comment that the quantities of the ingredients in fluoride toothpastes are not required in the labeling of these products.

34. One comment strongly disagreed with the Panel's conclusion that certain labeling claims are misleading and unsupported by scientific data (45 FR 20690) and contended that the labeling claim "for a healthier mouth with less decay" is clearly supported by a wealth of clinical effectiveness data. The comment also stated that the labeling claim "raising your natural resistance to tooth decay" refers to the incorporation of fluoride into dental enamel and the resulting increased resistance to acidic dissolution. The comment urged that these claims and other equivalent statements be allowed in the labeling of OTC anticaries drug products.

The agency has determined that anticaries drug products are effective in helping to prevent dental caries, thus contributing significantly to healthy teeth. Use of the term "mouth" in the comment's suggested statement "for a healthier mouth with less decay" is ambiguous. However, a statement such as "for healthier teeth with less decay" may be appropriate for anticaries drug products.

The agency has also determined that the regular use of anticaries drug products increases a person's resistance to tooth decay and believes that a statement such as "raises your resistance to tooth decay" may also be appropriate for anticaries drug products. However, the comment's suggested term "natural" would not be appropriate in this statement. The inclusion of the word "natural" may confuse consumers because the precise mechanism by which fluoride acts to reduce tooth decay remains unknown (Ref. 1). The agency believes that the statement adequately conveys the intended message to the consumer without using the term "natural."

Although the above statements may be truthful and helpful to a consumer, they do not convey a complete indication for the use of an anticaries drug product because they do not provide adequate information comparable to the required indication in § 355.50(b). Therefore, the above statements will not be included in the monograph.

However, the agency believes that the statements "for healthier teeth with less decay" and "raises your resistance to tooth decay" may be appropriate additional statements for anticaries drug products covered by this monograph and could appear in the labeling in addition to the required indication statement. As discussed in comment 2 above, the agency is proposing to amend its exclusivity rule by establishing new labeling requirements for OTC drug products. As proposed, the label and labeling of OTC drug products would be required to contain in a prominent and conspicuous location either (1) within a boxed area designated "APPROVED USES" specific wording on indications for use established under an OTC drug monograph or (2) within a nonboxed area other wording relating to such indications for use that meets the statutory prohibitions against false or misleading labeling. Thus, in either case, other wording relating to such indications for use, such as the above revised statements, would be permitted elsewhere in the labeling subject to the statutory prohibitions in 21 U.S.C. 352(a) against false or misleading labeling.

Reference

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, pp. 344–345, 1982.

35. One comment stated that the phrase "other allowable statements" that appears in § 355.50(f) of the Panel's advance notice of proposed rulemaking implies that only certain prescribed statements may be made on labels rather than a range of truthful statements and suggested that the word "allowable" be deleted from this phrase.

Under the current policy regarding the exclusivity of labeling terms (see comments 2 and 31 above), the agency will no longer include a section entitled "other allowable statements" in final monographs for OTC drug products. The agency is not proposing that such a section be included in this tentative final monograph. Therefore, it is unnecessary to further discuss the comment's request to delete the word "allowable" from the heading of this section.

36. Four comments requested deletion of the Panel's recommended labeling statement for dental rinses in § 355.50(e)(1), "This product is not a dentifrice." The comments maintained that this statement is unnecessary on dental rinses because consumers would not confuse a liquid in a bottle with a conventional dentifrice packaged in a conventional tube. One of the comments also objected to the use of the labeling statement on dental gels (see comment 25 above), but the other comments agreed with the Panel that the labeling statement is appropriate for a fluoride gel because a gel might be packaged in a conventional dentifrice tube and could conceivably be confused with a conventional dentifrice.

The agency agrees with the comments that consumers would not be apt to confuse a dental rinse with a dentifrice, but believes that a nonabrasive dental gel packaged in a conventional tube can be confused with a conventional abrasive-containing dentifrice. In addition, because fluoride dental rinses and mouthwash products (e.g., breath sweeteners) are similar in appearance, the agency is concerned that consumers may confuse these two groups of products. Proper labeling of abrasive-containing dentifrices, dental gels, and dental rinses is an important aid to preventing consumer confusion as to the use of these products. The agency is proposing to revise the statement of identity for dental gels (see comment 25 above) and is proposing to revise the statement of identity to require that dental rinses be identified as anticavity or fluoride treatment rinses to be consistent with the statement of identity for dental gels. The statements of identity for these products with the proposed revisions clearly distinguish one product from another; § 355.50(a) requires an anticaries drug product to be identified as an anticavity or fluoride dentifrice, toothpaste, anticavity or fluoride treatment rinse, anticavity or fluoride treatment gel, anticavity or fluoride treatment rinse concentrated solution, anticavity or fluoride treatment rinse powder, and anticavity or fluoride treatment rinse effervescent tablets as applicable (see comments 19 and 26 above). In order to help consumers further in distinguishing between dental gels and rinses, dentifrices, and mouthwashes, the agency proposes to revise the Panel's recommended labeling statements for dental gels and rinses in § 355.50(e) to read:

(1) *For all treatment gels.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment gel, not a toothpaste. Read directions carefully before using."

(2) *For all treatment rinses.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment rinse, not a mouthwash. Read directions carefully before using."

To clarify the proper use of dental rinses, the agency is proposing to revise the Panel's recommended directions in § 355.50(d)(2) to read: Adults and children 6 years of age and older: use (once or twice as appropriate) a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor. The agency also proposes to revise the directions for gels under § 355.50(d)(4) to read: Adults and children 6 years of age and older: use once a day after brushing your teeth with a toothpaste. Apply the gel to your teeth and brush thoroughly. Allow the gel to remain on your teeth for 1 minute and then spit out. Do not swallow the gel. Do not eat or drink for 30 minutes after brushing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made the following changes in the categorization of anticaries active ingredients proposed by the Panel. For the convenience of the reader, the following table is included as a summary of the categorization of anticaries active ingredients recommended by the Panel and proposed by the agency.

Anticaries active ingredients	Panel	FDA
Hydrogen fluoride:		
Rinse—In an appropriate formulation with 0.02 percent fluoride ion	NC [1]	III
Phosphate preparations:		
Calcium sucrose phosphate	II	NC [1]
Dicalcium phosphate dihydrate	II	NC [1]
Disodium hydrogen phosphate	II	NC [1]
Phosphoric acid	II	NC [1]
Sodium dihydrogen phosphate	II	NC [1]
Sodium dihydrogen phosphate monohydrate	II	NC [1]
Sodium phosphate		
Sodium phosphate, dibasic anhydrous reagent	II	NC [1]
Sodium bicarbonate	II	II
Sodium fluoride:		
Dentifrice—0.22 percent	I	I
Rinse—0.05 percent	I	I
Rinse—0.02 percent	NC [1]	I
Rinse—Acidulated phosphate fluoride with 0.02 percent fluoride ion	I	I
Rinse—Acidulated phosphate fluoride with 0.01 percent fluoride ion	NC [1]	I
Sodium fluoride and hydrogen fluoride:		
Rinse—Acidulated phosphate fluoride with 1.23 percent fluoride ion	NC [1]	II
Sodium monofluorophosphate:		
Dentifrice—0.76 percent	I	I
Rinse—0.0 percent	II	II
Stannous fluoride:		
Dentifrice—0.4 percent	I	I
Rinse—0.1 percent	I	I
Gel—0.4 percent in an anhydrous glycerin gel	I	I

[1] Not classified.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows:

1. The agency is proposing to change the term "anticaries agent" in § 355.3(b) to "anticaries drug" and to modify the definition to read as follows: "A drug that aids in the prevention of dental cavities (decay, caries)," to be consistent with the indication for anticaries drug products and the statement of identity in § 355.50(a) and to be consistent with the format of other tentative final monographs. (See comments 26 and 27 above.) In addition, the agency is proposing to change the terms "dental gel" and "dental rinse" to read either "treatment gel" and "treatment rinse" respectively in order to be consistent with the statement of identity regarding all the pertinent headings for these drug products in this tentative final monograph. (See comments 25 and 26.) The definitions regarding "dental gel" and "dental rinse" are changed accordingly. As a result of the change in these two terms, the agency is proposing to add definitions for treatment rinse concentrated solution, treatment rinse effervescent tablets, and treatment rinse

powder to the monograph as §§ 353.3(i), 353.3(j), and 353.3(k) respectively.

2. The agency is revising the introductory sentence of § 355.10 that lists anticaries active ingredients to correct a typographical error in the advance notice of proposed rulemaking and to conform to the format of other tentative final monographs. (See comment 6 above.)

3. Based on the comment stating that the Panel's classification of hydrogen fluoride as an inactive ingredient is misleading, the agency is proposing to include hydrogen fluoride in Category III as an anticaries agent. (See comment 17 above.)

4. The agency is proposing to include 0.01 percent acidulated phosphate and neutral fluoride ion treatment rinses as Category I anticaries drug products and to revise the wording in § 355.10(b)(1) by adding "the aqueous solution of" at the beginning of the statement regarding acidulated phosphate fluoride. The agency is also proposing to include directions for use of the 0.01-percent acidulated phosphate fluoride ion and a neutral fluoride ion in § 355.50(d)(2)(ii). (See comment 21 above.)

5. The agency proposes to clarify § 355.10(b) (3) and (4) by adding the phrase "with a pH of approximately 7." A freshly prepared saturated aqueous solution of sodium fluoride is described in "Merck Index" (Ref. 1) as having a pH of 7.4 and in "United States Pharmacopia XXI—National Formulary XVI," (Ref. 2) as having a pH below 7.5. "Accepted Dental Therapeutics" (Ref. 3) contains a list of acceptable 0.05 percent sodium fluoride dental rinses, two of which have a pH of approximately 7.0 with preservatives and flavoring agents. The Panel's discussion of an aqueous solution of 0.05 percent sodium gives a description of the solution as "approximately pH 7" (45 FR 20686). The agency believes that the phrase "with a pH of approximately 7" more accurately describes these dental rinses.

References

(1) Windholz, M., editor, "The Merck Index," 10th Ed., Merck and Co., Rahway, NJ, p. 1235, 1983.

(2) United States Pharmacopeia XXI—"National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 969–970, 1985.

(3) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, p. 353 1982.

6. The agency is proposing to include concentrated treatment rinses in the monograph. The agency is also proposing to include a warning for concentrated treatment rinses stating that these rinses should not be used before mixing with water. (See comment 19 above.)

7. The agency is proposing to revise the wording in § 355.20 concerning the package size limitations to indicate clearly that the limitations of total fluorine are per package for dentifrice, treatment rinse, and treatment gel drug products.

8. The agency is redesignating Subpart D as Subpart C and placing the labeling sections of the monograph in Subpart C.

9. The Panel's recommended statement of identity in § 355.50(a) has been expanded to include the terms "fluoride" and "toothpaste" in the labeling of anticaries drug products. (See comment 26 above.) The agency is also proposing to change the statement of identity for "dental rinse" and "dental gel" to "treatment rinse" and "treatment gel" respectively. (See comments 25 and 26).

10. The agency is proposing to change the term "caries" in § 355.50(b) in the advance notice of proposed rulemaking to allow alternative terminology for the statement of indications. The terms "cavities" and "decay" are better understood by consumers, whereas "caries" is the scientific term requiring further explanation. Therefore, the agency is proposing that the required indication for anticaries drug products read as follows: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)"). (See comment 27 above.)

11. The agency is not proposing to include the warning recommended by the Panel for treatment rinses and treatment gels in § 355.50(c): "Do not swallow. Developing teeth of children under 6 years of age may become permanently discolored if excessive amounts of flourine are repeatedly swallowed." The Panel's warning is not needed because fluoride treatment rinses and gels are not recommended for use in children under 6 years of age. However, the statement "Do not swallow the" ("rinse" or "gel" as applicable) is being included in the directions for use of these products. (See comments 22, 23, and 36 above.)

12. The agency is proposing to revise the Panel's recommended directions in § 355.50(d) (2) and (4) to include instructions to use treatment rinse or gel after cleaning the teeth with a toothpaste but not to swallow the rinse or gel, to supervise the use of rinses and gels by children under 12, and not to use rinses and gels in children under 6 years of age unless such use is approved by a dentist or doctor. (See comment 36 above.) The agency is also proposing to include directions for use in 0.01 percent fluoride ion in an acidulated phosphate and 0.01 percent fluoride ion in a neutral solution (pH of approximately 7) derived from sodium fluoride in § 355.50(d)(2)(ii). (See comment No. 21.)

13. The Panel recommended additional labeling statements for treatment gels and rinses in § 355.50(e). The agency is proposing to revise and expand the labeling in this section to aid the consumer in clearly distinguishing between abrasive containing dentifrices and nonabrasive fluoride dental gels, and between fluoride dental rinses and mouthwash products. (See comment 36 above.) The agency is redesignating the existing § 355.50(e)(2) in the Panel's recommended monograph as § 355.50(e)(3).

14. The Panel recommended additional labeling statements concerning nonpermanent staining of the teeth for stannous fluoride treatment rinses and gels. The agency is proposing to include these statements for stannous fluoride dentifrices also. (See comment 24 above.)

15. The agency is proposing to delete the section "Other allowable statements," previously designated as § 355.50(f), from the monograph. (See comments 2, 31, and 35 above.)

16. The agency is proposing to add a section, "Optional additional labeling statement," to the monograph as § 355.50(f) to allow a statement concerning the additive effect of using fluoride treatment rinses and gels to daily brushing with a fluoride dentifrice. (See comment 13 above.)

17. The agency is proposing to add a professional labeling section in the monograph to include directions for using Category I fluoride treatment rinses as fluoride supplements for ingestion. (See comment 14 above.)

18. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency proposes to revoke the existing warning and caution statement required by § 369.21 and exemptions for certain drugs limited by NDAs to prescription sale in § 310.201(a) (10) and

(15) for anticaries drug products at the time this monograph becomes effective.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC anticaries drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anticaries drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC anticaries drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC anticaries drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on anticaries drug products, a period of 120 days from the date of publication of this proposed rulemaking in the Federal Register will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of the proposal and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Interested persons may, on or before November 29, 1985, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 28, 1986. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

Interested persons, on or before September 30, 1986, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 1, 1986. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the Federal Register of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 1, 1986. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the Federal Register, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 355

OTC drugs; Anticaries drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 355, as follows:

PART 355—ANTICARIES DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
355.1 Scope.
355.3 Definitions.

Subpart B—Active Ingredients

355.10 Anticaries active ingredients.
355.20 Package size limitations.

Subpart C—Labeling

355.50 Labeling of anticaries drug products.
335.60 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); (5 U.S.C. 553); 21 CFR 5.11.

Subpart A—General Provisions

§ 355.1 Scope.

(a) An over-the-counter anticaries drug product in a form suitable for topical administration to the teeth is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 355.3 Definitions.

As used in this part:

(a) *Abrasive.* Solid materials that are added to dentifrices to facilitate mechanical removal of dental plague, debris, and stain from tooth surfaces.

(b) *Anticaries drug.* A drug that aids in the prevention of dental cavities (decay, caries).

(c) *Dental caries.* A disease of calcified tissues of teeth characterized by demineralization of the inorganic portion and destruction of the organic matrix.

(d) *Dentifrice.* A substance used with a toothbrush to clean the accessible surfaces of the teeth. It is an abrasive-containing dosage form for delivering an anticaries drug to the teeth.

(e) *Fluoride.* The inorganic form of the chemical element fluorine in combination with other elements.

(f) *Fluoride ion.* The negatively charged atom of the chemical element fluorine

(g) *Treatment gel.* A dosage form for delivering an anticaries drug to the teeth. Treatment gels are formulated in an anhydrous glycerin base with suitable thickening agents included to adjust viscosity. Treatment gels do not contain abrasives and are not intended for use in cleaning the teeth.

(h) *Treatment rinse.* A liquid dosage form for delivering an anticaries drug to the teeth.

(i) *Treatment rinse concentrated solution.* A fluoride treatment rinse in a concentrated form to be mixed with water before using to result in the appropriate fluoride concentration specified in the monograph.

(j) *Treatment rinse effervescent tablets.* A fluoride treatment rinse prepared by adding an effervescent tablet (a concentrated solid dosage form) to water before using to result in the appropriate fluoride concentration specified in the monograph.

(k) *Treatment rinse powder.* A fluoride treatment rinse prepared by adding the powder (a concentrated solid dosage form) to water before using to result in the appropriate fluoride concentration specified in the monograph.

Subpart B—Active Ingredients

§ 355.10 Anticaries active ingredients.

The active ingredient of the product consists of any of the following, within the established concentration and dosage form:

(a) *Dentifrices.* (1) Sodium fluoride 0.22 percent.

(2) Sodium monofluorophosphate 0.76 percent.

(3) Stannous fluoride 0.4 percent.

(b) *Treatment rinses.* (1) An aqueous solution of acidulated phosphate fluoride derived from sodium fluoride acidulated with a mixture of sodium phosphate, monobasic, and phosphoric acid to a level of 0.1 molar phosphate ion and a pH of 3.0 to 4.5 and which yields an effective fluoride ion concentration of 0.02 percent.

(2) An aqueous solution of acidulated phosphate fluoride derived from sodium fluoride acidulated with a mixture of sodium phosphate, diabasic, and phosphoric acid to a pH of 3.5 and which yields an effective fluoride ion concentration of 0.01 percent.

(3) Sodium fluoride 0.02 percent aqueous solution with a pH of approximately 7.

(4) Sodium fluoride 0.05 percent aqueous solution with a pH of approximately 7.

(5) Sodium fluoride concentrate containing adequate directions for mixing with water before using to result in a 0.02-percent or 0.05-percent aqueous solution with a pH of approximately 7.

(6) Stannous fluoride concentrate marketed in a stable form and containing adequate directions for mixing with water immediately before using to result in a 0.1-percent aqueous solution.

(c) *Treatment gel.* Stannous fluoride 0.4 percent in an anhydrous glycerin gel, made from anhydrous glycerin and the addition of suitable thickening agents to adjust viscosity.

§ 355.20 Package size limitations.

Due to the toxicity associated with fluoride active ingredients, the following package size limitations are required for anticaries drug products:

(a) *Dentifrices.* Dentifrice packages shall not contain more than 260 milligrams total fluorine per package.

(b) *Treatment rinses and treatment gels.* Treatment rinse and gel packages shall not contain more than 120 milligrams total fluorine per package.

Subpart C—Labeling

§ 355.50 Labeling of anticaries drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse, concentrated resolution," "treatment rinse powder," or "treatment rinse effervescent tablets").

(b) *Indication.* The labeling of the product states, under the heading "Indication," the following: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)")." Other truthful and nonmisleading statements, described only the indications for use that have been established and listed above, may also be used, as provided in § 330.1(c)(2) of this chapter subject to the prohibitions in section 502(a) of the act against misbranding by the use of false or misleading labeling and the prohibition in section 301(d) of the act against the introduction into interstate commerce of unapproved new drugs.

(c) *Warning.* The labeling of any concentrated treatment rinse solution, powder, or effervescent tablet contains the following warning under the heading "Warning": "Do not use before mixing with water. Read the directions carefully."

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions":

(1) *For anticaries products marketed in a dentifrice dosage form.* Adults and children 2 years of age and older: brush teeth thoroughly at least once daily or as directed by a dentist or doctor. Children under 6 years of age should be supervised in the use of this product.

(2) *For anticaries products marketed for use as treatment rinses*—(i) *For acidulated phosphate fluoride solution containing 0.02 percent fluoride ion, sodium fluoride 0.05 percent, sodium fluoride concentrate, and stannous fluoride concentrate identified in § 355.10(b) (1), (4), (5), and (6).* Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) *For acidulated phosphate fluoride solution containing 0.01 percent fluoride ion and sodium fluoride 0.02 percent aqueous solution identified in § 355.10(b) (2) and (3).* Adults and children 6 years of age and older: Use twice a day after brushing your teeth with a toothpaste. Vigorousy swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(3) *For stannous fluoride products intended for use as treatment rinses.* (i) Use immediately after preparing the rinse.

(ii) *For powder or effervescent tablets used to prepare treatment rinses.* Do not use as a rinse until all the (select one of the following: "powder" or "tablet") has dissolved.

(4) *For anticaries products marketed as treament gels.* Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste. Apply the gel to your teeth and brush thoroughly. Allow the gel to remain on your teeth for 1 minute and then spit out. Do not swallow the gel. Do not eat or drink for 30 minutes after brushing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(e) *Additional labeling statements for anticaries drug products.* The following labeling statements need not appear under warnings, but are required to appear on the label of anticaries products as applicable.

(1) *For all treatment gels.* "This is a(n)" (select one of both or the following: "anticavity" or "fluoride") "treatment gel, not a tooth paste. Read directions carefully before using."

(2) *For all treatment rinses.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment rinse, not a mouthwash. Read directions carefully before using."

(3) *For all stannous fluoride products intended for use as treatment rinses, treatment gels, and dentifrices.* "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist."

(f) *Optional additional labeling statement.* The following labeling statement may appear in the required boxed area designated "APPROVED USES" on the label of anticaries products marketed as fluoride treatment rinses and gels. "The combined daily use of a fluoride treatment" (select one of the following: "rinse" or "gel") "and a fluoride toothpaste can aid in reducing the incidence of dental cavities."

(g) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 355.60 Professional labeling

The labeling for anticaries products marketed for use as fluoride treatment rinses identified in § 355.10(b) provided to health professionals (but not to the general public) may contain the following additional dosage information: Children 3 to under 14 years of age: As a supplement in areas where the water supply is nonfluoridated (less than 0.3 part per million), clean the teeth with a toothpaste and rinse with 5 milliliters of 0.02 percent or 10 milliliters of 0.01 percent fluoride ion rinse daily, then swallow. When water supply contains 0.3 to 0.7 part per million fluoride ion, reduce the dose to 2.5 milliliters of 0.02 percent or 5 milliliters of 0.01 percent fluoride ion rinse daily.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: August 2, 1985.

[FR Doc. 85-23223 Filed 9-27-85; 8:45 am]

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federal register

Monday
September 30, 1985

Part V

Office of Personnel Management

5 CFR Part 330

Recruitment, Selection, and Placement (General); Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

Recruitment, Selection, and Placement (General)

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations that strengthen existing placement efforts for preference eligibles who occupy restricted positions such as custodian, messenger, guard, and elevator operator and positions covered under these generic titles, that are contracted out in accordance with the Office of Management and Budget (OMB) Circular A-76.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Don Smith, Chief, Evaluations Division, Office of Affirmative Employment Programs (202) 632-7082.

SUPPLEMENTARY INFORMATION: It is the policy of the executive branch not to perform commercial activities that can be more effectively done by the private sector. This has meant that some tasks previously performed by Government employees have been contracted out to private firms in accordance with OMB Circular A-76. Among those commercial activities are several in which the positions are reserved for preference eligibles under the Veterans' Preference Act of 1944, as amended.

Because the Federal Government has a longstanding interest in assisting those who have served the Nation, OPM published proposed regulations on January 25, 1985 (50 FR 3530) to provide increased placement efforts by both OPM and employing agencies to aid preference eligibles in contracting out situations. The public comment period ended on March 26, 1985. OPM received numerous comments from agencies, congressional representatives, veterans organizations, unions, and individuals. There were a number of suggestions for specific improvements in the proposed regulations that have been adopted in the final regulations. The proposed regulations included some actions that were already provided in other regulations, e.g., giving internal priority consideration, establishing a reemployment priority list, paying reasonable costs for training and relocation, and coordinating with OPM to ensure access to Governmentwide placement programs. We have, therefore, deleted those actions from these final regulations.

Several recommendations that did not result in charges to the regulations will be incorporated into Chapter 330 of the Federal Personnel Manual (FPM) instead. OPM will provide guidance to Federal agencies through the FPM system. Specific comments received and related decisions are summarized below:

Comment: One commenter recommended that the term "preference eligible(s)" be used consistently in the regulations.

Response: OPM agrees with this recommendation and the final regulations use the term "preference eligibles." (Sections 330.404–330.407)

Comment: Several commenters recommended that OPM clarify the relationship between this placement assistance and other OPM placement programs; i.e., the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). They also wanted a clarification on the minimum time period for potentially affected preference eligibles to be notified of OPM's placement assistance.

Response: These regulations supplement OPM's existing placement assistance programs. The additional assistance will be provided through the already established IPAP and DEP mechanisms. Preference eligibles covered by these regulations are entitled to be registered at least 60 days before the effective date of separation. (Section 330.405(c))

Comment: Some commenters recommended that the regulations provide more information on the duration of eligibility for additional assistance.

Response: Preference eligibles covered by these regulations are entitled to receive additional assistance through their IPAP and DEP enrollment. They may remain in DEP up to 1 year after their normal DEP eligibility expires. (Section 330.407)

Comment: Several commenters recommended that the extension of the enrollment period be at the discretion of the preference eligible.

Response: OPM agrees with this suggestion and has adopted it in the final regulations. (Section 330.407)

Comment: One commenter expressed concern that the proposed regulations have the effect of limiting assistance to one grade only.

Response: The regulations have been revised to reflect IPAP and DEP procedures which provide consideration at and below the former grade level from which the person was or will be separated. (Section 330.406)

Comment: One commenter recommended that the regulations provide for a monitoring system.

Response: OPM agrees with this suggestion and has incorporated it into the final regulations. (Section 330.406(d))

Comment: Several commenters pointed out that restricted positions include those positions covered under the generic titles of custodian, messenger, guard, and elevator operator.

Response: Final regulations include the positions covered under the generic titles of those four categories, in accordance with guidelines published in Chapter 330 of the Federal Personnel Manual. (Section 330.404)

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal Government employees.

List of Subjects in 5 CFR Part 330

Government employees, Restricted positions, Veterans.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 330 as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority for Part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted.

2. Sections 330.404 through 330.407 are added to Subpart D to read as follows:

Subpart D—Positions Restricted to Preference Eligibles

* * * * *

Sec.

330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
330.405 Agency placement assistance.
330.406 OPM placement assistance.
330.407 Duration of eligibility for assistance.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A-76. Preference eligibles are entitled to additional placement assistance through the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). These preference eligibles must: (a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and § 330.041 of this part, and further defined in the Federal Personnel Manual; (b) be in the competitive service (in tenure group I or II); and (c) meet the eligibility requirements of the IPAP as specified in OPM issuances or the DEP which is described in Subpart C of this part.

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with Subpart B of this part and Subpart J of Part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPAP or the DEP at least 60 days before the effective date of separation. Agencies, however, are encouraged to notify employees of their right to placement assistance through the IPAP as soon as they receive approval to convert a restricted position to contract performance.

(d) Assuring that OMB's policy directives on the preference eligibles' right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;

(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs.

(b) Making priority referral in accordance with § 330.304 of Subpart C of this part.

(c) Assuring that all agencies that have vacancies to fill through the competitive examining process give full consideration to adversely affected preference eligibles registered in the IPAP and DEP.

(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.

(e) Monitoring this placement assistance through IPAP and DEP procedures.

§ 330.407 Duration of eligibility for assistance.

Adversely affected preference eligibles may remain in the DEP for 6 months after their normal DEP eligibility expires and, upon their request, are entitled to a second 6-month extension. Eligibility may, however, be terminated earlier in accordance with DEP procedures.

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federal register

Monday
September 30, 1985

Part VI

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs; Interim Rule and Advance Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to add a line of credit authority for guaranteed operating (OL) loans and remove administrative barriers preventing greater lender participation in the guaranteed loan program. This amendment is needed to provide the policies and procedures for establishing the line of credit authority, to remove administrative barriers to allow greater lender participation in the program, to prevent farmers from paying repetitive guarantee fees which they would have to pay if they were to receive several guaranteed loans, and to maximize the use of guaranteed loan funds. Loan purposes under the line of credit authority are limited to the purchase of foundation livestock replacements and annual operating expenses. This amendment makes revisions which encourage lender participation in the guaranteed loan program and provide clarification in the processing and servicing of guaranteed operating (OL) and farm ownership (FO) loans. The need for governmental action is generated by increased pressures on the agency to provide effective services to farmers. The demand for FmHA farmer program services is severely straining the agency's capacity to provide effective services with its available limited resources. The intended effect of this action is to maximize the availability of credit to farmers.

DATES: Effective date: October 7, 1985.

Comments: This interim rule is subject to revision following a comment period ending October 30, 1985.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection under regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5448–S, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Secretary's Memorandum 1512–1, which implements Executive Order 12291; and it has been determined to be nonmajor because there is no substantial change from practices under existing rules, and no annual effect on the economy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because of the financial stress presently being experienced by agricultural lenders and their farm borrowers. Any delay in implementing this rule would be contrary to the public interest.

Further, pursuant to the Administrative procedure provisions in 5 U.S.C 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impracticable; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.**

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, No. 10.416 Soil and Water Loans, 10.422 Business and Industrial Loans, and 10.410 Very Low Income and Low Income Housing Loans. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The financial condition of many farmers and farm lenders has deteriorated over the past five years. Agricultural land values have devaluated as much as 49 percent between their 1981 peak and April 1985. Large supplies of agricultural commodities and weak demand has depressed farm income and the net worth of many farmers. A large number of farmers are experiencing insufficient cash flow, declining asset values, problems of access to credit, forced liquidations, foreclosure and bankruptcy. This financial stress is transmitted to farm lenders through loan delinquencies and losses, inadequate security for loans, bankruptcy, and failure of lending institutions. On January 1, 1985, there were an estimated 679,000 family size commercial farms with 229,000 of these farms owing over 46 percent of all farm debt, and having financial problems ranging from difficulty servicing debt to insolvency.

Agricultural lenders are concerned about farm defaults and delinquencies. As of March 31, 1985, nonperforming loans, which are defined as nonaccrual and renegotiated loans plus accruing loans that are past due 90 days or more amounted to 7.0 percent of the total outstanding farm production loan portfolio, an increase from the 5.7 percent figure of a year earlier. An additional 3.4 percent of production loans were delinquent 30 to 89 days.

In the period, from January 31, 1985 to August 22, 1985, there were 72 bank failures nationwide, 38 of which were agricultural banks. An agricultural bank is defined as a bank which has 25% or more of its loans portfolio in agricultural loans. As of July 31, 1985, there were 940 banks on the problem bank list of which 334 were agricultural banks.

Farm Credit System (FCS) banks which predominantly serve the agricultural sector are also experiencing financial adversity. The volume of non-performing loans has increased rapidly. Farm Credit System (FCS) defines nonaccruing loans as those loans which are nonaccrual and restrictured loans and loans delinquent 90 days or more but still accruing, accruing loans classified as vulnerable for loss because of severe credit weaknesses, and loans in the process of collection, foreclosure and bankruptcy. On March 31, 1985, 10.2 percent of Federal Land Bank (FLB) loan volume, 14.7 percent of Federal Intermediate Credit Bank (FICB) volume, and 15.7 percent of Production Credit Association (PCA) volume were nonperforming loans. During the past two years 11 Production Credit Associations (PCAs) have been

liquidated and 53 have been merged for various reasons.

Another measure of lender stress is the total net loan charge-offs (losses) as a percentage of total loans outstanding. Loan charge-offs at agricultural banks have increased dramatically since 1980. In 1984, charge-offs equalled 1.2 percent of loans outstanding at year end. This level of charge-offs was approximately double the level at other small banks. In 1984, charge-offs on Production Credit Association (PCA) loans totaled $285.9 million, Federal Land Banks (FLB's) $110 million, and Bank for Cooperatives (BC's) $10.1 million. Charge-offs for 1984 were 1.56 percent of year end outstandings at PCA's, 0.21 percent at FLB's, 0.13 percent at FICB's, and 0.11 percent at the BC's. Farm Credit System (FCS) charge-offs totaled $428 million in 1983. During the first six months of 1985, Farm Credit System (FCS) loan losses totaled $207 million, up $41 million from a year ago.

Since 1980, an increasing proportion of agricultural banks have experienced loan losses larger than could be covered by annual net earnings. In 1984, 12 percent of agricultural banks reported negative income, as opposed to a relatively constant 1 percent during the 1970's. Combined net income of the 37 Farm Credit System Banks was $5.6 million for the April-June quarter of 1985, compared to $126.3 million during the same period in 1984. During the first six months of 1985 Farm Credit System earnings were $96.2 million compared to $236.6 million during the same period in 1984.

In response, farm lenders have increasingly tightened credit requirements, and more accounts are being liquidated.

During the past two years lending activity by the Farmers Home Administration (FmHA), the lender of last resort, has increased accordingly. In Fiscal Year 1984, the agency loaned approximately $1.96 billion in insured operating loan funds to 35,328 of its currently indebted borrowers and 23,674 initial borrowers. Initial borrowers are defined as those who are not indebted to the agency at the time of application. During the same year 160 subsequent and 805 initial guaranteed operating loans were closed, totaling approximately $111.4 million. In Fiscal Year 1985 through the period ending August 14, 1985, the agency loaned approximately $3.44 billion in insured operating loan funds to 43,538 of its currently indebted borrowers and 29,692 initial borrowers. During the same period 1,574 subsequent and 7,276 initial guaranteed operating loans were approved totaling approximately $1 billion. This increase in insured loan volume is severely straining the agency's capacity to provide supervised credit services with its available limited resources.

Implementing selected regulation changes, and establishing a guaranteed operating loan line of credit are necessary to maximize the use of guaranteed funding authority in Fiscal Year 1986. The continued demand for farm credit and the financial condition of lenders make it imperative that implementation occur immediately. These changes are necessary to supplement present insured loan authority and make credit available to farm owners and/or operators who are presently in a "credit availability gap." The credit availability gap farmers are those who exceed FmHA's insured loan dollar limitations but who take a degree of financial stress which renders them unable to qualify for adequate credit based on standards required by the commercial agricultural lender.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." 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.

It is urgent that these regulation changes be published as an interim rule so that farmers can pay harvesting costs, and so that work out plans can be developed regarding the availability of credit for planting costs.

Lenders have emphasized the need for immediate implementation of these changes in order to facilitate their participation in the guaranteed loan program during fiscal year 1986. Participation in the guaranteed loan program will help agricultural banks remain solvent and leverage loanable funds to the maximum extent. In all National and most State banks only the portion of the loan not guaranteed counts against the bank's lending limits. Banks will also benefit by loss protection.

Lenders with foreign ownership interests who otherwise meet guaranteed lender eligibility requirements have indicated a desire to participate in the FmHA guaranteed loan program. This regulations change would permit their participation.

Implementing a Line of Credit authority will prevent farmers from having to pay repetitive guarantee fees, and save interest on money borrowed since line of credit advances can be disbursed over time. Using this authority, a farmer will be able to borrow money, up to a certain limit, at whatever time it is needed without having to apply for a loan each time money is needed. Implementing these changes will allow FmHA to serve the public in an expeditious manner. Any delay in implementing these changes would be contrary to the public interest.

Need for Governmental Action

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed loans and Operating (OL) guaranteed loans, Soil and Water (SW) guaranteed loans, Recreation Facility (RL) guaranteed loans, Emergency (EM) guaranteed loans, Business and Industry (B&I) guaranteed loans, and Rural Housing (RH) guaranteed loans. FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land Banks, Production Credit Association, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

FmHA is implementing these changes immediately because of the financial stress presently experienced by the nation's farmers and the need to maximize use of guaranteed funding authority in fiscal year 1986. Most importantly, the demand for farm credit during planting season makes it imperative that implementation occur immediately. These changes are necessary to supplement present insured loan authority, and make credit available to farm owners and/or operators who are presently in a "credit availability gap." The credit availability gap farmers are those who exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender. Lenders have emphasized the need for immediate implementation of these changes in order to facilitate their participation in the FmHA guaranteed program during fiscal year 1986.

Implemention selected changes does not impose additional burdens upon applicants/borrowers for assistance or change eligibility requirements. Benefits will accrue to all applicants and lenders, by a reduction in paperwork and a timely response to loan requests. Benefits will accrue to applicants/borrowers, in expeditiously processing

applications, providing lines of credit and elimination of paying repetitive guarantee fees. Benefits will accrue to FmHA in a standardization and reduction of material required for review on requests for a guarantee.

Highlights

Subpart A of Part 1980 contains general regulations and prescribed forms which are applicable to FmHA guaranteed loan programs authorized in Part 1980. The changes in Subpart A of 1980 concern the following:

The change establishes a line of credit for operating loans. In connection with this line of credit selected form changes are as follows:

a. References have been added to prescribe the use of Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," Form FmHa 1980–38, "Lender's Agreement (Line of Credit)," Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)" and Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)." Form FmHA 1980–27, 1980–38, 1980–15, and 1980–25 appear as Appendices D, E, F, and G respectively of Subpart A of Part 1980 of this chapter.

These form references are necessary to implement a line of credit authority for operating loans described in Subpart B.

b. Deletes lender certification in paragraph V of Forms FmHA 449–35 and 1980–38 which states: "The lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the lender is owned by citizens of the United States. Further such lender certifies that any guarantee received shall be only on loans made by it operating for itself and not on behalf of foreign citizens or organizations."

Lenders who presently do not meet this criteria but are otherwise eligible lenders would participate in the guaranteed loan program. This change would maximize the availability of credit.

c. Makes technical and editorial clarifications.

Subpart B of Part 1980 contains regulations for making the following farmer program loans guaranteed by the FmHA: Operating (OL), Farm Ownership (FO), Soil and Water (SW), Recreation Facility (RL), and Emergency (EM) Loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for guaranteed OL loans and guaranteed FO loans. Exhibit B provides policies and procedures for the guaranteed Debt Adjustment Program (DAP) for guaranteed OL loans and guaranteed FO loans. Exhibit C (available in any FmHA office) is added to provide a processing guide for guaranteed farmer program loans.

A summary of selected changes in Subpart B of 1980 concern the following:

(a) Expands the use of in-house forms which approved lenders may use in packaging guaranteed loan applications.

This change is necessary to expedite lender packaging of guaranteed loan applications.

(b) Establishes sources of price information and methods of documenting production history in connection with operation forecasts.

This change is necessary to standardize financial information submitted to FmHA. This will expedite FmHA's review of the application.

(c) Outlines qualifications appraisers preparing appraisals must meet.

Outlining appraiser qualifications will ensure that the lender is using high quality appraisals which will document the lender's collateral for the loan prior to the issuance of the government loan guarantee.

(d) Sets forth time requirements which county supervisors must meet in processing/approving guaranteed loans/or lines of credit.

Establishing time requirements for processing/approving guaranteed loans will provide expeditious processing of applications.

(e) Prohibits consolidation of OL lines of credit.

This prohibition is necessary to ensure that lines of credit maintain their distinct purposes for loan servicing.

(f) Clarifies allowed liquidation fees.

This clarification is necessary to prevent misunderstanding between the lender and FmHA on allowable liquidation fees.

(g) Allows the use of guaranteed operating loan funds to refinance FmHA insured loans.

This will allow greater flexibility in restructuring debts and serve as a tool for FmHA to use to assist borrowers in returning to commercial sources of credit.

(h) Establishes a line of credit in connection with guaranteed loans with specific purposes, terms, and servicing requirements.

A line of credit authority for operating loans will eliminate repetitive loan applications, therefore preventing farmers from paying repetitive guarantee fees. Implementing a line of credit will save farmers interest charges since credit advances can be disbursed over time. Loan purposes for the line of credit authority are limited to the purchase of foundation livestock replacements and annual operating expenses. Limiting lines of credit to selected purposes is a necessary action to allow proper lender supervision of the farm operation. Advances of the line of credit agreement are limited to three years from the date of the Contract of Guarantee. Lines of credit are payable up to a 7-year term. This limitation on advances is necessary to monitor the borrower's performance. Upon expiration of the line of credit, the borrower may request refinancing by the lender without the benefit of a guarantee or request an additional guarantee.

(i) Allows the lender to charge a rate of interest not to exceed one percent above the rate a lender changes its average (typical) customer.

This change will encourage greater lender participation in the guaranteed loan program.

(j) Revises OL security requirements when refinancing debts to allow junior liens on real estate.

This change will allow greater flexibility in restructuring debt.

(k) Deletes the limitation in the Approved Lender Program prohibiting multi-notes.

This deletion is necessary to allow the sale of a portion of the note on the secondary market.

(l) Establishes Attachment 2 to Exhibit A, Lender's Agreement, for Operating Loan Lines of Credit.

This addition is necessary to expedite Lender Approval for participation in the guaranteed loan program.

(m) Establishes Exhibit C-Processing Guide for Guaranteed Farmer Program Loans (available in any FmHA office).

This exhibit is necessary to provide standardization in application packaging/processing.

(n) References have been added to prescribe the use of Forms FmHA 1980–27, "Contract of Guarantee (Line of Credit)," Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit);" Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)." These forms appear as Appendices D, E, F, and G of Subpart A Part 1980 of this chapter.

These form references are necessary to implement a line of credit authority.

(o) The approved lenders agreement is revised to allow the State Director to make an exception to the current requirement that an eligible lender have at least $2.5 million or 50% whichever is

less of total loan portfolio in agricultural loans.

This change will allow greater lender participation in the guaranteed loan program.

The changes in Subpart C, D and E of 1980 are as follows:

a. References to Subpart A of Part 1980 are corrected as necessary.

b. Paragraph references to Form FmHA 449–35 are amended to correspond with the revised form.

c. Appendix F to Subpart E is amended to clarify the adjustment period for variable rate loans in accordance with the revised regulations.

The changes in Subpart F of 1980 are as follows:

a. References to Subpart A of 1980 are corrected as necessary.

b. References have been added to change the name of Form FmHA 1980–38 to "Lender's Agreement (Line of Credit)," Form FmHA 1980–25 to "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)," Form FmHA 1980–27 to "Contract of Guarantee (Line of Credit)," Form FmHA 1980–15 to "Conditional Commitment for Contract of Guarantee (Line of Credit)."

These form references are necessary to implement a line of credit authority for Operating Loans.

c. Paragraph references to Form FmHA 449–35 and 1980–38 are amended to correspond with the revised forms.

d. Removes Appendices B, C, D, E, F, and G and redesignates Appendix E as Appendix B.

List of Subjects in 7 CFR Part 1980

Loan programs-agriculture.

Therefore, Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.6(a) is revised to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

(1) *Assignment Guarantee Agreement (Form FmHA 449–36).* The signed agreement among FmHA, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

(2) *Borrower.* All parties liable for the loan/line of credit or any part thereof.

(3) *Conditional Commitment for Guarantee (Form FmHA 449–14).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Guarantee."

(4) *Conditional Commitment for Contract of Guarantee (Form FmHA 1980–15).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Contract of Guarantee."

(5) *Contract of Guarantee (Line of Credit) (Form FmHA 1980–27).* The signed commitment issued by FmHA setting forth (specifically or by reference) the terms and conditions of the guaranteed line of credit.

(6) *Finance Office.* The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103, (Phone 314–279–4400).

(7) *FmHA.* The United States of America, acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA office or official should be read as prefaced by "FmHA."

(8) *Guaranteed Line of Credit.* Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in a Form FmHA 1980–27 "Contract of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Lenders Agreement (Line of Credit)."

(9) *Guaranteed Loan.* A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35, "Lender's Agreement" and for which FmHA has issued a Form FmHA 449–34 "Loan Note Guarantee."

(10) *Hazard insurance.* Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

(11) *Holder.* The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee become a holder when Form FmHA 449–36, "Assignment Guarantee Agreement," is used.

(12) *Insured loans.* A loan directly made and serviced by FmHA as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

(13) *Joint financing.* Occurs when two or more lenders (or any combination of such lenders) make separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

(14) *Lender.* The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate Subpart. The lender is also the party requesting a guarantee.

(15) *Lender's Agreement (Form FmHA 449–35 or Form FmHA 1980–38).* The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for selected farmer program loans only.

(16) *Line of credit agreement.* An evidence of the debt in those instances in which a lender extends a line of credit to a borrower.

(17) *Loan Note Guarantee (Form FmHA 449–34).* The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

(18) *Market value.* The amount for which property would sell for its highest and best use at voluntary sale.

(19) *Note.* An evidence of the debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(20) *Principals of borrowers.* Include owners, officers, directors, entities and

others directly involved in the operation and management of a business.

(21) *Transfer and assumption.* The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

* * * * *

3. Section 1980.11 is revised to read as follows:

§ 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Gurantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee or Contract of Guarantee by lender. The Loan Note Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449-14 "Conditional Commitment for Guarantee," or Form FmHA 1980-15 "Conditional Commitment for Contract of Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

4. In § 1980.13, paragraph (b)(4) is removed, paragraphs (b)(5) and (b)(6) are redesignated as (b)(4) and (b)(5) respectively, and paragraph (b)(2), newly designated paragraph (b)(4), and paragraph (c) are revised as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) * * *

(2) *Lender notification.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA on Form FmHA 449-12, "Request for Loan Note Guarantee," or Form FmHA 1980-25, "Request for Guarantee (Line of Credit)" with such proofs as FmHA may require.

* * * * *

(4) *Conflict of interest.* For possible lender-borrower conflict of interest, see paragraph V of Form FmHA 449-35 or paragraph V of Form FmHA 1980-38. All lenders will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent that the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other. FmHA shall determine whether such ownership is sufficient to likely result in a conflict of interest.

* * * * *

(c) *Substitution of lenders.* With written concurrence of FmHA another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee provided the borrower, loan purposes, scope of project and loan terms remain unchanged. (See Part 1980, Subpart E of this chapter.)

§ 1980.20 [Amended]

5. In § 1980.20, in the first sentence of the introductory text the words "or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," are added after the words, "Loan Note Guarantee, Form FmHA 449-34."

6. Section 1980.21 is amended by revising paragraph (a) to read as follows:

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be one percent (1%) of the principal loan amount or one percent (1%) of the line of credit ceiling amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

* * * * *

§ 1980.22 [Amended]

7. In § 1980.22, in the introductory text of paragraph (b) and in paragraph (b)(3) the words "or Contract of Guarantee" are added after the words "Loan Note Guarantee."

8. Section 1980.23 is revised to read as follows:

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA will not guarantee any loan or line of credit made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA guaranteed loan or line of credit nor may an FmHA guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

§ 1980.41 [Amended]

9. In § 1980.41, in the first sentence of paragraph (a) the words, "Pub. L. 93-295" are removed and the words "Pub. L. 93-495," are inserted in their place.

10. Section 1980.60 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(1), (a)(6), (a)(7), (a)(10), (a)(11), (a)(12), (a)(14), (b) and (c) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* Form FmHA 449-34 or Form FmHA 1980-27 will not be issued until the lender certifies to FmHA that:

(1) No major changes have been made in the lender's loan or line of credit conditions and requirements since the issuance of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee except those approved in the interim by FmHA in writing.

* * * * *

(6) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that cannot be covered initially under State law.

(7) The borrower has marketable title to the collateral then owned by borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by FmHA.

* * * * *

(10) All other requirements of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee have been met.

(11) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee.

(12) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on Form FmHA 449-1, "Application for Loan and Guarantee." In line of credit cases if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Contract of Guarantee and Line of Credit Agreements. A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

* * * * *

(14) There has been no adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee or from the time of FmHA's issuance of the Conditional Commitment for Contract of Guarantee to the issuance of the Contract of Guarantee. The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower and its guarantors not more than 60 days old at time of certification. For purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower.

(b) *Inspections.* The lender will notify FmHA of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee or Contract of Guarantee. FmHA may attend such field inspections. Any inspections or review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

(c) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 449-35 or Form FmHA 1980-38.

* * * * *

11. Section 1980.61 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (h) respectively, by adding a new paragraph (c) and by revising paragraphs (a), and newly designated paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 449-35 or Form FmHA 1980-38. The original will be delivered to FmHA and a signed duplicate original retained by the lender. There will be a Form FmHA 449-35, or Form FmHA 1980-38 executed for all loans and lines of credit guaranteed by FmHA. The Lender's Agreement will be executed not later than the time the Loan Note Guarantee or Contract of Guarantee is signed and FmHA receives the guarantee fee.

* * * * *

(c) *Contract of Guarantee cases.* Upon receipt of the Form FmHA 1980-38 and after all requirements have been met, FmHA will execute Form FmHA 1980-27. An original will be provided to the lender and attached to the line of credit agreement. A conformed copy with a copy of the line of credit agreement will be retained by FmHA.

(d) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provisions of the applicable subpart, the lender, holder, and FmHA will execute Form FmHA 449-36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee. Line of credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph III of Form FmHA 1980-38.

(e) *Refusal to execute contract.* If FmHA determines that it cannot execute the Loan Note Guarantee or Contract of Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA 449-13, "Denial Letter," of the reasons, and give the lender a reasonable period within which to satisfy FmHA objections. If the lender writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(f) *Cancellation of obligations.* If the conditions for the loan or line of credit are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit to the Finance Office, Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation."

(g) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each loan or line of credit to be guaranteed and deliver the guarantee fee to the FmHA representative who concurrently delivers the Loan Note Guarantee(s) or Contract of Guarantee.

(h) *Authorized FmHA representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement (Form FmHA 449-35 or Form FmHA 1980-38), the Loan Note Guarantee, the Contract of Guarantee and/or the Assignment Guarantee Agreement.

12. Section 1980.62 is revised to read as follows:

§ 1980.62 Lender's sale or assignment of guaranteed portion of the loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA 449-35. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA 449-35, the lender will provide this information with the application to FmHA. Line of credit agreements evidencing advances made under lines of credit will *not* be sold or assigned except as provided in paragraph III of Form FmHA 1980-38.

§ 1980.63 [Amended]

13. In § 1980.63, the first sentence is revised to read: "Refer to paragraph X of Form FmHA 449-35 or paragraph X of Form FmHA 1980-38."

14. In § 1980.64, paragraphs (a) and (b) are revised to read as follows:

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA 449-35 or paragraph XI of Form FmHA 1980-38.

(b) *Lender's option.* If a lender has made a loan or line of credit guaranteed by FmHA under previous regulations and the lender concludes that liquidation of the guaranteed loan or line of credit is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure, the lender has the option of liquidate the loan under the provisions of this subpart, or under the provisions of previous regulations. The lender will notify the State Director in writing within 10 days after its decision to liquidate if it desires to proceed under this subpart.

* * * * *

15. Section 1980.65 is revised to read as follows:

§ 1980.65 Protective advances.

Refer to paragraph XII of Form FmHA 449-35, or paragraph XII of Form FmHA 1980-38.

16. Section 1980.66 is revised to read as follows:

§ 1980.66 Additional loans or advances.

Refer to paragraph XIII of Form FmHA 449-35, or paragraph XIII of Form FmHA 1980-38.

17. Section 1980.67 is revised to read as follows:

§ 1980.67 Lender's request to terminate Loan Note Guarantee or Contract of Guarantee.

The lender may request FmHA to terminate the Loan Note Guarantee(s) or the Contract of Guarantee(s) provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 449-34, or paragraph 5 of Form FmHA 1980-27.) The lender will provide the County Supervisor with a written notice that the loan(s) or line(s) of credit is paid in full and/or termination of the Loan Note Guarantee(s) or Contract of Guarantee(s) enclosing the original Form FmHA 449-34 or Form FmHA 1980-27 for cancellation. Within 30 days, the County Supervisor will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) (or line of credit) is paid in full," and/or "the Loan Note Guarantee or Contract of Guarantee has been cancelled at the request of the lender."

18. In § 1980.83, paragraph (a) is revised to read as follows:

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449-34, "Loan Note Guarantee," FmHA 449-35, "Lender's Agreement," and FmHA 449-36, "Assignment Guarantee Agreement," are incorporated in this Subpart A, made a part hereof, and appear as Appendices A, B and C in the Federal Register. Forms FmHA 1980-27, "Contract of Guarantee (Line of Credit)," FmHA 1980-38 "Lender's Agreement (Line of Credit)" and FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," and FmHA 1980-25 "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)," are incorporated in this Subpart A and are made a part hereof and appear as Appendices D, E, F and G of 7 CFR Part 1980 Subpart A in the Federal Register. Copies of the forms may be obtained from any FmHA office.

* * * * *

19. In § 1980.83, in the first sentence of paragraph (b), the words "or Contract of Guarantee" are added after the words "Loan Note Guarantee." In the second sentence of paragraph (b) the words "or line of credit" are added after the words "guaranteed loan."

20. Section 1980.84 is amended by revising the title, paragraphs (a), the introductory text of paragraph (b), paragraph (b)(1)(iv), (b)(1)(v), and the introductory text of Administrative paragraph C. to read as follows:

§ 1980.84 Replacement of loss, theft, destruction, mutilation, or defacement of FmHA Form 449-34, "Loan Note Guarantee," Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)" or FmHA Form 449-36, "Assignment Guarantee Agreement".

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the FmHA State Director is authorized on behalf of Farmers Home Administration to issue a replacement Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s) which may have been lost, stolen, destroyed, mutilated, or defaced to the Lender or Holder upon receipt of an acceptable certificate of loss and an indemnity bond. After the required documentation has been received, the State Director will consult with the Regional Office of General Counsel to assure that all documents are of legal sufficiency before the reissuance of the Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s).

(b) *Requirements.* When a Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the State Director for processing. The requirements for replacement are as follows:

(1) * * *

(iv) Full identification of the Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement including the name of the borrower, FmHA case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, or Contract of Guarantee, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan or line of credit, percentage of guarantee and if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement.

* * * * *

Administrative

* * * * *

C. If the decision is to reissue Loan Note Guarantee(s), Contract of Guarantee(s), or Assignment Guarantee Agreement(s) the following procedure will be followed:

* * * * *

BILLING CODE 3410-07-M

21. Appendix B—Form FmHA 449-35, "Lender's Agreement" to Subpart A is revised to read as follows:

Position 5

USDA-FmHA
Form FmHA 449-35
(Rev. 9-85)

APPENDIX B

FORM APPROVED
OMB NO. 0575-0024
Expiration Date Avail. On Request.

LENDER'S AGREEMENT

Type of Loan: _____
Applicable 7 CFR Part 1980 Subpart _____

FmHA Loan Identification No. _____

_____ (Lender) of

_____ has made a loan(s) to

_____ (Borrower)

_____ in the principal

amount of $ _____ as evidenced by _____ note(s)

(include Bond as appropriate) described as follows: _____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not

to exceed _____ % of the amounts of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or conceives. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This section includes certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefits of an FmHA loan guarantee. This agreement is formulated pursuant to P. L. 96-511.

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449-36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing. Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. After Loan Closing.

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed notes(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concerned in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisition only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds, that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule: _____

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loans) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder's(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portions of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problems to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) his pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the Borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion hereto together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to request payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan as guarantor, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults by third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, futures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc., where FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss satisfactory to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payments will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantors) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through FmHA for _____

(State) with mailing address at the date of this instrument _____

_____

Dated this _____ day of _____, 19___.

22. Appendix D—Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)" is added to Subpart A to read as follows:

APPENDIX D

USDA-FmHA
Form FmHA 1980-27
(Rev. 9-85)

CONTRACT OF GUARANTEE
(Line of Credit)

	Type of Loan ☐OL ☐EL or ☐EE
	Case No.
	State
	County
Lender / Lender's IRS Tax No.	Date of Line of Credit Agreement
Lender's Address	Line of Credit Ceiling $
Borrower's Name and Address	

The guaranteed portion of this line of credit is _____ % of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (hereinafter called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
   a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and
   b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral; or
2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1. Line of Credit Servicing
   Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record.
2. Priorities
   The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.
3. Full Faith and Credit
   The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.
4. Protective Advances
   Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.
5. Custody of Unguaranteed Portion
   The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.
6. When Guarantee terminates
   This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit; or (b) upon full payment of any loss obligation under this Contract; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.
7. Settlement
   The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.
8. Notices
   All notices and actions will be initiated through the FmHA County Supervisor for _____ (County) _____ (State with mailing address at the date of this instrument.

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____ (Date)

By: _____

Title: _____

Assumption Agreement by _____ dated _____, 19__

Assumption Agreement by _____ dated _____, 19__

23. Appendix E—Form FmHA 1980–38, "Lenders Agreement (Line of Credit)" is added to Subpart A to read as follows:

APPENDIX E

USDA-FmHA
Form FmHA 1980-38
(Rev. 9-85)

FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request.

Type of Loan
☐OL ☐EL or ☐EE
FmHA Loan ID No.

LENDER'S AGREEMENT
(Line of Credit)

Applicable 7 CFR Part 1980, Subpart _____

_____ (Lender) of _____

has established a line of credit to _____ (Borrower) for the fiscal period ending

_____, 19___, for the purpose of _____

_____

in the maximum sum of $ _____ as evidenced by a "Line of Credit Agreement" dated _____, 19___.

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed _____ % of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed _____ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. Full Faith and Credit.
The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR , Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee.

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner.
2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.
3. Inspecting the collateral as often as necessary to properly service the line of credit.
4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch.
6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.
8. Assuring that the borrower obtains marketable title to the collateral.
9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.
10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".
11. Obtaining from the Borrower periodic financial statements under the following schedule: _____

_____

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

X. Defaults.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

XI. Liquidation.

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.
3. A proposed method making the maximum collection possible on the indebtedness.
4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation proposal. FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation, Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.
2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

   After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

   After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.
3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.
4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved:
   a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.
   b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.
5. If FmHA has conducted liquidation; it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.
6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation; loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII. Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage is guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantors) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 34 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligations upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County).

_____ (State with mailing address at the date of this instrument

_____

Dated this _____ day of _____, 19__.

ATTEST: _____ SEAL

LENDER

By _____

Title _____

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By _____

Title _____

24. Appendix F—Form FmHA 1980-15, "Conditional Commitment for (Line of Credit)" is added to Subpart A to read as follows:

USDA-FmHA
Form FmHA 1980-15
(Rev. 9-85)

APPENDIX F FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request.

CONDITIONAL COMMITMENT FOR CONTRACT OF GUARANTEE (Line of Credit)

Type of Loan ☐OL ☐EL or ☐EE	
Case No.	
State	
TO: Lender	County
Lender's Address	Line of Credit Ceiling $
Borrower	Principal Amount of Initial Loan

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," subject to the conditions and requirements specified in said regulations and below.

The guarantee fee payable by the Lender to FmHA (for operating loans only) will be the amount as specified in the regulations on the date of this Conditional Commitment. The interest rate for the loan is _____ %. 1/ If a variable rate is used, it must be tied to a base rate which cannot change more often than _____ 2/ and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Contract of Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are as set out on the Request for Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Request for Guarantee will be considered.
Additional Conditions and Requirements: 3/

This conditional commitment will expire on _____ 4/ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

By: _____

Date: _____ FmHA: _____
(Title)

Position 2 FmHA 1980-15 (Rev. 9-85)

ACCEPTANCE OR REJECTION OF CONDITIONS

To: Farmers Home Administration (FmHA) 5/

The condition(s) of Form FmHA 1980-15 on the other side of this page:

1. ☐ are acceptable and the undersigned Lender intends to proceed with the loan transaction and to request issuance of a Contract of Guarantee at the appropriate time.
2. ☐ are acceptable, but for other reasons the undersigned Lender does not desire a Contract of Guarantee.
3. ☐ are not acceptable and for that reason the undersigned Lender does not desire a Contract of Guarantee.
4. ☐ are not acceptable, but would be acceptable if the following changes were made:

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of Applicant, name and address of Lender, amount of loan, and general purpose of the loan.

(b) It is anticipated that the Contract of Guarantee will be requested in approximately _____ days.

_____
(Name of Lender)

By: _____
(Signature of Lender)

1/ Insert fixed interest rate or, as authorized by regulations, variable interest rate followed by "V".

2/ Insert the period prescribed in the applicable FmHA regulation.

3/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise insert "NONE".

4/ Insert expiration date. (Allow sufficient time for processing and issuance of the Contract of Guarantee.)

5/ Return completed and signed copy of this form to FmHA office from which it was received.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

25. Appendix G—Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)" is added to Subpart A to read as follows:

APPENDIX G FORM APPROVED OMB NO. 0575-0079 Expiration date avail. on request.

USDA-FmHA
Form FmHA 1980-25
(Rev. 9-85)

REQUEST FOR GUARANTEE
(Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)

Type of Loan ☐OL ☐EL or ☐EE
Case No.

TO: Farmers Home Administration (FmHA) | State | County

Applicant's Name | Applicant's Address

Lender Requests a Loan Note Guarantee | Lender Requests a Contract of Guarantee for a Line of Credit

Line of Credit Ceiling $ _____
Principal Amount of Loan $ _____ | Principal Amount of Initial Advance $ _____

The undersigned Lender requests issuance of a guarantee in the subject case.

THE FOLLOWING INFORMATION AND DOCUMENTS ARE SUBMITTED FOR YOUR CONSIDERATION:

1. Copy of Application for Loan with enclosures.
2. Cash flow sheet, if used by Lender.
3. Any drawings and specifications for: ☐construction ☐major repairs ☐major land development
4. Appraisal report on any real estate security.
5. Certificates of Lender and Loan Applicant (Emergency Livestock Loan), or Lender's Certification (Guaranteed Economic Emergency Loan).
6. Purposes for which guarantee loan funds will be used and the amounts to be used for such purposes are:

PURPOSES	AMOUNTS
	$

7. Interest rate to borrower is _____% per annum.
8. Loan fee payable by loan applicant is _____% of principal amount of loan or $ _____.
9. Repayment period for the loan or line of credit is _____ year(s).
10. Proposed loan guarantee is _____% of the principal and interest.
11. Escrow account is required for: ☐Taxes ☐Insurance premiums ☐Other (specify) _____
12. The undersigned Lender is subject to examination and supervision by

_____
(Insert name of agency of United States or State, or "None")

13. Loan(s) will be ☐made, and/or ☐serviced, by the undersigned's:
☐Main office address: _____
☐Branch office: _____ *(Name of office)*
Branch office address: _____
☐Agent: _____ *(Name of Agent)*
Agent's address: _____
14. Initial loan is scheduled for repayment: _____ *(Maturity date for line of credit agreement, dates of monthly, annual, or other installments)*
15. Line payments charges, if any, are made on the following basis pursuant to a written agreement between the applicant and the undersigned Lender as required by 7 CFR 1980.22: _____
16. Types and amounts of insurance required are:

Types	Amounts
	$
	$

17. List of Required Security Property
(Including That on Hand and to be Acquired)

DESCRIPTION OF PROPERTY

A. ON HAND*	APPRAISED VALUE	AMT. ANY PRIOR LIENS	LOAN EQUITY
	$	$	$
	$	$	$

Appraiser's Certificate on Personal Property

Personal property listed above, if any, was appraised by me at the values set forth opposite the description thereof.

_____ *(Date)* _____ *(Appraiser)*

B. TO BE ACQUIRED*	ESTIMATED VALUE
	$
TOTAL	$

* Quantity and brief description. For example: "Smith farm 160 acres," (based on separate appraisal report) "1 - 1972 John Deere 2520 Tractor," "25 Hereford range cows, 3-6 years."

18. Plan of Operation agreed upon by Lender and loan applicant for a typical operating year

a. PLANNED CROPS, PASTURE, ETC. - PRODUCTION AND SALES

CROPS, PASTURE, ETC.	ACRES	YIELD PER ACRE	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	OPERATOR'S SHARE FOR SALE VALUE
					$
				TOTAL	$

b. PLANNED LIVESTOCK AND PRODUCTS PRODUCTION AND SALES

KIND	PRODUCTION PER ANIMAL	NUMBER	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	OPERATOR'S SHARE FOR SALE VALUE
					$
				TOTAL	$

19. CASH OPERATING EXPENSES

	TOTAL CREDIT NEEDED	TOTAL PLANNED EXPENSES
Hired Labor	$	$
Machinery Repair	$	$
Interest	$	$
Cash Rent	$	$
Feed	$	$
Seed	$	$
Fertilizer	$	$
Pesticides & Spray Materials	$	$
Livestock Expense	$	$
Machinery Hire	$	$
Fuel and Oil	$	$
Personal Prop. Tax	$	$
Real Estate Taxes	$	$
Water Charges	$	$
Property Insurance	$	$
Auto & Truck Expense (Farm)	$	$
Utilities	$	$
Feeder Livestock (Bought & sold during year)	$	$
Family Living Expenses	$	$
Other	$	$
TOTAL	$	$

20. Financial Summary of Typical Years Operation

A. Livestock Income	$
B. Crop Income	$
C. Other Farm Income	$
D. Off-Farm Income (net)	$
E. Total Gross Income (A+B+C+D)	$
F. Total Cash Expenses (Table 19)	$
G. Net Cash Income (E minus F)	$
H. Loans and Other Credit	$
I. Interest	$
J. Balance Available for Debt Payment (G+H+I)	$

21. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE FIRST YEAR (PRIN. & INT.)	PLAN PRIN. & INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
Income and Social Security Taxes	$	$		
TOTAL	$	$		

22. The loan will be properly closed or line of credit agreement will be properly executed and the required security obtained. The construction, relocation, repairs, or other development will be completed in accordance with approved drawings and specifications.

23. The borrower has marketable title to security property now owned (and will obtain such title to any additional property to be acquired with loan funds), subject only to the instruments securing the loan to be guaranteed and any other exceptions set forth here:

24. Security property now owned (any to be acquired) is considered adequate security for the loan to be guaranteed, or if an adequate state in item 29 of this form, why you believe the borrower's farm or ranch operating plans will permit the borrower to pay the guaranteed loan or line of credit in full within the period specified in item 9 on page one of this form. The security instruments will be properly filed or recorded prior to the issuance of the guarantee; except that if security property is yet to be acquired in a jurisdiction in which an after acquired property clause is not valid, a security instrument covering such property will be obtained as soon as appropriate and legally permissible. Loan funds will be used for FmHA-approved purposes.

25. Proper hazard and any other required insurance will be obtained or is now in effect.

26. Truth in Lending requirements will be met.

27. All Equal Opportunity and Nondiscrimination requirements will be met (or any that cannot yet be met will be met at the appropriate time).

28. If an Operating Loan (Line of Credit) is guaranteed under Subpart H of 7 CFR, Part 1980, a Guarantee Fee Report on Form FmHA 449-19 and a check for the amount of the guarantee will be provided at the time the Contract of Guarantee is issued.

29. The undersigned (a) considers the proposed loan or line of credit to be sound and within the borrower's repayment ability, (b) believes that all applicable requirements in Subparts A, B, C or F of Part 1980, 7 CFR have been or will be met and (c) will not make the loan or advances under the line of credit without an FmHA guarantee.

30. Lender's Planned Loan Servicing:

31. Other Relevant Information:

_____
(Date)

_____
(Name of Lender)

BY: _____

TITLE: _____

_____
(Lender's IRS ID Tax No.)

32. From an examination of information supplied by the Lender on the above proposed loan or line of credit, the county committee certification or recommendation and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the FmHA agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," or Form FmHA 449-34, "Loan Note Guarantee," on the above loan or line of credit at the time, subject to the conditions and requirements specified in said regulations and Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," or Form FmHA 449-14, "Conditional Commitment for Guarantee for Guarantee," attached.

If the Contract of Guarantee or Loan Note Guarantee is executed and the guaranteed fee, if any, is paid by the Lender to FmHA, the loan subsidy rate, if any, payable by FmHA to the Lender, and the interest rate payable by the borrower in cases which that rate is limited by statute or is fixed from time to time pursuant to statute, will be those rates in effect on the date of this approval.

Rate payable by borrower _____% per annum.

This approval will expire _____ days from the date hereof unless the time is extended in writing by FmHA, or upon the Lender's earlier notification in writing to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____
(Date)

BY: _____

TITLE: _____

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

26. Section 1980.101 is amended by adding a new paragraph (e) and revising paragraph (a) as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), and Emergency (EM) loans. It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans and Guaranteed Farm Ownership (FO) loans. Exhibit B provides policies and procedures for the Guaranteed Debt Adjustment Program (DAP) for Guaranteed Operating (OL) Loans (Loan Note Guarantee cases only) and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart.

* * * * *

(e) *Type of guarantee*—(1) *Loan Note Guarantee.* Lenders desiring to sell the guaranteed portion of fixed amount and term loans will use the method contained in Subpart A of this part. In accordance with that method, loans may be made by a lender and guaranteed by issuance of Form FmHA 449–34.

(2) *Contract of Guarantee.* (Operating Loans—Line of Credit only.) Lenders desiring a guarantee on a "line of credit" will use the method contained in Subpart A of this part. Line of credit loans are guaranteed by Form FmHA 1980–27. The amount of loan may not exceed the line of credit ceiling set forth in the contract. This procedure will be followed for operating purposes line of credit only (See § 1980.175(c)(2)).

27. In § 1980.106 paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

(1) *Applicant.* The party applying for a guaranteed loan or line of credit.

* * * * *

(4) *Borrower.* All parties liable for the loan or line of credit or any part thereof.

* * * * *

28. Section 1980.108 is revised to read as follows:

§ 1980.108 General provisions.

(a) *Security, personal and corporate guarantees, and other requirements.* See §§ 1980.170(f), 1980.175(g), 1980.180(g), 1980.185(g) and 1980.190(g) for specific security requirements for the type of loan or line of credit being considered.

(1) *Security.* (i) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(ii) All security must secure the entire loan/line of credit. The lender may not take separate security to secure only that portion of the loan/line of credit not covered by the guarantee. The lender may not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan/line of credit. However, compensating balances or certificates of deposit as used in the ordinary course of business are not prohibited.

(2) *Personal and corporate guarantees.* (i) For EM loans and OL loans/lines of credit, personal guarantees from principal members or cooperatives, stockholders of corporations, and all partners of a partnership will be required. For this purpose, any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member or stockholder owns or controls at least a 20 percent interest, all members of stockholders will be considered principal members or stockholders. For FO, RL and SW loans, personal guarantees from members holding a majority interest in cooperatives, stockholders of corporations and all partners of a partnership will be required. Guarantees of parent, subsidiary, or affiliated companies may also be required. Guarantees will be required in an amount which reasonably assures repayment of the loan/line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender and/or FmHA may require additional personal and corporate guarantees. The lender and/or FmHA also may require that such guarantees be secured.

(ii) The lender may ask FmHA to make an exception to the requirement for personal or entity guarantees if the proposed guarantors cannot provide such guarantees due to other existing contractual obligations or legal restrictions. Applicants will give the lender written evidence of any such obligations or restrictions. FmHA's concurrence is required before an exception is made.

(iii) *Guarantors of applicants will:* (A) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing) signed by the guarantors, and disclosing community or homestead property.

(B) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing) certified by an officer of the corporation.

(3) *Other requirements.* (i) The lender must ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment or other parties against the security of the borrower, and that no suits are pending or threatened that would adversely affect the borrower's interest in the collateral when the security instruments are filed and when final loan disbursement is made.

(ii) Appropriate hazard insurance with a standard mortgage clause naming the lender as beneficiary may be required by the lender when deemed necessary.

(iii) When the lender believes it is necessary, life insurance will be required for the individual borrower or the principals and key employees of the entity borrower and will be assigned or pledged to the lender. This life insurance may be decreasing term insurance. A schedule of life insurance available will be included as part of the application.

(iv) Workmen's compensation insurance will be obtained as required by State law.

(b) *Person entitled to veteran's preference.* An application on hand from a veteran as defined in § 1980.106 of this Subpart will be given preference by the lender over an application from a nonveteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants. This applies to FO, SW, RL, OL guaranteed loans, and OL guaranteed lines of credit.

(c) *Determining whether credit elsewhere is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loan/line of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans and guaranteed or insured economic emergency loans.* (1) If an applicant qualifies for an EM loan in an authorized area, the applicant's total credit needs will be considered under EM loan authorities.

(2) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO, RL, SW loans, or OL loans/lines or credit provided the total outstanding principal indebtedness to FmHA and/or an FmHA guaranteed lender would not exceed *$850,000.*

Administrative

The County Supervisor will determine whether the lender is requiring the necessary security. If necessary, the assistance of the District Director or Farmer Programs Staff will be obtained.

29. Section 1980.109 is revised to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this Subpart or Subpart A of this part.

(1) For EM guaranteed loans and OL guaranteed loans/lines of credit, when the applicant is a cooperative or a corporation, the promissory note(s) or line of credit agreement(s) will be executed so as to evidence liability of the entity as well as each principal member or stockholder as an individual except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart. Any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member or stockholder owns or controls at least a 20 percent interest, all members or stockholders will be considered principal members or stockholders.

(2) For EM, FO, SW and RL guaranteed loans and OL guaranteed loans/lines of credit, when the applicant is a partnership, the promissory note(s) or line of credit agreement(s) will be executed so as to evidence liability of the partnership as well as each and every partner as an individual except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this Subpart.

(3) For FO, SW and RL guaranteed loans, when the applicant is a cooperative or corporation, the promissory note(s) will be executed so as to evidence liability of the entity as well as liability of member(s) or stockholder(s) holding a majority interest in the entity as individuals except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) Stating that "disposition of the collateral is not authorized hereby."

30. Section 1980.113 is amended by revising the introductory text, paragraphs (a)(1), (d)(3), (d)(5), the introductory text of paragraph (d)(7), and (d)(7)(iii), (d)(7)(ix), (d)(7)(xi), (d)(7)(xiii), (d)(8), (d)(9) and (d)(10) and by adding (a)(6) to read as follows:

§ 1980.113 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. A preliminary application may be used when applicant or lender wants FmHA to determine eligibility, feasibility, or availability of guaranteed authority before filing a complete application. Exhibit C (available in any FmHA office) may be used by lenders for submitting applications under this subpart. The County Supervisor will cooperate with lender and applicant and will provide appropriate assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) * * *

(1) Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)." For applications to be processed under the Approved Lender feature set out in Exhibit A of this subpart, Form FmHA 449–6 need only reflect the name, address, telephone number, purpose of the loan or line of credit, date and signature of the applicant, provided the information requested on the form is provided on an attached alternative document such as the lender's application form, the FmHA Request for Loan Note Guarantee/Contract of Guarantee, etc.

* * * * *

(6) Any proposed line of credit agreement.

* * * * *

(d) * * *

(3) Form FmHA 449–12, "Request for Loan Note Guarantee" or Form FmHA 1980–25, "Request for Guarantee

(Operating Loan Line of Credit, Emergency Liverstock Loan, or Economic Emergency Loan)."

* * * * *

(5) Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by Approved Lenders.

* * * * *

(7) Proposed loan agreements or line of credit agreements when a Contract of Guarantee is requested, between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement" or paragraph VII of Form FmHA 1980–38, "Lender's Agreement.") Loan Agreements or Line of Credit Agreements will include at least the following:

* * * * *

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

* * * * *

(ix) Maximum debt to asset ratio.

* * * * *

(xi) Purposes for which loan funds or funds advanced under the line of credit will be used.

* * * * *

(xiii) The plan for repayment, reamortization or rescheduling of the loan or line of credit.

(8) Any readily obtainable financial information for the past 3 years. Production history and operation forecast must also be provided by lender and/or applicant. This will indicate a production history (up to 5 years), current financial condition; projected production, income and expenses; and loan/line of credit repayment plan. Forms ordinarily used by the lender or Form FmHA 431–2, "Farm and Home Plan," Form FmHA 431–1, "Long-Time Farm and Home Plan," or Form FmHA 424–1, "Development Plan," may be used, or other similar plans of operation acceptable to FmHA.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, document by date, location, time and degree of use.

(B) Government loan rates, i.e., ASCS target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the state land grant university for the time crop sale.

(F) For specialty crops, the average of three previous years' prices, *only* if the above data is not available.

(ii) Crop yields will be estimated in the following priority of information available, or in a combination of information if complete information is not available for each category. Estimated crop yields will be based on the applicant's accurate 5 year average, historical production yields if available, ASCS Proven or Established yields, or Statistical Reporting Service county averages. When these sources of information are not available, then yields published by the State land grant university or recognized industry averages for the area may be used.

(9) *Appraisals*—(i) *Appraisal Report.* (A) Real estate or chattel property that will serve as collateral for a loan/line of credit will be appraised by a qualified appraiser selected by the lender. The lender is responsible for determining that appraisers have the necessary qualifications and experience to make appraisals. If the lender has any questions in this regard, FmHA should be consulted before an appraisal is made. Appraisal reports may be on forms approved by the lender and/or Form FmHA 422–1, "Appraisal Report Farm Tract," and Form FmHA 440–21, "Appraisal of Chattel Property."

(B) A real estate appraisal report will be based on at least two comparable sales made within two years. If the real estate has been appraised by FmHA or by a qualified appraiser within the last three years and if no significant changes in the market value of real estate have occurred in the area within the three-year period, a new appraisal does not have to be made.

(C) A *current* chattel appraisal is required when chattels are taken as security.

(ii) *Appraiser Qualifications.* The lender is responsible for substantiating the appraiser's qualifications. At FmHA's request the lender will provide documentation of the appraiser's qualifications. The appraiser completing the report must meet at least *one* of the following qualifications:

(A) Certification by a National or State appraisal society.

(B) If a certified appraiser is not available, the lender may use other qualified appraisers if the lender can establish that the appraiser meets the criteria for certification in a National or State appraisal society.

(C) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

10. The lender's plan for servicing the loan/line of credit and providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.

* * * * *

31. Section 1980.114 is amended by revising the introductory text and adding paragraph (c) before the Administrative text to read as follows:

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of repayment ability and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation." This evaluation is for the benefit of FmHA and not the lender. The County Supervisor will notify participants in the Approved Lender Program within 3 working days whether an application submitted is complete. Non-approved lenders will be advised on the completeness of applications within 14 working days. This requirement is contingent upon the availability of a County Supervisor during the prescribed time frame, and employment ceilings affecting FmHA.

* * * * *

(c) *Evaluation for insured loan assistance.* Upon written request by a lender and/or borrower, guaranteed loan/line of credit applications will be reviewed for FmHA insured loan assistance, consistent with the appropriate insured loan regulation.

* * * * *

32. Section 1980.115 is amended by adding Administrative paragraph B.4 and revising Administrative paragraphs A, B.1, B.2 and B.3 to read as follows:

§ 1980.115 County committee review.

* * * * *

Administrative

A. *After County Committee certification is obtained, the County Supervisor will:*

1. Prepare Form FmHA 449–14, "Conditional Commitment for Guarantee" or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." The loan subsidy rate will be indicated on Form FmHA 449–14 for EM loss loans. If the loan/line of credit is within the County Supervisor's approval authority, any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be used if

necessary. Form FmHA 449–14 or Form FmHA 1980–15 will be executed immediately and properly distributed if the loan/line of credit is within the County Supervisor's approval authority.

2. Prepare Form FmHA 1940–1, "Request for Obligation of Funds," and, for initial loans/lines of credit only, Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the FMI. If the loan/line of credit is within the County Supervisor's approval authority, execute Form FmHA 1940–1 and distribute the copies in accordance with the FMI. The Finance Office will obligate funds and notify the County Supervisor by forwarding the original and one copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

3. Forward the docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. * * *

1. Set forth in the space provided on Form FmHA 449–14 or Form FmHA 1980–15 any special conditions of approval, including requirements for security, improved management practices, and type and frequency of financial report required by FmHA but not required by the lender. An attachment to the form may be used if necessary. Return Form FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution.

2. Sign original and one copy of Form FmHA 1940–1 distributing copies in accordance with the FMI, making sure the lender receives a signed copy.

3. Forward the docket to the National Office for approval when the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

4. Approval determinations will be made within 14 working days of County Committee certification for Approved Lenders, and within 30 days of County Committee certification for non-approved lenders. This requirement is contingent upon the availability of an approval official during the prescribed time frame and employment ceilings affecting FmHA.

33. Section 1980.116 is revised to read as follows:

§ 1980.116 Review of requirements.

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449–14 or Form FmHA 1980–15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449–14 or Form FmHA 1980–15 will be so revised.

34. Section 1980.117 is amended by revising the title of that section and Administrative paragraphs A and D to read as follows:

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

* * * * *

Administrative

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 449–14 or Form FmHA 1980–15. A copy of Form FmHA 449–14 or Form FmHA 1980–15 and any amendments will be included in the file.

* * * * *

D. Review basic credit requirements of all loans/lines of credit.

* * * * *

35. Section 1980.118 is revised to read as follows:

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

(a) See § 1980.61 of Subpart A of this part.

(b) A guaranteed portion of the loan may not be sold by the lender until at least an equal amount of guaranteed loan funds have been disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in paragraph III of Form FmHA 1980–38.

(c) The amount to be entered in the blank in paragraph IX(C)(5) of Form FmHA 449–35 or paragraph IX(C)(5) of Form FmHA 1980–38 for a loan secured by chattels will be the lesser of $10,000 or 20 percent of the loan/line of credit for OL loan/line of credit purposes and the lesser of $25,000 or 20 percent of loan for EM loan purposes.

(d) Paragraph IX(C)(10) of Form FmHA 449–35 will be changed by striking the word "semiannually," inserting the word "annually" in its place and eliminating the words "and June 30."

Administrative

A. *Section § 1980.61(a).* The original Form FmHA 449–35 or Form FmHA 1980–38 will be kept in the County Office.

B. *Section § 1980.61(b)(1).* Copy(ies) of the Loan Note Guarantee(s) or Contract of Guarantee(s) will be kept in the County Office. Additional copy(ies) may be retained by the State Office. Copies of all issued Loan Note Guarantees or Contract of Guarantee(s) will be kept in the file.

C. *Section § 1980.61(b)(3).* For reporting purposes where multinotes are issued, the loan will be counted as one loan regardless of the number of notes issued.

§ 1980.119 [Reserved]

36. Section 1980.119 is removed.

§ 1980.122 [Amended]

37. Section 1980.122 is amended by adding the words, "or Form FmHA 1980–38," after the words, "Form FmHA 449–35" in the third sentence.

38. In § 1980.123 paragraph (c), the introductory text of paragraph (d), paragraphs (f), (g), (h)(2), (m), (n) and (o), Administrative paragraphs A.2, A.3., and B. are revised to read as follows:

§ 1980.123 Transfer and assumption of Farmer Program Loans.

* * * * *

(c) Available transfer and assumption options to eligible applicants include transferring the *total* indebtedness to another borrower on the same terms, or on different terms not to exceed those terms for which an initial loan/line of credit can be made.

(d) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or the line of credit ceiling for Contracts of Guarantee. If the transfer is for less than this:

* * * * *

(f) The lender is responsible for getting an appraisal of the fair market value of all the collateral securing the loan/line of credit. Subject to the approval of the transferor and transferee, an appraisal can be made by either independent fee appraisers or qualified appraisers on the lender's staff. Appraisers must meet the qualifications outlined in § 1980.133(d)(9)(ii) of this subpart. The appraisal report fee and other related costs will be paid by the transferor and transferee, as they agree.

(g) The market value of the security being acquired by the transferee, plus any additional security the transferee proposes to give, must be adequate to the balance of the total guaranteed loan/line of credit ceiling for Contracts of Guarantee, plus any prior liens.

(h) * * *

(2) Any downpayment that is made by the transferee to the transferor does not suspend the transferee's obligation to continue to make the guaranteed loan/line of credit payments as they come due under the terms of the assumption.

* * * * *

(m) The assumption agreement may change loan terms and/or interest rates

only if a new Loan Note Guarantee or Contract of Guarantee will be executed.

(n) In the case of a transfer and assumption at the same rates and terms, the lender must give any holder(s) notice of the transfer and notice that future payments will be made under a different name and case number. It is the lender's responsibility to see that the transfer and assumption is noted on all originals of the Loan Note Guarantee or Contract of Guarantee. The lender must provide FmHA with a copy of the transfer and assumption agreement.

(o) Before allowing a transfer and assumption at *different* rates and terms, the lender must consult with any holder(s). If the holder(s) consents in writing to the transfer, the lender must provide FmHA with a copy of the transfer and assumption agreement and must note the transfer and assumption on all originals of the Loan Note Guarantee or Contract of Guarantee.

* * * * *

Administrative

A. Loan approval official may consent:

1. * * *

2. To the release of the transferor and guarantor(s) from liability on the loan or line of credit agreement. The approval official will notify the lender and the appropriate parties of the decision in writing.

3. To any changes in the loan or line of credit terms and/or interest rates provided the holder(s), if any, and lender agree.

B. The Loan Note Guarantee or Contract of Guarantee will be endorsed in the space provided on the form.

* * * * *

39. In § 1980.124 paragraphs (b), (d), (e), and (f) are revised as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing, and deferral.

* * * * *

(b) *Consolidation and rescheduling.* (1) The term "consolidate" means to combine the outstanding principal and interest balances of two or more EM loans *made for operating loan (Subtitle B) purposes* or two or more OL loans.

(2) The term "reschedule" means to rewrite the rates and/or terms of a single Promissory Note or Line of Credit Agreement which acknowledges indebtedness for a loan made for operating purposes (EM or OL loan/line of credit).

(3) EM loans made for operating loan purposes may be consolidated only with other EM loans made for operating loan purposes, including EM loans for annual operating purposes and EM major adjustment loans for operating (Subtitle B) purposes. Whenever a subsequent EM loan for operating purposes is approved, it may be consolidated with all outstanding EM loans for operating purposes into a single new note. OL Loan Note Guarantee loans may be consolidated only with other OL Loan Note Guarantee loans.

(4) An EM loan made for operating loan purposes or an OL loan/line of credit may be rescheduled when it is in the best interest of the borrower and the lender to do so.

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes and OL loans secured by real estate and OL Contract of Guarantee lines of credit will *not* be consolidated. When special circumstances exist and an EM loan is scheduled to be repaid over a period of more than seven years, rescheduling will *not* take place (see § 1980.170(e)(2)(i)(A) of this subpart).

(6) There is no limit on the number of times a consolidation or rescheduling action may take place.

(7) The interest rate for a consolidated or rescheduled EM loan for operating purposes will be the current rate established by the Secretary of Agriculture for similar type loans in effect at the time of the action. This information is available from any FmHA office (See FmHA Instruction 440.1, Exhibit B).

(8) The interest rate for a consolidated OL loan or rescheduled OL loan/line of credit will be the negotiated rate agreed upon by the lender and the borrower subject to the limitations set out in § 1980.175(e) of this Subpart.

(9) The new note or line of credit agreement which exists after a consolidation or rescheduling occurs must be repaid over a period *not to exceed fifteen years for Loan Note Guarantee(s) or seven years for Contract of Guarantee(s)* from the date of the action, unless the new note evidences a loan made solely for recreation and/or nonfarm enterprise purposes, in which case it must be repaid over a period not to exceed seven years from the date of the action.

(10) When a consolidation occurs, a new Form FmHA 449-34 will be executed.

* * * * *

(d) *Deferral.* The term "defer" means to postpone the payment of interest and/or principal on an FO, SW, RL, OL or EM loan or OL line of credit. Principal may be deferred in whole or in part. Interest may be deferred only in part. A partial payment of interest will be required during the deferment period.

(1) Deferred interest will not be capitalized.

(2) Payments may be deferred for no more than three years, but in no case will the deferral period extend beyond the final due date of the note.

(3) The lender must determine that scheduled payments cannot be made for reasons beyond the borrower's control and must also determine that there are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) The new note or line of credit agreement will not increase the amount of principal which the borrower would have been required to pay if the consolidation, rescheduling or reamortization had not been made.

(f) The new note or line of credit agreement will describe the note(s) or line of credit agreement(s) being consolidated, deferred, reamortized or rescheduled and will state that the indebtedness evidenced by such note(s) or line of credit agreement(s) is *not* satisfied. The original note(s) or line of credit agreement(s) will be retained for identification purposes.

* * * * *

40. Section 1980.130 is amended by revising the introductory text and paragraphs Administrative paragraphs B.1, B.2, B.4, B.6, C.1, D.1, D.2, D.3, and D.5 to read as follows:

§ 1980.130 Loan servicing.

The lender is responsible for loan servicing as required by paragraph IX of Form FmHA 449-35 or paragraph IX of Form FmHA 1980-38.

Administrative

* * * * *

B. * * *

1. Make timely investigations during acquisition and development and at least annually thereafter to determine whether any security that was to be acquired or constructed after issuance of the Loan Note Guarantee or Contract of Guarantee has been acquired or constructed, and whether the guaranteed loan/line of credit is being properly serviced. If a problem develops the County Supervisor will promptly contact the lender to resolve it.

2. Review all of the borrower's financial statements furnished by the lender and remind the lender of its servicing responsibilities required in paragraph IX of Form FmHA 449-35, or paragraph IX of Form FmHA 1980-38 when deficiencies are noted.

* * * * *

4. Take the action required in paragraph X of Form FmHA 449-35 or paragraph X of Form FmHA 1980-38.

* * * * *

6. Submit to the Finance Office immediately after December 31 of each year, the lender's statement required in paragraph IX C 10 of Form FmHA 1980-38 or paragraph IX C 10 of Form FmHA 449-35 as modified by requirements set out in § 1980.118(d) of this Subpart, reflecting the unpaid principal balances on the loan/or line of credit.

C. * * *

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

* * * * *

D. * * *

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. * * *

5. The use of proceeds from the disposition of collateral complying with the provisions of paragraph IX of Form FmHA 449-35, or paragraph IX of Form FmHA 1980-38.

41. Section 1980.136 is revised to read as follow:

§ 1980.136 Protective advances.

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449-35 or paragraph XII of Form FmHA 1980-38.

Administrative

The County Supervisor is authorized, under paragraph XII of Form FmHA 449-35 or paragraph XII of Form FmHA 1980-38 to approve protective advances in excess of $500 and will consult with the lender on future servicing of the account. To determine if the loan/line of credit is to be continued with the borrower, the borrower's ability to pay the remaining loan/line of credit balance and any future advances in accordance with the existing repayment schedule will be considered.

42. Section 1980.139 is revised to read as follows:

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449-34, or paragraph 5 of Form FmHA 1980-27.

Administrative

The County Supervisor will advise the Finance Office by memorandum when a Loan Note Guarantee or Contract of Guarantee is terminated.

43. Section 1980.145 is amended by revising paragraphs (a) and Administrative paragraph A. to read as follows:

§ 1980.145 Defaults by borrower.

(a) See paragraph X of Form FmHA 449-35 or paragraph X of Form FmHA 1980-38.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449-35, or paragraph X A of Form FmHA 1980-38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449-35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

* * * * *

44. Section 1980.146 is revised to read as follows:

§ 1980.146 Liquidation.

(a) *General.* The general requirements for liquidating a guaranteed Farmer Program loan/line of credit are set out in § 1980.64 of Subpart A of this part and in paragraph XI of Form FmHA 449-35 or paragraph XI of Form FmHA 1980-38. The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. All liquidations must receive prior concurrence by the appropriate FmHA official. Estimated or final loss claims will be submitted using Form FmHA 449-30, "Loan Note Guarantee Report of Loss," along with the required supporting documentation set out in the instructions for preparing the form.

(b) *Estimated loss payments.* (1) Estimated loss payments will be made after the lender has submitted a liquidation plan that has been approved by the County Supervisor for loss payments up to $55,000, or the State Director for loss payments in excess of $55,000. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449-30. The Director, Finance Office will forward loss payment checks within 30 days of receipt of request.

(2) If the actual loss is less than the estimated loss payment, the lender will reimburse FmHA for the overpayment plus interest at the note or line of credit agreement rate from the point of initial check issuance. Variable interest notes or line of credit agreements will bear interest at the average note or line of credit agreement rate paid during the loan/line of credit term.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs will be allowed. Reasonable is defined as the prevailing rate charged in the area for like services. Liquidation costs are paid from the sale of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or if a liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender are *not allowable* costs under a liquidation plan. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel and overhead.

(2) *Appraisals.* If an appraisal is made and the fee is shared by FmHA and the lender is accordance with Paragraph XI A 4 of Form FmHA 449-35 or Paragraph XI A 4 of Form FmHA 1980-38, this is an allowable liquidation cost. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered.

Administrative

A. *Meetings.* The County Supervisor will meet with the lender when the lender or FmHA determines that liquidation is necessary and will inform the District Director and the State Director of the results.

B. *Form FmHA 449-35, paragraph XI B or paragraph XI B of Form FmHA 1980-38.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide for a reasonably adequate recovery. The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, submit Form FmHA 1980-45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *FmHA 449-35, paragraph XI D or paragraph XI D of Form FmHA 1980-38.* County Supervisors are responsible for seeing that the lender complies with the requirements of Paragraph XI D. The County Supervisor will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office when necessary. When FmHA liquidates the security, the County Supervisor will submit these reports to the lender and will send copies to the District Director and the State Office.

D. *Form FmHA 449-35, paragraph XI E 2 or paragraph XI E 2 of Form FmHA 1980-38.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

E. *Form FmHA 449-35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980-38.* Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced if necessary after considering the Conditions of Guarantee in Form FmHA 449-34 or Form FmHA 1980-27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss payment does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance is conducting any review.

44a. Section 1980-147 is revised to read as follows:

§ 1980.147 Graduation.

There is no graduation requirement for guaranteed loans/lines of credit.

45. Section 1980.153 is amended by revising the introductory text to read as follows:

§ 1980.153 FmHA forms.

See § 1980.83 of Subpart A of this part and Exhibit C (available in any FmHA office) of this subpart.

* * * * *

§ 1980.170 [Temporarily suspended]

46. Section 1980.170 of Subpart B of Part 1980 relating to guaranteed EM loans continues to be suspended. Accordingly, authority to approve guaranteed EM loans continues to be suspended.

47. Section 1980.175 is amended by revising paragraphs (c), (d), and (e), revising the title of paragraph (f), revising and redesignating paragraphs (g) as (h) and (h) and (i) respectively, and adding a new paragraph (g) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(c) *Loan purposes*—(1) *Loan Note Guarantee.* Loans may be made for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, worms, birds, bees, tools, and inventories, or to purchase an individual undivided interest in such items.

(ii) Payment of annual operating expenses.

(iii) Payment of family living expenses.

(iv) Refinancing debt incurred for any authorized operating loan purpose including FmHA insured loans.

(v) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(vi) Purchase and repair of essential home equipment.

(vii) Purchase of milk base or milk quota with or without cows.

(viii) Not more than $7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made by the lender before a guaranteed OL loan is made for real estate improvement:

(A) Loans will not be needed year after year for this purpose.

(B) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(ix) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(x) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(xi) Partial payment for the purchase and construction of crop, storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(2) *Contract of Guarantee—Line of Credit.* Lines of credit may be advanced for farm, forestry, recreation, and nonfarm enterprises for the following purposes when such purposes are essential to the operation:

(i) Purchase foundation livestock replacements.

(ii) Payment of annual operating expenses, which may include the purchase of feeder animals.

(d) *Loan limitations.* (1) The total outstanding guaranteed OL principal balance may not exceed $400,000 at loan closing. The amount of principal and interest outstanding at any one time on a guaranteed line of credit must never exceed the ceiling set out on the Contract of Guarantee.

(2) Loans may not be made for the purchase of real estate, making principal payments on real estate, or refinancing any debts incurred for the purchase of real estate. In addition, loans may not be made to pay land lease costs under any program other than cash rent. Guaranteed lines of credit *will not* be used for capital expenditures except foundation livestock replacements.

(3) *Multiple Guarantees.* More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan/line of credit is secured with separate collateral that is clearly identified. Total Loans or line of credit ceiling must not exceed $400,000 at any time.

(e) *Interest rates.* The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender. Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) *Terms—Loan Note Guarantee.*

* * *

(g) *Terms—Contract of Guarantee (Line of Credit).* (1) All advances on a line of credit must be made within three years from the date of the Contract of Guarantee.

(2) All advances must be repaid within seven years from the date of the Contract of Guarantee.

(h) *Security.* Ordinarily, the security must be adequate in the opinion of the

lender to assure repayment of the loan/line of credit. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the lender and FmHA (provided the FmHA approval official's opinion is based on the evaluation set forth in § 1980.114 of this Subpart) in determining whether loan/line of credit should be made. However, when a loan is made for refinancing purposes, the amount refinanced may not exceed the value of the security. The agreement between the lender and FmHA concerning the applicant's repayment ability will be indicated on Form FmHA 449-14. The loan/line of credit must be secured by a first lien on all property or products acquired, or produced with loan funds and by any additional security needed. Any loans made for refinancing when the debt refinanced is secured by real estate or chattels will be secured by a first lien on the property securing the debt which is being refinanced or when the debt refinanced is secured by real estate by a junior lien which is no lower than the lien presently held on the property securing the debt being refinanced, and by any additional security needed. Additional security may consist of the best lien obtainable on chattels, real estate or other property.

* * * * *

48. Section 1980.180 is amended by revising the introductory text of paragraph (d), and paragraph (f)(2), and by adding paragraph (f)(4) to read as follows:

§ 1980.180 Farm Ownership loans.

* * * * *

(d) *Loan purpose.* Loans that are consistent with all federal, State and local environmental quality standards may be made for authorized loan purposes. The following are authorized purposes:

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and the borrower. Variable rates may change according to the practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan.

* * * * *

(4) At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

* * * * *

49. Section 1980.185 is amended by revising paragraph (f)(2) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customers. If a variable rate is used, it must be tied to a base rate published periodically in a publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposits, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative differential rate schedule formulas used by the lender.

* * * * *

50. Section 1980.190 is amended by revising paragraph (f)(2) to read as follows:

§ 1980.190 Recreation loans.

* * * * *

(f) * * *

(2) The interest rate will be fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exeed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative rate schedule formulas used by the lender.

51. Exhibit A to Subpart B is revised to read as follows:

Approved Lender Program—Farm Ownership and Operating Loans

I. *General.* This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175 and Farm Ownership (FO) Loans described in § 1980.180 of this subpart. The objectives are to minimize time required by approved lenders in obtaining responses to request for a guarantee, eliminate the requirement of having Form FmHA 449-35, "Lender's Agreement," or Form FmHA 1980-38, "Lender's Agreement (Line of Credit)," executed for each loan or line of credit guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1

and 2, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Exhibit. Attachment 1 is the Lender's Agreement to be executed in relation to regular term loans. Attachment 2 is the Lender's Agreement that is to be executed in relation to lines of credit. The lender, in its application, should indicate the type(s) of advance to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods and ALP lender will use to process, service and conclude guaranteed OL and FO loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.* Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 and/or Attachment 2 of this Exhibit. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. In cases involving the Farm Credit System (FCS), the State Director shall give ALP status, within the State Director's area of jurisdiction, to any FCS member institution provided such members do not have loan losses for the 1984 calendar year in excess of 6 percent of the institution's total loan portfolio based on information provided by the Farm Credit Administration (FCA) in 1985, or, if based on information provided by FCA in 1986 and thereafter, either do not exceed 6 percent per year for each of the three previous years or 18 percent of the institution's average loan portfolio computed for three previous years. FCS member institutions having an acceptable loan loss percentage as specified above are exempt from complying with requirements of paragraphs IIA(1) (a) through (d) and (2). The Governor of FCA will notify the FmHA Administrator in writing annually or sooner of any FCS member institution that has loan losses exceeding the acceptable percentage specified above.

To obtain ALP status, an FCS member institution with an acceptable loan loss percentage need only execute the agreement (Attachment 1 and/or Attachment 2 of this Exhibit) and satisfy the State Director that it is using acceptable forms as provided in paragraphs IIA(1)(e). Even if an FCS member institution is identified by FCA as having an unacceptable loan loss percentage, that institution may still request the State Director to consider it for ALP status under paragraphs IIA (1) and (2). Except for those FCS member institutions identified by FCA as having an acceptable loan loss percentage, ALP status will expire at the end of any approved 2-year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. The ALP status of *any* lender may be revoked by the FmHA State Director as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold ALP status. The name of each ALP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of Part 1980 of this chapter. Except for FCS member institutions having an acceptable loan percentage as specified in the introductory text of paragraph II, lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "optional criteria" contained in paragraph II A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District of State Office may provide a lender who desires to apply for ALP status, a complete copy of Part 1980, Subparts A and B of this chapter, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 30 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance in as outlined in the application.

(1) *Required Criteria.* Other than as noted in paragraph A above, before a State Director approves a lender, including an FCS member institution that is identified by FCA as having an unacceptable annual percentage of loan losses, for ALP status, the requirements listed in paragraphs IIA(1) (a) through (f) must be met. However, upon the request of a lender asking for ALP status, the State Director may exempt that lender from complying with the requirement of paragraph IIA(1)(b) provided the lender complies with all the other requirements listed in paragraph IIA(1) if the State Director is satisfied that the lender—without regard to the requirement for which the exemption is being requested—is an acceptable agricultural lender with the ability to adequately make and service agricultural loans.

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A, Part 1980 of this chapter.

(b) Provide information to show that agricultural loan losses—net of recovery—do not exceed the following:

(i) For FCS member institutions, either 6 percent per year of the institution's total loan portfolio for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years; *or*

(ii) For all other lenders, either 1½ percent per year of the lender's total loan portfolio for each of the three previous years or 4½ percent of the lender's average loan portfolio computed for the three previous years.

(c) Have the capacity to process and service FmHA guaranteed FO loans and guaranteed OL loans/lines of credit.

(d) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(e) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, record keeping method, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(f) Agree to abide by all applicable conditions of § 1980.60 of Part 1980, Subpart A for all loan guarantees.

(2) *Optional Criteria:* Exceptions to the following criteria may be made at the discretion of the State Director, but a denial by a State Director is not appealable.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans/lines of credit.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide a resume of designated person who will process and service guaranteed FmHA loans/lines of credit. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least two (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(d) Provide a copy of most recent Statement of Condition and description of current level of agricultural and other lending activities.

(e) Demonstrate a potential capacity for guaranteed OL loan/line of credit and guaranteed FO loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL and/or FO loans and/or OL lines of credit, subject to availability of funds, per fiscal year (October 1–September 30).

(f) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood and Mudslide, Clean Air, etc. (See Sections 1980.40 through 1980.46 of Subpart A of Part 1980 of this chapter.)

(g) Agree to submit requests for guaranteed OL and/or FO loans and/or OL lines of credit to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(h) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval Period(s).* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, a new 2-year period of ALP status is not automatic. Lenders who desire to continue to ALP status are required to submit a request for subsequent approved periods at least 60 days prior to the expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnel, and, if requested by the lender, determine if a new 2-year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, as a minimum, the following:

(1) Brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL loans/lines of credit and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL and/or FO lending activity and recap of any loss settlements.

(2) A current update of data required in paragraph II A of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL loan/line of credit and/or FO loan processing and servicing.

(3) Request for a new 2-year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons.

C. *Revocation of ALP Status.* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, ALP status will lapse upon expiration of any 2-year approved period unless the lender obtains a new agreement under paragraph II B.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet any "optional criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan or line of credit, or to protect adequately the interests of the lender and the Government. Furthermore, status, at the option of the State Director, may also be revoked if an FCS member institution that previously had acceptable loan losses as specified in the introductory text of paragraph II above is identified by FCA as now having unacceptable losses.

State Directors will provide all county offices named in paragraph XVI of the ALP agreements (Attachment 1 and/or Attachment 2 to this Exhibit) with a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders' loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP agreement and Subparts A and B of Part 1980 of this chapter pertaining to guaranteed OL and FO loans. County Supervisors will use their copy of the ALP agreement to duplicate and place in the County office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any descrepancies. A maximum of 30 days will be provided to correct an deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) or line(s) of credit shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL loans and Guaranteed FO loans.*

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Part 1980, Subparts A and B. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b) or 1980.180(c) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL and FO loans in § 1980.175 and 1980.180. All requests for guaranteed loans or lines of credit will be processed under Subparts A and B of Part 1980 except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 449-6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The applicant must complete and sign all parts of the Form FmHA 449-6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL loans/lines of credit or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this subpart except Form FmHA 449-12 "Request for Loan Note Guarantee." Attachment 3 to this Exhibit will be used by ALP lender to request a guarantee from FmHA. An ALP lender will not be required to submit any form or documents, other than Form FmHA 449-6 with information on crops, livestock and financial condition on farms previously approved for use under paragraph II A of this Exhibit, and Attachment 3 of this Exhibit, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Guarantee (Line of Credit)," and determining that all conditions, including the certification required by § 1980.60 of Subpart A of Part 1980 of this chapter, can be met. The ALP lender will be responsible for fully securing the loan or line of credit under § 1980.175(g) or loan under § 1980.180(g) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans/lines of credit guraranteed.

C. *Liquidation of Loans/Lines of Credit.* Any liquidation of guaranteed OL loans or lines of credit or FO loans will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449-30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. The FmHA County Supervisor will review each Form FmHA 449-6 and request for a guarantee, compare material with the County office copy of ALP agreement, approved forms, methods and immediately contact the ALP lender if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, revfew the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449-23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit or FO loan, and the purposes and terms of such loans/lines of credit.

A. FmHA will provide a response to all ALP lenders request for a guarantee within 2 weeks. This 2 week period will be contingent upon:

(1) Requests for guarantee being received by the appropriate FmHA county office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first loan or line of credit developed by an ALP lender. FmHA will examine the lender file on each guaranteed OL at least quarterly and each guaranteed FO at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of Part 1980 of this chapter.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated _____." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated _____." This date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County office file maintained for each Loan Note Guarantee and Contract of Guarantee issued.

Exhibit A of Subpart B, Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement (Loan Note Guarantees Only) For Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO)

(Lender of) _____

is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to any loans involving subsidy payments to the Lender nor does it apply to loan types other than those specifically named in this agreement. The agreement applies to the following offices of the Lender: _____

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the Lender as may be issued pursuant to the regulations for operating and/or farm ownership loans and to participate in a percentage of any loss on any such operating and/or farm ownership loan not to exceed the amount established in the particular loan note guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating and/or farm ownership loan guaranteed.

II. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449-36, "Assignment Guaranteed Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder.

2. *Multi Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantee to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.* a. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The Lender may obtain participation of only the unguaranteed portion in its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in Title 7 CFR Part 1980, Subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions hereof.

III. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and B as set forth in Form FmHA 449-14, "Conditional Commitment for Guarantee," for the particular loan.

IV. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V. The Lender will certify to FmHA, prior to the issuance of a loan note guarantee for each loan, that there has been no adverse changes, in the Borrower's financial condition nor any other adverse change in the borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes

any parent, affiliate, or subsidiary of the Borrower.

VI. Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VII. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this agreement.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid;

(b) the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart B, Section 1980.106(b)(4)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least semiannually and each real estate loan secured Borrower at least annually.

Lender is responsibile for analyzing the financial statements, taking any servicing actions and providing copies of statements and records of actions to the FmHA office upon request.

VIII. *Default.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments of the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder's(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

The FmHA will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determinations of the appropriate amount

due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 days payment requirement. Upon receipt of the appropriate information, the FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

IX. *Liquidation.* If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation.* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination. Estimated loss payments may be approved by FmHA after the lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. *Payment.* Final loss payments will be made within 60 days after the review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIII. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, Subpart B.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XIV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XV. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI. *Notices.*

All requests for Loan Note Guarantee and any notices or actions will be initiated through the following FmHA County Offices

_____

_____

XVII. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of requests for Contract of Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XVIII unless earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at the time of expiration or revocation until those Contracts of Guarantee still extant are concluded.

XVIII. This Agreement is dated ———.

Lender: (Name) _____

UNITED STATES OF AMERICA,

Farmers Home Administration.

(IRS I.D. Tax No.) _____

By _____

Title _____

By _____

Title _____

Attest: (Seal) _____

Exhibit A, Attachment 2.—Farmers Home Administration, Approved Lender Program (ALP)

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

———— (Lender) of ———— is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to any lines of credit involving subsidy payments to the Lender nor does it apply to line of credit types other than those specifically named in this agreement. The agreement applies to the following offices of the Lender:

_____

The United States of America, acting through Farmers Home Administration (FmHA), agrees to enter into Contract of Guarantees with the Lender for Operating Loan lines of credit and to participate in a percentage of any loss on any such Operating Loan line of credit advance(s) not to exceed the amount established in the particular contract of guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advance(s) the Lender enters into this agreement.

The Parties Agree

I. The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular line of credit guarantee as to percentage of the principal and accrued interest on any Operating Loan line of credit advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. *Lender's Sale of Guaranteed Line of Credit by Participation.*

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line(s) of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of

the line of credit. Participation with a lender by an entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line(s) of credit through participation at or subsequent to execution of the line of credit agreement(s), such line(s) of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line(s) of credit. Participation with a lender by an entity does not make the entity a holder.

III. The Lender agrees funds advanced under the line(s) of credit will be used for the purposes authorized in Subpart B of Title 7 CFR Part 1980 as set forth in Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," for the particular line of credit.

IV. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have a substantial financial interest in any guaranteed line of credit Borrower. The Lender certifies that neither any guaranteed line of credit Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V. The Lender will certify to FmHA, prior to issuance of a contract of guarantee, for each line of credit agreement, that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

VI. The Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Contract of Guarantee is issued.

VII. *Servicing.*

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of a line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of lines of credit or loans that are not guaranteed.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and Note, if one exists), security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing of any violations.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or renewed only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid;

(b) the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature which will serve as collateral without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A, § 1980.106(b)(4)) is not released from liability for all or any part of the line of credit except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each Borrower at least semiannually.

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

VIII. *Defaults by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Action taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in Subpart B of Part 1980 or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

IX. *Liquidation.*

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the line of credit unless FmHA, at its option, decides to carry out liquidation.

A. *Lender's proposed plan of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed plan of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreements and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credit.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the line of credit. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender of FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (see G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accuring interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accuring interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 440-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 60 days after review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

IX. *Additional Loans or Advances.* The Lender will not make additional expenditures or new lines of credit or loans to any borrower which has financial assistance guaranteed by FmHA without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XII. *Future Recovery.* After a line of credit has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the line of credit and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the line of credit.

XIII. *Transfer and Assumption Cases.* Refer to Subpart B of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the

transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at this time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XIV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XV. *Execution of Agreements.* This agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR Part 1980, Subparts A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract of Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI. *Notice.*

All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA county offices:

_____

_____

XVII. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of requests for Contract of Guarantee(s) under Exhibits A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XVIII unless earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at the time of expiration or revocation until those Contracts of Guarantee still extant are concluded.

XVIII. This Agreement is date _____

Lender: _____

(Name)

_____

(IRS I.D. Tax No.)

By _____

Title _____

ATTEST: _____

(SEAL)

UNITED STATES OF AMERICA

Farmers Home Administration

By _____

Title _____

To: County Supervisor, FMHA

_____

_____

Subject: Request for Loan Note Guarantee under Approved Lender Agreement Applicable to Loan Note Guarantee Cases (Attachment 1). Principal Amount of Loan $_____.

AND/OR.

Request for Line of Credit Guarantee under Approved Lender Agreement Applicable to Contract of Guarantee Cases (Attachment 2).

Line of Credit Ceiling $ _____

Principal Amount of Initial Advance $ _____

Lender Agreement Dated _____

Lender IRS I.D. No. _____

Request is made for issuance of a guarantee(s) in the following case.

Applicant's Name _____

Address _____

Social Security or IRS Tax No _____

County _____

State _____

Percent Guarantee Requested ____%

Interest rate to borrower ____%

If variable, state method determined and frequency of adjustment _____

Specific amounts and purposes of loan/line of credit are as follow: _____

_____

Proposed repayment terms: _____

Proposed closing date if request is approved:

_____

Special or unique conditions or problems: —

Applicant's Financial Condition: _____

Net Worth $____

	Assets value	Debt	Amount due in 12 months
Current [1]	$		
Intermediate [2]			
Long Term [3]			
Totals			

Ratio Calculation from Financial Information and Operating Plans:

Toal Assests of $____ divided by Total Liabilities ____=

Net Capital Ratio _____

Annual Case Operating Expenses $____ divided by Gross Income $____=

Operating Ratio _____

Net Income $____ divided by Total by Assets $____=

Profit to Assets _____

Debt Repayment $ ____ divided by Gross Income $____=

Dept Repayment _____

Security proposed:

Item	Value	Prior liens (in any)	Equity value
Total			

Briefly list any special conditions and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan/line of credit agreement. See 7 CFR Part 1980, Subpart B, §1980.113(d)(7)

_____

_____

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Include totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

_____

_____

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required its described in § 1980.113(d) of Part 1980, Subpart B are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a loan note guarantee or contract of guarantee.

2. Before a Loan Note Guarantee of Contract of Guarantee is issued by FmHA, the lender will certify to conditions in § 1980.60 of 7 CFR Part 1980, Subpart A.

3. The lender will provide a Guaranteed Loan Closing Report on Form FmHA 1980-19 and a check for the amount of the guarantee fee at the time the Loan Note Guarantee or Contract of Guarantee is issued.

4. This proposed loan/line of credit is considered sound, will be fully secured and is within the borrower's repayment ability.

5. All applicable requirements have been or will be met.

6. The loan or advances under the line of credit cannot be made without an FmHA guarantee.

_____

(Name of Lender)

By _____

Title _____

_____

(Lender's IRS I.D. Tax No.)

Date _____

[1] Current: Cash, savings, marketable bonds, receivables, 60 day sales of goods available within 60 days.

[2] Intermediate: Machinery, livestock, retirement accounts, cash value life insurance, securities, household goods, receivables 60 days to 1 year.

[3] Long term: Real estate, contracts and notes receivable amount beyond current year.

Subpart C—Emergency Livestock Loans

§ 1980.207 [Amended]

52. Section 1980.207(d) is amended by changing the name of Form FmHA 1980-27 "Contract of Guarantee (Emergency Livestock Loan or Economic Emergency Loan)" to "Contract of Guarantee (Line of Credit)."

§ 1980.209 [Amended]

Appendix A—[Amended]

52a. Subpart C is further amended by changing the name of Form FmHA 1980-38 "Lender's Agreement (Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee)" to "Lender's Agreement (Line of Credit)" in § 1980.209, and in Appendix A, paragraph (a) in the listing of FmHA forms.

§ 1980.217 [Amended]

52b. Subpart C is further amended by changing the name of Form FmHA 1980-15, "Conditional Commitment for Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee," to "Conditional

Commitment for Contract of Guarantee (Line of Credit)" in the last sentence of § 1980.217, and in Appendix A, paragraph (a) in the listing of forms.

§ 1980.246 [Amended]

52c. Subpart C is further amended by changing the name of Form FmHA 1980–25, "Request for Guarantee Emergency Livestock Loan or Economic Emergency Loan," to "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)" in § 1980.246(a)(5) and in Appendix A, paragraph (a) in the list of FmHA forms.

53. Section 1980.207 is amended by revising the second sentence in the introductory paragraph to change the reference from "§§ 1980.6(a) (1), (3), (6), (8), (12) and (13)," to "§§ 1980.6(a) (1), (3), (7), (11), (15) and (17).

54. Section 1980.209 is revised to read as follows:

§ 1980.209 Eligible lenders.

See § 1980.13 of Subpart A of this part.

55. Section 1980.246 is amended by revising paragraphs (a)(5) and (c)(4) to read as follows:

§ 1980.246 Receiving and processing applications.

* * * * *

(a) * * *

(5) Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

* * * * *

(c) * * *

(4) Proposed loan agreements (or line of credit agreement when a Contract of Guarantee is requested) between the borrower and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement," in Loan Note Guarantee cases of Form FmHA 1980–38, in Contract of Guarantee cases.) Ordinarily, agreements will include information such as the following:

* * * * *

56. Section 1980.251(a) is revised to read as follows:

§ 1980.251 Issuance of guarantee instruments.

* * * * *

(a) *Loan Note Guarantee cases.* See § 1980.61 of Subpart A of this Part, except that § 1980.61(b)(2) and § 1980.61(g) as well as the "guarantee fee" in § 1980.61(a) shall not apply.

* * * * *

57. Section 1980.279 is amended by revising the introductory text, and paragraphs Administrative paragraphs B. 2 and D. 5 to read as follows:

§ 1980.279 Loan servicing.

The *lender* is responsible for loan servicing. See paragraph IX of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph IX of Form FmHA 1980–38 for Contract of Guarantee cases for specific requirements.

Administrative

* * * * *

B. * * *

2. Review all EL borrowers' financial statements furnished by the lender and will take appropriate servicing action to remind the lender of its servicing responsibilities. See paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

3. * * *

4. Take appropriate action upon receipt of notice from the lender when any guaranteed loan is delinquent more than 30 days or when the loan otherwise appears to be developing into a problem case. See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

D. * * *

5. Use of proceeds from disposition of collateral meeting the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

* * * * *

58. Section 1980.280 is amended by revising the introductory text to read as follows:

§ 1980.280 Protective Advances.

See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, as appropriate.

* * * * *

59. Section 1980.282 is amended by revising paragraph (a) to read as follows:

§ 1980.282 Defaults by borrowers.

(a) See paragraph X of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph X of Form FmHA 1980–38 for Contract of Guarantee cases.

* * * * *

60. Section 1980.283 is amended by revising the introductory text and paragraphs Administrative paragraphs B, C, D and E to read as follows:

§ 1980.283 Liquidation.

See paragraph XI of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph XI of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * * * *

B. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI B.* FmHA will exercise the option to liquidate only when there is reason to believes the lender's liquidation plan will likely not result in maximum recovery. District Directors are authorized to approve lender liquidation plans or exercise the FmHA option to liquidate. When such a decision is made, submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *Form FmHA 1449–35 or Form FmHA 1980–38, paragraph XI D.* County Supervisors are responsible for seeing that the lender complies with the requirement of paragraph XI D. The concurrence of the District Director will be necessary before the County Supervisor may accept the accounting reports as submitted by the lender and before submission of such reports to lenders when FmHA is conducting liquidation.

D. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI E 2.* County Supervisors are authorized to accept Report of Loss determinations for both Loan Note Guarantee and Contract of Guarantee cases on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," in those cases where loss will not exceed $35,000; District Directors for loss not to exceed $100,000; and State Directors for all others. The State Director will submit to the Finance Office for payment any losses claimed of Form FmHA 449–30. The Finance Office will forward loss payment checks within 10 days of receipt of the claim to the County Supervisor for delivery to the lender.

E. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI E 3.* Final loss payments will be made within 60 days required but only after a review has been made to accurately determine FmHA liability. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. County Supervisors may conduct such reviews when the *loss* does not exceed $35,000; District Directors when the *loss* does not exceed $100,000; and State Directors for amounts not to exceed their loan approval authority. If the State Director wishes National Office assistance in the conduct of the review, the State Director may request it.

Subpart D—Rural Housing Program Loans

61. Section 1980.333 is amended by revising Administrative paragraph B to read as follows:

§ 1980.333 Review of requirements.

* * * * *

Administrative

A. * * *

B. The County Supervisor will notify the Finance Office, in accordance with § 1980.61(f) of Subpart A of this part, if a commitment is canceled.

63. Section 1980.335 is revised to read as follows:

§ 1980.335 Issuance of Lender's Agreement, Loan Note Guarantee and Assignment Guarantee Agreement.

Administrative (with reference to § 1980.61 of Subpart A of this Part):

A. *See § 1980.61(a).* The original Form FmHA 449–35, will be kept in the County Office. Paragraph IX C 10 of Form FmHA 449–35 will be crossed out for housing loans.

Paragraphs IX C 5 and 11 will be completed by adding -0- in the blank for housing loans.

B. *See § 1980.61(b)(1).* Copy(s) of all issued Loan Note Guarantee(s) will be kept in the County Office.

C. *See § 1980.61(b)(3).* For reporting purposes when multi-notes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

D. *See § 1980.61(b)(4).* The State Director will notify the Finance Office of the transaction.

E. *See § 1980.61(e).* County Supervisor signs all Forms FmHA 449-13.

F. *See § 1980.61(g). The County Supervisor will:*

1. Review Form FmHA 1980-19, "Guaranteed Loan Closing Report," for completeness.

2. Forward the guarantee fee and original Form FmHA 1980-19 to Finance Office.

3. Retain in County Office loan file the original of Form FmHA 449-35 and copies of Form FmHA 1980-19, Form FmHA 449-34 and Form FmHA 449-36, "Assignment Guarantee Agreement."

63. Section 1980.337 is amended by revising the introductory text to read as follows:

§ 1980.337 Loan servicing.

The Lender is responsible for loan servicing. See paragraph IX of Form FmHA 449-35. Loan servicing is a preventive rather than a curative action. Prompt follow up by the lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan case.

* * * * *

64. Section 1980.338 is amended by revising the introductory text to read as follows:

§ 1980.338 Defaults by borrower.

Refer to paragraph X of Form FmHA 449-35. In case of default, the lender will arrange a meeting with the borrower to resolve the problem. A memorandum of the meeting, individuals who attended, a summary of the problem, and proposed solutions will be forwarded to the County Supervisor to be retained in the loan file.

* * * * *

65. Section 1980.339 is revised to read as follows:

§ 1980.339 Liquidation.

Refer to paragraph XI of Form FmHA 449-35. If either the lender or FmHA concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with paragraph XI of Form FmHA 449-35.

Administrative

A. *Paragraph XI B of Form FmHA 449-35.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan will likely not result in maximum recovery. State Directors are authorized to approve lender liquidation plans or exercise the FmHA option to liquidate.

B. *Paragraph XI D of Form FmHA 449-35.* County Supervisors are responsible for review and acceptance of accounting reports submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation.

C. *Paragraph XI E 2 of Form FmHA 449-35.* County Supervisors are authorized to accept Report of Loss determinations on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," from lenders and forward them to the State Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of verified losses. The Finance Office forwards payment checks to lender.

D. *Paragraph XI E 3 of Form FmHA 449-35.* Final loss payments will be made within the 60 days required but only after an audit to assure all collateral for the loan has been properly accounted for. State Directors are responsible to see that such audits are accomplished in time to be reviewed and accepted or otherwise resolved within the 60 day period. County Supervisors may conduct such audits.

Subpart E—Business and Industrial Loan Program

66. Section 1980.419 is amended by revising Administrative paragraph B. to read as follows:

§ 1980.419 Eligible lenders.

* * * * *

Administrative

A. * * *

B. *Paragraph (b)(4) of Subpart A 1980.13,* State Director submits information to National Office with recommendations.

* * * * *

67. Section 1980.451 is amended by revising the introductory text of paragraph (i)(13) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(i) * * *

(13) *Proposed loan agreement.* (See paragraph VII of Form FmHA 449-35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449-14 including the requirements for periodic financial statements and recordkeeping. There must be provisions for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. However, FmHA will not accept a limitation to the scope of the audit. Compilation or reviews do not satisfy the audit requirement. The loan agreement must also include but is not limited to the following:

* * * * *

68. Section 1980.461 is amended by revising Administrative paragraphs L. and M., and the introductory text of administrative paragraph N to read as follows:

§ 1980.461 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

[See Subpart A, § 1980.61]

Administrative

* * * * *

L. *Paragraph (d) of Subpart A, § 1980.61.* A copy of Form FmHA 449-36 will be kept and a copy of executed Lender's Agreement retained in loan file along with copies of the Loan Note Guarantee with attached original canceled Contract of Guarantee, copy of Guarantee Fee Report and the original Lender's Agreement.

M. *Paragraph (e) of Subpart A, § 1980.61.* State Director signs all Forms FmHA 449-13, "Denial Letter."

N. Paragraph (g) of Subpart A, § 1980.61. The County Supervisor will:

* * * * *

69. Section 1980.469 is amended by revising the introductory text to read as follows:

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA of any violations in the Lender's Loan Agreement. (See Paragraph X of Form FmHA 449-35).

* * * * *

70. Section 1980.470 is amended by revising Administrative paragraph B to read as follows:

§ 1980.470 Defaults by borrower.

* * * * *

Administrative

A. * * *

B. In considering servicing options, some of which are identified in paragraph X A of Form FmHA 449-35, the prospects for

providing a permanent cure without adversely affecting the risks of the FmHA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA. Some of these actions may require concurrence of the holder(s).

* * * * *

73. Section 1980.471 is amended by revising the title of Administrative paragraphs B, D, E and F to read as follows:

§ 1980.471 Liquidation.

* * * * *

Administrative

* * * * *

B. *Paragraph XI B of the Lender's Agreement.* * * *

* * * * *

D. *Paragraph XI D* * * *

E. *Paragraph XI E 2* * * *

F. *Paragraph XI E 3* * * *

BILLING CODE 3410-07-M

72. Appendix F—Form FmHA 449–14. "Conditional Commitment for Guarantee," to Subpart E is revised as follows:

USDA-FmHA
Form FmHA 449-14
(Rev. 9-85)

This form may contain certain specific conditions which may require the providing of future reports and information which would have to be agreed to by the lender and proposed borrower in order to obtain the benefit of potentially assuming an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

APPENDIX F
FORM APPROVED
OMB No. 0575-0024
Expiration date avail. on request.

CONDITIONAL COMMITMENT FOR GUARANTEE	Case No.
	State
TO: Lender	County
Lender's Address	Type of Loan
Borrower	Principal Amount of Loan $

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form(s) FmHA 449-34, "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is _____ % and, if applicable, the loan subsidy rate is _____ % 1/. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____ 2/ and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on these forms will be considered. Additional Conditions and Requirements including Source and Use of Funds: 3/

This conditional commitment will expire on _____ 4/ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

By: _____

Date: _____ FmHA _____ (Title)

Position 2 FmHA 449-14 (Rev. 9-85)

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration (FmHA) 5/

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

_____ (Name of Lender)

_____ (Date) By: _____ (Signature for Lender)

_____ (Date) 6/ _____ (Signature for Borrower)

1/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

2/ Insert the period prescribed in the applicable FmHA regulation. For B&I loans "quarterly" will be inserted in this space.

3/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

4/ FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

5/ Return completed and signed copy of this form to FmHA issuing office.

6/ Required in B&I and RH-MF cases, not in other cases.

BILLING CODE 3410-07-C

Subpart F—Economic Emergency Loans

73. Section 1980.501(a) is revised to read as follows:

§ 1980.501 Introduction.

(a) *Policy.* This subpart contains regulations for making and servicing Economic Emergency (EE) loans made after August 11, 1978, and applies to lenders, holders, borrowers, Farmers Home Administration (FmHA) personnel, and other parties involved in making, guaranteeing, holding servicing, or liquidating such loans. Subpart A of this part applies to EE loans except §§ 1980.21, 1980.61 (b)(2) and (g). It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract.

* * * * *

74. Section 1980.511 is amended by revising paragraph (c)(2) and the introductory text of paragraph (c)(5) to read as follows:

§ 1980.511 Receiving and processing applicants.

* * * * *

(c) * * *

(2) Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

* * * * *

(5) Proposed loan agreements (or line of credit agreement when a Contract of Guarantee is requested) between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement," in Loan Note Guarantee cases or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)" in Contract of Guarantee cases). Ordinarily, agreements will include the following information:

* * * * *

75. Section 1980.524 is revised to read as follows:

§ 1980.524 Additional loans or advances.

See paragraph XIII of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph XIII of Form FmHA 449–38 for Contract of Guarantee cases.

76. Section 1980.549 is amended by revising paragraph (a) to read as follows. The introductory text is shown for user convenience.

§ 1980.549 Issuance of guarantee instruments.

Events from issuance of a conditional commitment through issuance of the guarantee instruments may all occur at loan closing in the sequence indicated in § 1980.61 of Subpart A of this part.

(a) *Loan Note Guarantee cases.* See § 1980.61 of Subpart A, except that paragraphs § 1980.61(b)(2) and § 1980.61(g) as well as the "guarantee fee" in paragraph § 1980.61(a) shall not apply. Paragraph IX C 10 of Form FmHA 449–35 will be changed by striking the word "seminannually", inserting "annually" in its place, and eliminating the words "June 30 and". FmHA and the lender should initial the change.

* * * * *

77. Section 1980.578 is amended by revising the introductory test and Administrative paragraphs Administrative B.2, B.4, B.6 and D.5 to read as follows:

§ 1980.578 Loan servicing.

The *lender* is responsible for loan servicing. See paragraph IX of Form FmHA 449–35 for Loan Note Guarantee Cases or paragraph IX of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * *

B. * * *

2. Review all EE borrowers' financial statements furnished by the lender and take appropriate servicing action reminding the lender of its servicing responsibilities. See paragraph IX of Form FmHA 449–35 or Paragraph IX of Form FmHA 1980–38.

* * * * *

4. Take appropriate action upon receipt of notice from the lender when any guaranteed loan is delinquent more than 30 days or when the loan otherwise appears to be developing into a problem case. See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

6. Submit to the Finance Office "the lender's statement" required in paragraph IX C 10 of Form FmHA 449–35 or paragraph IX C 10 of Form FmHA 1980–38 reflecting the unpaid principal balances on the loan.

D. * * *

5. Use of proceeds from disposition of collateral meeting the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

* * * * *

78. In § 1980.579, the introductory text is revised to read as follows:

§ 1980.579 Protective advances.

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, as appropriate.

* * * * *

79. In § 1980.581, paragraph (a) and Administrative paragraph A. are revised to read as follows:

§ 1980.581 Defaults by borrower.

(a) See paragraph X of Form 449–35 for Loan Note Guarantee cases or paragraph X of Form FmHA 1980–38 for Contract of Guarantee cases.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449–35 or paragraph X A of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449–35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction by the State Director.

* * * * *

80. Section 1980.582 introductory text and Administrative paragraphs B, C, D and E are revised to read as follows:

§ 1980.582 Liquidation.

See paragraph XI of Form FmHA 449–35 for Loan Note Guarantee cases or paragraph XI of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * * * *

B. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI B.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide for a reasonably adequate recovery. The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, the County Supervisor will submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *Form FmHA 449–35, or Form FmHA 1980–38, paragraph XI D.* County Supervisors are responsible for seeing that the lender complies with the requirements of paragraph XI D. The County Supervisors will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office when necessary. When FmHA liquidates the security, the County Supervisors will submit these reports to the lender and will send copies to the District Director and the State Office.

D. *Form FmHA 449–35, or Form FmHA 1980–38, paragraph XI E 2.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," in those

cases where the loss will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

E. *Form FmHA 1980-38, or Form FmHA 1980-38, paragraph XI E 3.* Final loss payments will be made within the 60 days required, but only after a review has been made to accurately determine FmHA liability. These payments will be reduced if necessary after considering the "Conditions of Guarantee" in Form FmHA 449-34 or Form FmHA 1980-27, as appropriate. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any reviews.

81. In § 1980.593, paragraph (b) is revised to read as follows:

§ 1980.593 FmHA forms.

* * * * *

(b) Forms FmHA 1980-27, "Contract of Guarantee (Line of Credit)"; FmHA 1980-38, "Lender's Agreement (Line of Credit)"; FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)"; FmHA 1980-32, "Lender's Certification (Guaranteed Economic Emergency Loan)"; and FmHA 1980-25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)"; are incorporated in Subparts A and F of this part, and are made a part of these regulations. Forms FmHA 1980-27, 1980-32, 1980-15, and 1980-25 appear as Appendices D, E, F, and G to Subpart A in the **Federal Register**. Form FmHA 1980-38 appears as Appendix B to this subpart.

Appendix A—[Amended]

81a. In Appendix A to Subpart F, paragraph (a), the listing of FmHA forms is amended by removing the entries for FmHA form numbers 1980-25, 1980-38, 1980-15 and 1980-27 and inserting in their places the following entries:

FmHA form No.	Name of form	Total No.	Signed by—	Distribution
1980-25	Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan).	2	L-O	O-FmHA, C-L
1980-38	Lender's Agreement (Line of Credit)	2	L & FmHA (O&C)	O-FmHA, C-L
1980-15	Conditional Commitment for Contract of Guarantee (Line of Credit).	2	FmHA-O	O-L, C-FmHA
1980-27	Contract of Guarantee (Line of Credit)	2	FmHA-O	O-L, C-FmHA

Appendixes B, C, D, F and G [Removed]

82. Subpart F is further amended by removing Appendixes Appendix E—[Redesignated as Appendix B] B, C, D, F and G and redesignating Appendix E as Appendix B.

Dated: September 20, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-23239 Filed 9-25-85; 4:04 pm]

BILLING CODE 3410-07-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1780

Guaranteed Loan Programs; Advance Notice

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) is considering whether to propose establishing procedures for marketing guaranteed farmer program loans on the secondary market. Farmers Home Administration invites proposals from the public on facilitating a secondary market for guaranteed farmer program loans through pooling of such loans by private entities.

DATE: This advance notice of proposed rule-making is subject to a comment period ending January 28, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5448–S, Washington, D.C. 20250, telephone 475–4017.

SUPPLEMENTARY INFORMATION: The current guaranteed program permits use of the assignment of guarantee or multinote option features in marketing guaranteed loans to the secondary market.

The secondary market is presently receiving limited use with guaranteed farmer program loans partly because the individual loan amounts are not large enough to attract the secondary market investors.

Pooling of notes by private entities, as used in this proposal, involves the consolidation of notes for sale into the secondary market in a manner which would be acceptable to the lenders and to the secondary market. The notes would be consolidated into a pool of undivided interests which would be sold via Certificates of Beneficial Ownership or some similar instrument to convey beneficial ownership to the secondary market under the authority of section 310B(d)(6) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(d)(6)).

Written proposals will be received for a period of 120 days from the date of this publication.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans and No. 10.416 Soil and Water Loans. For the reasons set forth in the Final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: September 20, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85–23241 Filed 9–25–85; 4:04 pm]

BILLING CODE 3410–07–M

federal register

Monday
September 30, 1985

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 20
Financial Assistance and Social Services Program; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

Financial Assistance and Social Services Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: the Bureau is publishing final Financial Assistance and Social Services Program regulations in response to a congressional directive in "The Department of the Interior and Related Agencies Appropriations Act," Fiscal Year 1985, Pub. L. 98-473. The Act provides that:

. . . after September 30, 1985, no part of any appropriation (except trust funds) to the (BIA) may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in regulations of the Secretary or in regulations of the State public welfare agency pursuant to the Social Security Act adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 8(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 . . .

In order to insure that the limitations in the statutory language are applied to the Bureau's general assistance program it was necessary to amend 25 CFR Part 20 to:

—More precisely define key terms within the regulations, i.e., "need", "essential needs", "resources", and "general assistance";
—Further delineate what constitutes a general assistance program and in what circumstance the Bureau provides general assistance payments to Indian citizens;
—Further identify and support a uniform standard for the determination of assistance payments; and
—Make additional revisions which may support any of the above and which further strengthen the management and effectiveness of the general assistance program.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Eddie F. Brown, Division of Social Services—Code 450, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245, Telephone number (202) 343-6434.

SUPPLEMENTARY INFORMATION: This final rule was preceded by a notice of proposed rulemaking published on July 26, 1985, in the **Federal Register** (50 FR 30688). The public was invited to provide comments on the proposed rule for a thirty-day period. Thirty-three (33), public commenters responded on or before August 26, 1985, the closing date of the public comment period. Each comment was carefully reviewed by the Division of Social Services which adopted, rejected or developed a modified version of each recommendation for incorporation into the final rule. A number of comments pertained to issues which cannot properly be addressed in regulations. Such comments generally fell within one of the following categories:

1. *Requests for more specific detail and actual case examples to illustrate how the amended regulations will be applied at the service delivery level.* (The publication of this final rule makes necessary the immediate revision of 66 BIAM, the Bureau's social services procedures manual. It is that document which will provide the clarification and interpretation sought by many of those who commented. Plans for revising 66 BIAM are presently being formulated by the Bureau's Division of Social Services.)

2. *Requests that consideration be given to amending certain sections of 25 CFR Part 20 that were left unaddressed in the notice of proposed rulemaking.* (Several of the comments in this category were based on sound judgment and merit further analysis by the Division of Social Services. The Federal rulemaking process prohibits incorporation of these suggested changes into the final rule without first extending an opportunity for public comment. In view of out interest in these recommendations, the Bureau may consider them for inclusion in a subsequent proposed amendment of 25 CFR Part 20.)

3. *Requests for additional direction and more specific information regarding implementation in a given State of § 20.21(b) of these amended regulations.* (Due to wide variation prevailing among the States with regard to their general assistance program policies, the Bureau deems it advisable to develop individual responses to be sent directly to these commenters. The letters of response will be sent by certified mail, return receipt requested on a date approximately concurrent with the date of this publication.)

Other comments on the proposed rule were received to which we shall not respond directly: One Indian tribe, for example, submitted a letter in support of all the proposed changes; another requested the Bureau to immediately give notice that the proposed rule was being withdrawn in its entirety. Also, a large volume of positive comment was generated by section G of the Supplementary Information, which discussed quality assurance and recordkeeping. Of particular interest to the commenters was the announcement therein that the BIA is developing a quality assurance system to provide on-going evaluations of the general assistance program in accordance with established policies and procedures.

Changes Adopted Due To Comments Received

Comment. A number of commenters sought clarification and/or specification of limitations in § 20.20(c) which authorizes emergency or short-term assistance to Indians not otherwise eligible for assistance or services under this rule.

Response. The Bureau agrees that, as proposed, § 20.20(c) was overly general. We have therefore amended that subsection to more specifically define "emergency, short-term assistance" and "hardship", and to clarify the process by which such assistance may be authorized.

Comment. Several comments were received in response to the proposed definition of "household" (§ 20.1(dd)). The majority of those who commented objected to use of the word "accepted" in the definition, maintaining that it was vague, if not meaningless. One commenter cited an example to demonstrate that sharing of a dwelling by two or more people does not automatically confer acceptance of the arrangement by any party involved—even if the relationship criterion, also specified in the definition of "household", is met. Other commenters had essentially the same objections to including the phrase, ". . . who function as members of the family", which was viewed as being open to subjective interpretation.

Response. The Bureau agrees with comments regarding our use of the word "accepted" in the proposed definition of "household", and has excluded it from the final rule. After considerable deliberation, we have chosen to retain the phrase, ". . . who function as members of the family".

Comment. Two commenters requested clarification of § 20.21(b)(2). The commenters asked if, under the

proposed regulations, the Bureau would consider a State-funded general assistance program to be available even if payments levels regularly fluctuated.

Response. Language has been added to § 20.21(b)(2) to clarify that a state may be considered to have a general assistance program even though payments fluctuate

Comment. Numerous commenters were concerned with language at § 20.21 (c)(1)(i) and (c)(3) which requires general assistance applicants to file prior or concurrent applications for other types of assistance for which they are presumed to be eligible. Those who submitted comments generally requested that the Bureau give consideration to the hardships these requirements would impose due to the isolation factor on many reservations and the itinerant schedules of public welfare eligibility workers serving rural areas.

Response. The Bureau agrees that the proposed rule was unduly rigid in this regard and is therefore incorporated changes to permit good cause exceptions for initiating general assistance prior to the actual application for assistance from other sources, provided that the individual can demonstrate that he/she has initiated or attempted to initiate the application process for other assistance.

Comment. Comments were received concerning the supplemental information relative to the provisions of general assistance for members of tribes whose reservations extend into more than one state. Two commenters favored the adoption of the Bureau proposal to provide general assistance for all members of a tribe residing on a multi-state reservation. One commenter pointed out that Bureau general assistance could not be provided under Pub. L. 98–473 where an individual is eligible for state general assistance.

Response. Although there was no specific provision in the proposed regulation as published, the Bureau agrees that the Bureau general assistance should be provided to members of a tribe on a multi-state reservation on the basis of the multi-state reservation area. Thus in keeping with this conclusion and the policy of dealing government-to-government with Indian tribes, the Bureau is providing for members of tribes of multi-state reservations residing in states on such reservations where the Bureau does not otherwise provide general assistance, to receive Bureau general assistance to the extent that such members are eligible for Bureau general assistance and are not eligible for state general assistance in the state where they reside. This provision has been included in the final at § 20.21(b)(4).

Comment. Several commenters objected to the provision at § 20.21(d) allowing general assistance recipients 15 days to inform the Bureau of any changes in status which might affect either eligibity or the amount of assistance. All of the commenters favored retention of the existing Bureau policy requiring immediate notification of any changes in status. In each instance, the more stringent reporting requirement was preferred in order to avoid overpayment. As one commenter pointed out, current Bureau policy specifies that a 20-day written notice must precede any change in a general assistance recipient's grant. To add a 15-day "grace period" to the 20-day advance notice requirement would tend to increase the number and dollar amount of overpayments, and would decrease the probability of overpayment recovery.

Response. The Bureau concurs with the rationale for immediate reporting of changes in status and has adopted the requested modification.

Comment. Many commenters expressed concern that the proposed regulation does not permit applicants or recipients to retain any cash to handle emergencies. Several commenters suggested that the Bureau adopt the AFDC resource limit specified by the State where the individual lives. Some commenters proposed that the Bureau adopt SSI's resource limit, and another proposed that BIA specify its own resource limit.

Response. The Bureau reviewed the resource limits in those States in which it provides General Assistance. We found the State limits for all those States to be $1,000. Accordingly, we have revised the regulations to permit applicants and recipients to retain a resource limit of $1,000. Any liquid resource in excess of this amount will be counted as income in determining eligibility for, and the amount of the BIA payment. However, this provision is not to be construed as applying to earned or unearned income during the month in which such income is received. All monies not specifically exempted by law are to be counted as income during the month in which they are received, but as a resource thereafter up to $1,000 maximum

Comment. In response to the Bureau's proposed rule in intermittent income (§ 20.21(f)(3)(iii)), several commenters argued against immediate application of proration to lease income. The recommendation was made that a transition period of up to three years be granted to allow for implementation of proration rule. Rationale for such a transition period was based on the observation that lease money often does not reach an individual in a consumable form. For example, lease income may be obligated for direct payment on loan or credit indebtedness and is therefore not actually cash on hand. To avoid placing undue hardship on certain recipients of lease income, commenters proposed a transition period as an alternative to allow caseworkers time to assist recipients in long-term financial planning.

Response. The Bureau has incorporated this recommended change into the regulations because we agree that immediate implementation of the proration requirement would have an unduly harsh impact on certain general assistance recipients due to pre-existing obligations which may limit the actual availability of lease income.

Comment. Comment was received regarding the criteria for incapacitation now specified at § 20.21(i)(1)(iv). Objection to this clause centered on the fact no recognition is given to caseworkers' abilities to assess special case contingencies and make independent determinations in certain instances where incapacitation is obvious.

Response. The Bureau agrees that social services field staff should have the authority to make documented casework decisions, including eligibility determinations and assessments of employability, based on their professional evaluation of an individual's circumstances. We are also aware that psychological assessment services are not available in most Indian communities, and that heavy patient loads in many reservation healthcare facilities necessitate low priority being assigned to medical examinations requested for purposes of determining welfare assistance eligibility. Subsection (1)(v) has therefore been added to §20.21(i) to approve eligibility based on caseworker assessment, but pending examination of the applicant by a physician.

Comment. Comment was received urging the Bureau to specify penalty for individuals who refuse to accept available local employment, voluntarily terminate employment without good cause, or are fired from jobs because of unjustifiable absence, poor work habits, etc.

Response. The Bureau has further investigated this issue through contact with field staff and has determined that the requested provision should be included in the final rule. A new subsection (4) has been added to

§ 20.21(i) which will levy a minimum 60-day period of ineligibility for applicants or recipients who refuse to accept available local employment or, without good cause, do not maintain their employed status. The period of ineligibility has been made applicable only to the individual who violates the new provision, and will not extend to other eligible members of his/her household. A provision for reducing the period of ineligibility, subject to specified conditions, has also been added.

Comments Not Adopted

Comment. Some commenters objected to the time constraints imposed by the eligibility redetermination criteria (§ 20.21(d)). These commenters stated that the requirements are unrealistic because they disregard such factors as heavy worker caseloads, physical distances, harsh weather conditions during periods of the year and substandard roads on many reservations—all of which interfere with a caseworker's ability to make home visits and eligibility redeterminations in a timely manner.

Response. The regulations, especially at § 20.21(d)(2), do provide limited caseworker flexibility in establishing annual personal contact with assistance recipients. It is the Bureau's position that a regulated eligibility redetermination process is necessary to maintain overall program accountability; therefore, no change has been made in this section.

Comment. Three commenters were concerned that § 20.21(g)(2) requires Indians to divest real or personal property holdings which, for reason of religious belief or tribal custom, cannot be divested by an Indian.

Response. These regulations do not require Indian people to relinquish real or personal property holdings related to religious belief or tribal custom.

Comment. Numerous commenters objected to BIA's long-standing policy of adhering to State AFDC payment levels in the provision of general assistance. Others objected to the rateable reduction of general assistance payments in States where such reductions are imposed on AFDC grant assistance. In regard to these issues, some commenters maintained that adoption of State-established payment levels fails to take into account the extreme isolation, absence of private sector economies and other unique factors that are characteristic of Indian reservations. Many who objected to rateably reduced general assistance payments in particular, and BIA's adherence to AFDC payment levels in general, advocated the development of a separate BIA general assistance payment standard for implementation on reservations nationwide.

Response. BIA general assistance is available only when the applicant is not eligible for AFDC, SSI or State/locally funded income maintenance programs. On most reservations, the majority of financial assistance recipients are clients of AFDC programs; therefore, if BIA were to establish a separate general assistance standard of payment, inherent inequities would exist between general assistance recipients and the recipients of AFDC. The Bureau holds that the creation of such payment inequity would not be in the ultimate best interest of Indian communities, and would be contrary to the intent of Congress when it annually appropriates monies to fund the Bureau's general assistance program. Applying rateable reductions, where applicable, establishes absolute parity between AFDC and BIA general assistance payment levels, thereby assuring that the basic needs of all welfare assistance recipients in a given locale are met on an equal basis.

Comment. One commenter maintained that the proposed regulations require BIA to administer a program of general assistance in a State where State general assistance is provided by vendor payments or purchase orders in lieu of cash payments.

Response. Section 20.21(b) requires no change because it does not stipulate that State general assistance must be provided in cash payment in order to be considered available to meet the needs of eligible Indians. A State program which meets criteria specified under § 20.21(b) will be considered available, whether the assistance is provided in vendor payments or purchase orders.

Comment. A single commenter asked the Bureau to incorporate into § 20.21 of the final rule a provision requiring administration of general assistance programs in all States where Indian lands are held in Federal trust.

Response. This recommendation was not adopted because the BIA social services program does not relate to land held in trust status as such. The authority for BIA social services is the Snyder Act (25 U.S.C. 13 (1982)); therefore, the provision of general assistance is based on Federal statute rather than on the trust relationship per se. The suggested provision would be in conflict with the Federal Government's view of BIA general assistance as a secondary or residual form of financial assistance, and would, in effect, establish BIA assistance as a primary form of assistance in States where State or locally funded general assistance is available to all residents on an equal basis.

Comment. Another item of concern to some commenters was custodial care, a subcomponent of the Bureau's general assistance program. Comment on this issue dealt principally with questions of whether the amended regulations allow for the continued delivery of this service.

Response. We have carefully reviewed the amended regulations in light of these comments, and have determined that existing Bureau policy relative to custodial care services has been left unchanged.

Comment. Several commenters asked whether the Bureau is required to consider as available to the BIA household the income of non-legally responsible individuals living in the household.

Response. All income of those included in the BIA payment is to be counted as available to meet need. However, no income of anyone outside the BIA household is considered unless the individual actually contributes to the support of a member of the household. Therefore, the Bureau will not assume that a non-legally responsible individual(s) residing together with a general assistance household is contributing to the support of any member(s) of the household included in the BIA payment.

Comment. Several commenters objected to the proposal that income from trust land leases and proceeds from the sale of trust land must be counted as income and resources. One commenter believed that this was in conflict with the General Allotment Act and other Acts which govern trust allotments on specific reservations. Additional comments suggested that the regulations should allow a resource exemption for the first $2,000 derived from trust land leases or sales.

Response. The Federal Government does not exercise any control over income derived from trust land leases or the sale of trust land. Pub. L. 98-473 provides for trust funds to be counted as income and resources.

Comment. One commenter proposed that the Bureau eliminate the requirements for counting free shelter as income in kind and use two standards of assistance—one which includes shelter costs, and one which does not. The commenters believed this to be less administratively complex.

Response. A few States have an AFDC standard which distinguishes between those who have shelter costs and those who do not. In these States,

the Bureau will determine eligibility and payment amount for a household having no shelter costs by using the standard without shelter, and will not count free shelter as income in kind. However, in States not making such shelter cost distinctions, the Bureau will count free shelter as income in kind.

Comment. Some commenters were opposed to counting as income any contribution of shelter at no cost. Other commenters proposed that the Bureau adopt an in kind income policy only if the State in which the person lives counts free shelter as income in kind for AFDC purposes.

Response. The Bureau believes that it is the best use of limited funds to not pay a shelter amount to individuals who have no shelter cost.

Comment. Some commenters asked for further clarification of the kinds of income to be prorated.

Response. Proration applies to any income received which is payment for work performed. It applies to income received by individuals who, because of a contract, self-employment, or short-term employment, earn annual income in a period of time shorter than one year, e.g., teachers and farmers. Proration also applies to income received other than monthly which is anticipated to continue on a regular basis, e.g., lease income.

Comment. Several commenters were opposed to prorating lease income because the extra money gave recipients the opportunity to purchase items which are considered necessities by most people. They suggested that lease income be counted only for the month in which it was received. Other commenters suggested that only amounts in excess of a specific amount, e.g., $3,000, be prorated. Some commenters, on the other hand, supported proration because it would discourage persons from spending lump sums of income at one time.

Response. This regulation is not changed. Due to the limitations of available funds, it is our position that people shoud first use their own income, rather than public tax revenues to meet basic needs.

Comment. The Bureau received comments objecting to the provision of prorating shelter expenses contained in § 20.21(h)(2). The basic rationale of most commenters was that this would be a difficult provision to apply equitably, given the various types of living arrangements prevalent on Indian reservations, and variations in State public welfare policies that affect BIA general assistance recipients.

Response. The Bureau has carefully weighed the comments received on proration of shelter expenses and has decided to make no changes in § 20.21(h)(2). In consideration of limited program funds, the Bureau is retaining the shelter cost proration provision in § 20.21(h)(2). The provision is compatible with the definition of "household", and is consistent with our efforts to identify and support a uniform standard for the determination of assistance payments.

Comment. Two commenters sought reconsideration of § 20.21(h)(3) which stipulates that the Bureau shall round general assistance payments down to the next lower whole dollar.

Response. This method of computing welfare grant assistance payments is currently used by every Federally funded income maintenance program and by the Food Stamp Program. To establish consistency between BIA general assistance and other similar programs, the provision at § 20.21(h)(3) has been retained.

Comment. Three commenters proposed that the Bureau extend general assistance eligibility criteria to include Indians who are unavailable for employment due to enrollment in a post-secondary academic or vocational curriculum.

Response. It has been BIA policy to deny exemptions of the pertinent regulation (here codified at § 20.21(i)) for adult students because of the practical need to apply eligibility factors uniformly, and because post-secondary students have access to various types of financial aid.

Comment. The Bureau was requested by three commenters to include a provision at § 20.21(i)(1) extending general assistance eligibility to Indians who are unavailable for employment due to voluntary or obligatory tribal service in roles of cultural or religious significance.

Response. We have given very careful consideration to these comments and have discussed the issue at length with certain tribal representatives and social services field personnel. Based on those consultations and our analysis of the issue, we have concluded that the Bureau cannot deem any class or category of persons automatically eligible for general assistance. We also have concluded that costs for basic maintenance needs of Indian ceremonial figures are private tribal responsibilities not to be borne by the Federal Government through BIA's general assistance program. In keeping with the provisions of these regulations, individuals fulfilling obligations in any ceremonial capacity which precludes regular employment shall, at the time of general assistance application, be considered unavailable to seek and accept employment, and therefore ineligible for general assistance.

Comment. One commenter requested that the Bureau exempt persons under age 18 from the requirement to seek and accept local employment rather than only persons under age 16 as proposed at § 20.21(i)(1)(i).

Response. This recommendation has not been adopted. In the vast majority of cases, persons under age 16 are unemancipated by marriage, subject to compulsory school attendance laws, and ineligible to apply for general assistance in their own right because they are under the physical care, custody and control of others. These characteristics are less likely to be true of persons age 16 or older. We believe individuals age 16 and older who are not in school should not be relieved of the requirement to seek and accept local employment unless exempted pursuant to § 20.21(i)(1).

Comment. A single commenter requested exemption from § 20.21(i) for all Tribal Work Experience Program (TWEP) participants on grounds that, because they are "employed", such tribal members should not be required to seek and accept regular employment.

Response. In all instances, TWEP is a subcomponent of the Bureau's general assistance program and participation is contingent on basic general assistance eligibility. As the name itself implies, TWEP is designed to provide general assistance recipients with opportunity to end general assistance dependency through gaining work experience, development of good work habits and acquisition of job skills. Assignment to a TWEP project does not constitute regular employment; therefore the suggested change is not adopted.

Comment. Numerous commenters requested clarification of the portion of § 20.21(i) dealing with general assistance recipients' "availability" to participate in Tribal Work Experience Programs (TWEP).

Response. We believe this section of the rule (now codified as § 20.21(i)(2)) requires no change since it clearly conveys the Bureau's intent to make TWEP participation mandatory on reservations where the tribe has exercised its option to contract for TWEP under Pub. L. 96-638. By specifying that the general assistance recipient shall be *available* for TWEP participation, the Bureau is acknowledging that the total number of TWEP positions or work site assignments may well be insufficient to permit 100 percent participation of all

eligible heads of household receiving general assistance.

Other Changes Made

Upon review of the proposed rule, the Bureau has made the following changes in the final:

—The definition of "BIA general assistance", § 20.2(m), has been changed to emphasize that such assistance is provided only to *eligible* Indians;

—The definition of "Essential needs", § 20.1(cc), has been expanded to include burial expenses;

—Change was made at § 20.1 to require tribes not served by BIA general assistance to formally request the service from BIA;

—Language has been added to § 20.21(f)(2)(i) authorizing proceeds from the sale of trust land and other real or personal property to be set aside for up to one year pending reinvestment in trust land or a primary residence. If not so reinvested at the end of one year from the date of transaction, such proceeds will be considered unearned income available to meet need;

—The word "general" has been deleted from § 20.21(f)(2)(iii) to indicate that any assistance provided by a State, county or local agency will be considered unearned income; and

—Several numbering changes were necessary to accommodate all changes now incorporated into this final rule. Other changes in numbering were made for purposes of clarity and ease of reference.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The information collection requirements contained in this part have been submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501 *et seq.*, and have been given clearance number 1076–0017.

This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1983.

Since the Bureau's general assistance program cannot function because of Pub. L. 98–473 after September 30, 1985, until these regulations are effective, good cause is found under 5 U.S.C. 553(d)(3) for these regulations to become effective upon publication in the Federal Register.

The primary author of this document is Eddie F. Brown, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343–6434.

List of Subjects in 25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians-Social welfare, Public assistance programs.

PART 20—[AMENDED]

For reasons set out in the preamble, Part 20 of Subchapter D, Chapter I of Title 25, Code of Federal Regulations, is amended as follows:

1. The authority for 25 CFR Part 20 is revised to read as follows:

Authority: 25 U.S.C. 13; § 20.21 also issued under Pub. L. 98–473.

2. Section 20.1 is amended by revising paragraphs (m), (s), (t), and (w) and adding paragraphs (cc), (dd), (ee), (ff) and (gg) to read as follows:

§ 20.1 Definitions.

* * * * *

(m) "BIA general assistance" is a secondary or residual source of assistance for eligible Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs.

* * * * *

(s) "Need" means the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides.

(t) "Public assistance" means those programs of assistance provided under Title IV of the Social Security Act (49 Stat. 620), as amended, and includes the Aid to Families with Dependent Children (AFDC) Program provided under Title IV–A.

* * * * *

(w) "Resources" means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties.

* * * * *

(cc) "Essential needs" include at a minimum shelter, food, clothing and utilities, but do not include needs, except for burial expenses, beyond those basic and special needs included in the Bureau standard of assistance for the State where the Indian individual or household lives.

(dd) "Household" means persons living together with the "head of household" who may be related or unrelated to the "head of household" and who function as members of the family.

(ee) "Tribal Work Experience Program (TWEP)" means a program operated by tribal contract which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills.

(ff) "Recipient" means an individual to whom or for whom a BIA general assistance payment is made for the month.

(gg) "Case" includes all individuals in the household as defined in § 20.1(dd) whose needs are included in the BIA general assistance payment made for the month.

3. Section 20.20(c) is revised to read as follows:

§ 20.20 General.

* * * * *

(c) Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at § 20.21(s) and prevent hardship caused by fire, flood or acts of nature.

* * * * *

4. Section 20.21 is revised in its entirety to read as follows:

§ 20.21 General assistance.

In States where BIA general assistance would otherwise be available, the Bureau will not provide general assistance:

(a) To on or near-reservation members of tribes currently not served by BIA general assistance unless the tribe formally requests, through final governing body action, that the Bureau operate a general assistance program. Such request for BIA general assistance should be timed with the Bureau's next fiscal year for the general assistance program;

(b) In any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general

assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations;

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments even though payments may fluctuate subject to the limited availability of funds;

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis; and,

(4) Where the Bureau provides general assistance on a reservation in one State and that reservation extends into a bordering State(s), the Bureau will provide general assistance to members of the tribe in the other bordering State(s) based on the standard of assistance in the State where the recipient or applicant resides. However, the Bureau will provide such assistance in the bordering State(s) only to those members who are not eligible for State general assistance as defined in § 20.21.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in § 20.20(a); and the following conditions:

(1) Must not receive financial assistance from AFDC or Supplemental Security Income [SSI];

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI, except that payment shall be authorized when good cause reasons, such as physical isolation, lack of transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Must have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance;

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance, unless good cause reasons, such as physical isolation with sporadic access to transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(d) *Redeterminations.* (1) The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(i) Whenever there is an indication of a change in circumstances;

(ii) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(iii) Not less frequently than one every six (6) months for all households.

(2) the redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) *Standards of Assistance.* (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a rateable reduction to the need standard, the Bureau standard is the rateable reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult, or one-half the amount of the standard for a household of two, whichever is greater.

(f) *Resources.* In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under § 20.21(g), or specifically excluded by Federal statute. All earned or unearned income will be counted as income in the month received and as a liquid asset thereafter, except certain income from the sale of real personal property as provided for under § 20.21(f)(2)(i). Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) "Earned income" means in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, "earned income" means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) "Unearned income" includes but is not limited to:

(i) Income from: Interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the

standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(3) The Bureau shall prorate (i) over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau shall prorate the income unless there is evidence that the income will not continue to be received in the future. *However*, for a period of three years from the publication date of these regulations, the Bureau will not prorate lease income which has been obligated by a household in a manner which makes it unavailable in consumable form to the household.

(g) *Disregards.* (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

(i) Federal, State and local taxes;

(ii) Social Security (FICA);

(iii) Health insurance;

(iv) Work related expenses, including reasonable transportation costs;

(v) Child care costs except where the other parent in the home is not working or is not disabled; and

(vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first $1000 of liquid resources available to the household;

(ii) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption;

(iii) Resources specifically excluded by Federal statute.

(h) *Payments.* (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in a dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar.

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) *Employment.* (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

(i) A person under the age of 16 years;

(ii) A full-time student under the age of 19 who is attending an elementary or secondary school, or a vocational or technical school equivalent to a secondary school;

(iii) A person suffering from an illness, when it is determined on medical evidence or on other sound basis that the individual's illness or injury is serious enough to temporarily prevent entry into employment;

(iv) An incapacitated person, when verified that a physical or mental impairment determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(v) A person who, upon the documented assessment of the social services caseworker, and pending examination by a physician or other appropriate professional, is deemed essentially incapacitated because of age, physical or mental impairment;

(vi) An individual responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a virtually continuous basis, and there is no other appropriate household member available;

(vii) A parent or other individual who personally provides full-time care of a child under that age of 6;

(viii) A parent or minor living in the household if the other parent is not exempt from seeking or accepting employment;

(ix) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days; and

(x) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

(2) Where the tribe administers a Tribal Work Experience Program (TWEP), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment.

(3) Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

(4) Individuals not exempt under one of the preceding clauses of this section, who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination.

(i) The 60-day period of ineligibility will be renewed upon each application for general assistance until the applicant complies with the requirement to seek and accept available local employment.

(ii) An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment.

(iii) Periods of eligibility suspension shall affect only the individual who fails to comply with the provision of this section, but shall not apply to other members of his/her household.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-23343 Filed 9-27-85; 8:45 am]

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Federal Register

Monday
September 30, 1985

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-002-N]

Medicare Program; Part A Premium for the Uninsured Aged for the 12-Month Period Beginning January 1, 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Solomon Mussey, (301) 594-2829.

SUPPLEMENTARY INFORMATION: Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1986, is $214.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 606(b) of the Social Security Amendments of 1983 (Pub. L. 98-21) requires the Secretary to determine and publish, during the next to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year. The formula specified in this section requires that, for the period beginning January 1, 1986, the 1973 base year premium ($33) be multiplied by the ratio of (1) the 1986 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1 or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1986 inpatient hospital deductible was determined to be $492. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1986 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 × (492/76) = $213.63, which is rounded to $214.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1986, will increase to $214. That amount is 23 percent higher than the $174 monthly premium amount for the 12-month period beginning January 1, 1985.

The estimated cost of this increase to the approximately 22 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $11 million.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i-2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 20, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-23463 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-003-N]

Medicare Program; Monthly Actuarial Rates and Part B Premium Rates Beginning January 1, 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1986. It also announces the monthly SMI premium rate to be paid by all enrollees during calendar year 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Carter Warfield, (301) 594-2893.

SUPPLEMENTARY INFORMATION:

Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR Part 405, Subpart I.

The Secretary of Health and Human Services is required by law to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of Pub. L. 92-603 and until the passage of section 124 of Pub. L. 97-248, the Tax Equity and Fiscal Responsibility Act of 1982, the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits. The difference between the premiums paid by all enrollees and total incurred costs was met from the general revenues of the Federal Government.

Section 124 of Pub. L. 97-248 amended section 1839 of the Social Security Act

(Act) regarding a temporary change in the calculation of the SMI premium rate. Specifically, from July 1983 through June 1985, the monthly premium rate was set at one-half the actuarial rate for aged beneficiaries (25 percent of the expected average monthly cost of SMI for each aged enrollee).

Section 606 of Pub. L. 98–21 further amended section 1839 of the Act to revise the date that the premium rate is announced and the date that the premium rate goes into effect. Thus, the premium rates are to be announced in September rather than December of each year and become effective in January following the announcement rather than in July. Additionally, section 606 of Pub. L. 98–21 and section 2302 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amended section 1839 of the Act to extend through 1987 the provision that the premium be based on 25 percent of program costs. In January 1988, calculation of the premium rate will revert to the method used before the passage of Pub. L. 97–248, Pub. L. 98–21 and Pub. L. 98–369, except that it will remain on a calendar year basis.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act that was added by Pub. L. 98–369. This provision refers to section 215(i) of the Act that provides for cost of living increases in social security benefits. Section 1839(f)(1) of the Act states that if no cost of living increase under section 215(i) of the Act becomes effective in December 1985 or 1986, there will be no increase in the SMI standard monthly premium for the following year. Thus, the premium will remain at the December level. However, those individuals, who enroll in the SMI program after the expiration of their initial enrollment period or reenroll after termination of a coverage period, are still subject to the increase in premium described in section 1839(b) of the Act. In these cases, the monthly premium would be the amount of the December premium plus the additional amount specified in section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

Section 1839(f)(2) of the Act, as added by Pub. L. 98–369 and amended by Pub. L. 98–617, contains provisions that are applicable if there is a cost of living increase for 1986 or 1987. The law provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premium deducted from these benefit payments, the premium increase would be reduced to avoid causing a decrease in the individual's benefit payment. This would occur if the cost of living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual receives benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

Note.—A check for benefits under section 202 or 223 is received in the month following the month for which it is due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.

Generally, the reduced SMI premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December.

(2) The monthly premium for that individual for that December.

Again, those individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. In these cases, the monthly premium would be calculated as specified in (1) and (2) above with the addition of the amount specified under the provisions of section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

In determining the premium limitations under section 1839(f)(2) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f)(2) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

For calendar year 1986, the notices of the monthly actuarial rates and the monthly premium rate are as follows:

Notice of Monthly Actuarial Rates

As required by sections 1839(a) (1) and (4) of the Act (42 U.S.C. 1395r(a)(1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for calendar year 1986 are $31.00 for enrollees age 65 and over, and $40.80 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

Notice of Monthly Premium Rate

As required by section 1839(a)(3), (e)(1) and (f) of the Act (42 U.S.C. 1395r(a)(3), (e)(1) and (f)), as amended, I have determined that the standard monthly premium amount will be $15.50 during calendar year 1986. The accompanying statement shows how the premium amount was derived.

Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1986

1. Actuarial Status of the Supplementary Medical Insurance Trust Fund

The law requires that the SMI program be financed on an incurred basis; that is, program income during the calendar year for which the actuarial rates are effective must be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for periods from 1984 through 1985.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1984–DEC. 31, 1985

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1984	$9,696	$3,090	$6,606
Dec. 31, 1985	11,436	3,586	7,850

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1986 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1986 and June 30, 1987, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July 1 annual fee screen update used for benefits prior to the passage of section 2306(b) of Pub. L. 98–369. The values for the 12-month period ending June 30, 1983, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. These per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from July 1, 1983, through December 31, 1986, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1986 is $33.86. The monthly actuarial rate of $31.00 provides an adjustment for interest earnings and $−1.65 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a negative margin is needed to reduce assets to a more appropriate level.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 months or because of entitlement to Medicare under the end-state renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parrallel to projections for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1986 is $60.24. The monthly actuarial rate of $40.80 provides an adjustment for interest earnings and $−14.29 for a contingency margin. As in the determination of the monthly actuarial rate for disabled enrollees, a negative margin is needed to reduce the surplus to a more appropriate level.

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TABLE 2--PROJECTION FACTORS 1/
12-MONTH PERIODS ENDING JUNE 30 OF 1984-1987
(In percent)

12-month period ending June 30	Physicians' services		Radiology and pathology	Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees 2/	Residual 3/					
Aged:							
1984	7.2	4.3	-12.3	20.8	28.2	28.6	12.8
1985	0.7	3.0	1.2	7.5	17.1	19.1	97.5
1986	5.1	3.6	9.6	14.8	9.7	19.8	9.6
1987	4.8	3.7	10.7	14.9	8.8	19.8	10.2
Disabled:							
1984	7.2	5.7	-11.6	-0.7	0.0	26.3	16.2
1985	0.7	4.3	1.6	11.3	0.0	27.5	114.9
1986	5.1	5.7	11.7	17.2	0.0	31.6	9.6
1987	4.8	5.7	8.9	15.1	0.0	30.4	9.4

1/ All values are per enrollee.
2/ As recognized for payment under the program.
3/ Increase in the number of services received per enrollee and greater relative use of more expensive services.

TABLE 3--DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER
FINANCING PERIODS ENDING DECEMBER 31, 1983 THROUGH DECEMBER 31, 1986

	Financing Periods			
	July 1, 1983 through December 31, 1983	January 1, 1984 through December 31, 1984	January 1, 1985 through December 31, 1985	January 1, 1986 through December 31, 1986
Covered services (at level recognized):				
Physicians' reasonable charges	$26.37	$27.59	$29.33	$31.90
Radiology and pathology	1.02	.99	1.04	1.15
Outpatient hospital and other institutions	5.18	5.61	6.25	7.18
Home health agencies	.04	.04	.05	.06
Group practice prepayment plans	.97	1.12	1.34	1.61
Independent lab	.45	.69	.96	1.06
Total services	34.02	36.05	38.98	42.95
Cost-Sharing:				
Deductible	-2.50	-2.52	-2.53	-2.54
Coinsurance	-6.29	-6.61	-7.09	-7.86
Total benefits	25.24	26.93	29.36	32.55
Administrative expenses	1.19	1.19	1.28	1.31
Incurred expenditures	26.43	28.12	30.64	33.86
Value of interest	-.65	-.65	-1.19	-1.21
Contingency margin for projection error and to amortize the surplus or deficit	1.22	1.73	1.55	-1.65
Monthly actuarial rate	$27.00 1/	$29.20	$31.00	$31.00

1/ This rate, although originally promulgated for the 12-month period ending June 30, 1984, was modified by Pub. L. 98-21 to apply only to the 6-month period ending December 31, 1983.

TABLE 4--DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES
FINANCING PERIODS ENDING DECEMBER 31, 1983 THROUGH DECEMBER 31, 1986

	Financing Periods			
	July 1, 1983 through December 31, 1983	January 1, 1984 through December 31, 1984	January 1, 1985 through December 31, 1985	January 1, 1986 through December 31, 1986
Covered services (at level recognized):				
Physicians' reasonable charges	$33.88	$35.92	$38.79	$42.77
Radiology and pathology	1.06	1.03	1.10	1.21
Outpatient hospital and other institutions	19.21	21.56	25.24	27.88
Home health agencies	.00	.00	.00	.00
Group practice prepayment plans	0.49	0.59	0.77	1.01
Independent lab	0.79	1.11	1.44	1.58
Total services	55.43	60.21	67.34	74.45
Cost-Sharing:				
Deductible	-2.30	-2.34	-2.35	-2.36
Coinsurance	-10.63	-11.47	-12.79	-14.19
Total benefits	42.50	46.40	52.20	57.90
Administrative expenses	1.97	2.05	2.28	2.34
Incurred expenditures	44.47	48.45	54.48	60.24
Value of interest and other income	-3.61	-3.67	-5.62	-5.15
Contingency margin for projection error and to amortize the surplus or deficit	5.24	9.52	3.84	-14.29
Monthly actuarial rate	$46.10 1/	$54.30	$52.70	$40.80

1/ This rate, although originally promulgated for the 12-month period ending June 30, 1984, was modified by Pub. L. 98-21 to apply only to the 6-month period ending December 31, 1983.

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4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical error in the respective increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of $5,799 million by the end of December 1986. This amounts to 19.4 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors), produce a surplus of $2,422 million by the end of December 1986, which amounts to 7.4 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of $8,983 by the end of December 1986, which amounts to 32.8 percent of the estimated total incurred expenditures for the following year.

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TABLE 5—PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1986

	This Projection			Low Cost Projection			High Cost Projection		
	12-month periods ending June 30,			12-month periods ending June 30,			12-month periods ending June 30,		
	1985	1986	1987	1985	1986	1987	1985	1986	1987
Projection factors (in percent): 1/									
Physician services - fees 2/									
Aged	0.7	5.1	4.8	0.2	4.6	4.1	1.2	5.6	5.5
Disabled	0.7	5.1	4.8	0.2	4.6	4.1	1.2	5.6	5.5
Physician services - Residual 3/									
Aged	3.0	3.6	3.7	1.5	1.9	1.4	4.5	5.3	6.0
Disabled	4.3	5.7	5.7	0.3	0.7	0.7	8.3	10.7	10.7
Outpatient hospital services									
Aged	7.5	14.8	14.9	2.5	7.8	4.9	12.5	21.8	24.9
Disabled	11.3	17.2	15.1	3.3	7.2	5.1	19.3	27.2	25.1

	As of December 31,			As of December 31,			As of December 31,		
	1984	1985	1986	1984	1985	1986	1984	1985	1986
Actuarial status (in millions):									
Assets	$9,698	$11,436	$9,892	$9,698	$12,276	$12,600	$9,698	$10,573	$7,013
Liabilities	$3,090	$3,586	$4,093	$2,832	$3,240	$3,617	$3,350	$3,938	$4,591
Assets less Liabilities	$6,608	$7,850	$5,799	$6,866	$9,036	$8,983	$6,348	$6,635	$2,422
Ratio of assets less liabilities to expenditures (in percent) 4/	28.1	29.5	19.4	30.4	36.5	32.8	26.0	23.2	7.4

1/ All All values are per enrollee.
2/ As recognized for payment under the program.
3/ Increase in the number of services received per enrollee and greater relative use of more expensive services.
4/ Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

BILLING CODE 4120-01-C

5. Standard Premium Rate

For calendar years 1984 through 1987, the law provides that the standard monthly premium rate for both aged and disabled enrollees shall be 50 percent of the monthly actuarial rate for enrollees age 65 and older. Therefore, the standard monthly premium rate for both aged and disabled enrollees for calendar year 1986 is $15.50 which is 50 percent of the monthly actuarial rate for this period ($31.00).

Regulatory Impact Statement

The monthly SMI premium rate of $15.50 for all enrollees during calendar year 1986 is the same as the monthly premium amount for the previous financing period. Therefore, there is no increase in the estimated cost over the current premium to the approximately 30.7 million SMI enrollees for calendar year 1986.

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

Review by EOMB Under Executive Order 12291

Because of statutory requirements this notice must be published prior to October 1, 1985. As authorized by section 8(a)(2) of the Executive Order 12291, we are publishing this notice in the **Federal Register** without the benefit of comment from the Director of the Executive Office of Management and Budget (EOMB). As soon as practical we will notify EOMB of the publication of this notice.

(Sections 1839(a) (1), (3), and (4); (e) and (f) of the Social Security Act; 42 U.S.C. 1395r(a) (1), (3), and (4); (e) and (f))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: September 19, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-23464 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-004-N]

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts for 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts for calendar year 1986 under Medicare's hospital insurance program. The Medicare statute specifies the formula to be used to determine these amounts. The inpatient hospital deductible will be $492. The daily coinsurance amounts will be: (a) $123 for the 61st through 90th days of hospitalization; (b) $246 for lifetime reserve days; and (c) $61.50 for the 21st through the 100th days of extended care services in a skilled nursing facility. Each figure represents an increase of 23 percent over the corresponding 1985 figure.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Solomon Mussey (301) 594-2829.

SUPPLEMENTARY INFORMATION: Section 1813 of the Social Security Act (Act) (42 U.S.C. 1395e(b)(2)) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished an individual. Section 1813(b)(2) of the Act requires the Secretary of HHS to determine and publish, between July 1 and October 1 of each year, the amount of the inpatient hospital deductible applicable for the following calendar year.

The 1986 inpatient hospital deductible and coinsurance amounts discussed below have been computed in the same manner as in previous years, as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. The Secretary has no discretion in computing the inpatient hospital deductible and coinsurance amounts. The amount of the deductible for 1986 under the formula has been determined to be $492.

Because the coinsurance amounts in section 1813 of the Act are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1986, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $123; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $246; and the daily coinsurance for the 21st through the 100th days of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $61.50.

Under the formula in the law, the deductible for calendar year 1986 must be equal to $45 multiplied by the ratio of (1) the current average per diem rate for inpatient hospital services for calendar year 1984 to (2) the average per diem rate for such services in 1966. The amount so determined is rounded to the nearest multiple of $4. The average per diem rates are based on the amounts paid to participating hospitals by Medicare for inpatient services to insured individuals, plus the deductible and coinsurance amounts.

The average per diem rate for a calendar year is computed from the inpatient hospital bills for all beneficiaries. Each bill shows the number of inpatient days of care and the interim cost (the sum of interim reimbursement, deductible, and coinsurance). The data are summarized for each year, and an average interim per diem rate computed that accurately reflects interim payments on an accrual basis.

In order to reflect the change in the average per diem hospital rate under the program properly, the average interim rate must be adjusted to show the effect of final settlements made with each participating hospital after the end of its accounting year. The final settlements adjust the interim payment to the hospital to the actual full payment for providing covered services to beneficiaries. To the extent that the ratio of final payments to interim payments for 1984 differs from the ratio of final cost to interim cost for 1966, the increase in average interim per diem rates will not coincide with the increase in actual final payments that has occurred.

The current average interim per diem rate for inpatient hospital services for calendar year 1984, based on tabulated interim payments, is $430.50; the corresponding amount for 1966 is $37.92. The averages are based on approximately 91 million days of hospitalization in 1984 and 30 million days in 1966 (last 6 months of the year). The ratio of final payments to interim payments is approximatley 1.018 for 1984 and 1.055 for 1966. Thus, the inpatient hospital deductible is $45×(430.50×1.018)/

(37.92×1.055)=$492.96 which is rounded to $492.

The inpatient hospital deductible and coinsurance amounts for calendar year 1986 will be 23 percent higher than the 1985 amounts. The inpatient hospital deductible increased from $400 to $492; the daily coinsurance for the 61st through 90th days of hospitalization increased from $100 to $123; the daily coinsurance for lifetime reserve days increased from $200 to $246; and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility increased from $50 to $61.50.

The 23 percent increase in the inpatient hospital deductible is due to the increase in the average per diem hospital rate for 1984 as compared to the average per diem rate for 1983. Although the increase in the average per admission hospital payment for 1984 as compared to the average per admission hospital payment for 1983 is about 11 percent, the law specifies using the average per diem rate, not the average per admission rate. The substantial difference between the average per diem increase and the average per admission increase is due to the significant reduction in average length of stay for a hospital admission. Since 1983, the average length of stay has been declining at a much faster rate than in prior years. Thus, the fixed payment per admission is spread over fewer days, causing the average per diem increase to be higher than the average per admission increase.

We believe that the large increase in the deductible will be for this year only. We expect the reduction in the length of stay to level off. Consequently, the increase in the deductible should be substantially lower in future years.

The estimated cost to beneficiaries due to these increases is $1.1 billion. This amount is based on an estimated 8.0 million beneficiaries who will have 9.2 million benefit periods and use 4.4 million hospital coinsurance days, 1.2 million lifetime reserve days, and 4.8 million skilled nursing facility coinsurance days in 1986.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 20, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-23465 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-001-N]

Medicare Program; Medicare Economic Index for Physicians' Services (Effective October 1, 1985)

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

ACTION: Notice.

SUMMARY: This notice sets forth the economic index used in the calculation of prevailing charges for physicians' services under Part B of Medicare (title XVIII of the Social Security Act). The Medicare statute and regulations require that the calculation of these charges be subject to a limit based on appropriate indicators of economic change. The economic index used for this purpose is 2.128 for the period October 1, 1985 through September 30, 1986.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Carter Warfield (301) 594-2893.

SUPPLEMENTARY INFORMATION:

Background

Payment under Medicare Part B for a physician's service is based on a reasonable charge which may not exceed the lowest of (1) the physician's actual charge for the service, (2) his or her customary charge for that service, or (3) the prevailing charges of physicians for similar services in the locality. The prevailing charge for a service, before adjustment for the economic index, is calculated at the 75th percentile of physicians' customary charges. The economic index adjustment is mandated under section 1842(b)(3) of the Social Security Act (Act). Section 1842(b)(3) of the Act and HCFA regulations at 42 CFR 405.504 require further that the prevailing charge for a service in a locality not exceed the level in effect for that service in the locality on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change.

Section 2306(a) of Pub. L. 98-369, the Deficit Reduction Act of 1984 (DRA), established a freeze on Medicare customary and prevailing charges for physicians. The law provides that during the 15-month period, beginning July 1, 1984 and ending September 30, 1985, the Medicare customary and prevailing charges for physicians' services cannot be increased. These charge levels are to remain at the level in effect for the 12-month period ending June 30, 1984. Thus, the updated Medicare economic index for physicians' services for the period July 1, 1984 through June 30, 1985 (49 FR 25309) that was published prior to the DRA did not go into effect.

We note that there is the possibility that Congress will pass legislation that would extend the freeze on Medicare customary and prevailing charges for another year (October 1, 1985 through September 30, 1986). Should that happen, the economic index update announced in this notice will be moot. However, if Congress extends the freeze only to certain physicians (for example, only to physicians who have not signed an agreement to participate in the Medicare program), the economic index update will affect only those physicians to whom the freeze does not apply.

Section 2306(b) of the DRA also provides that beginning October 1, 1985 the economic index updates would be effective for the 12-month period beginning on October 1 of each year instead of the 12-month period beginning on July 1 that was used previously. The base year period used for calculating the prevailing charge levels also changed under the DRA. Previously, customary charges made during the calendar year formed the basis for the prevailing charge levels that became effective for the 12-month period beginning the following July 1. Now, charges made during the 12-month period ending on March 31 form the basis for the prevailing charge calculation that will be effective for the 12-month period beginning on the following October 1 of each year.

The economic index for the purpose of determining prevailing charge levels is set forth in regulations at 42 CFR 405.504. The index consists of two components: one measuring increases in general earnings level (attributable to factors other than increases in productivity) and the other measuring increases in expenses of the kind incurred by physicians.

Calculating the Economic Index

The Senate Finance Committee Report on the Social Security Amendments of 1972 (Pub. L. 92-603) explained that the economic index is intended to reflect inflationary trends accurately. See,

generally, Senate Report No. 1230, 92nd Cong., 2nd Sess., 190–194 (1972). The economic index is based on changes in expenses of office practice incurred by physicians and general earnings levels.

To obtain information on income and expenses, HCFA contracted for a national survey of physicians. The survey was based on a national probability sample of physicians, and the results are representative of the distribution of physicians in the United States. After HCFA verified the contractor's analysis of the data, we determined that the expenses of medical practice for physicians account for approximately 40 percent of the gross income of practice, and net income accounts for approximately 60 percent.

The analysis of the data also included the calculation of weights for each type of practice expense by determining the ratio of the expense of each element to total practice expenses. (For example, the cost of office space is 23 percent of all practice expenses.) The physician practice expense portion is currently composed of six components: (1) Salaries and wages; (2) office space; (3) drugs and supplies; (4) automobile expense; (5) malpractice insurance premiums; and (6) other expenses.

Various indices are used to estimate price changes for those components (see Table A). The salaries and wages component is based on the Bureau of Labor Statistics (BLS) index of hourly earnings of nonsupervisory workers in finance, insurance, and real estate. The office space component is based on the housing component of the Consumer Price Index (CPI). The drugs and supplies component is based on the drugs and pharmaceutical component of the Producer Price Index (PPI). Automobile expense is based on the private transportation component of the CPI. The other expenses component is based on the entire CPI, and covers costs for items such as insurance other than malpractice, depreciation on medical equipment, attorneys' fees, accountants' fees, entertainment, travel, food and lodging while away from home, office furniture and decorations, and other incidental expenses.

When the economic index was originally promulgated, malpractice premium expenses were not included as a separate component of the physician practice expense portion of the economic index. (The original economic index had included malpractice as part of the other expenses category tied to the CPI.) However, in 1975, as a result of increases in premium rates, malpractice insurance premiums began to constitute a significantly greater share of physicians' office practice costs. As a result, we decided to include malpractice premiums as a separate component of the economic index. Data used in calculating the initial malpractice component was acquired from a survey of the major malpractice insurers. Comparable surveys have been conducted annually to update the malpractice insurance premium component.

Increases in general earnings levels have been addressed through the inclusion of the BLS index of average weekly earnings of nonagricultural production and nonsupervisory workers. This index is modified by excluding increases in workers' productivity. This modification precludes duplicative changes in earnings resulting from increases in productivity.

Items 1 through 8 in Table B are the elements used in computing the increase in the physicians' expenses component of the economic index. Item 9, the net income component, is derived from information contained in items 7 and 8 and reflects increases in general earnings levels exclusive of productivity increases.

The principal source of the increase values used for each component is the data on labor statistics for the 12-month period ending March 31, 1985 as set forth in the Current Labor Statistics section of the July 1985 issue of *The Monthly Labor Review*, published by the U.S. Department of Labor. The increase for each element and component from the 12-month period ending March 31, 1984 to the 12-month period ending March 31, 1985 was calculated on the basis of these data and their weighted values were summed. This yielded an increase factor of 1.0315 (see Table C). That factor, multiplied by the economic index for the period ending June 30, 1984 (see 48 FR 30459–30461, July 1, 1983; this was the last economic index actually used) and adjusted as explained below (2.0627), resulted in the new economic index of 2.128. This means that the prevailing charges for physicians' services to be used during the 12-month period beginning October 1, 1985, may not exceed the prevailing charges in effect on June 30, 1973 by more than 112.8 percent.

Because the Bureau of Labor Statistics has periodically retroactively revised some of the statistics and data on which earlier economic indexes were based, it was necessary for us to recompute some of the values and ratios for earlier years in order to obtain an accurate index for the current year. Table C sets forth the revised values for those years.

It should be noted that, although we have recalculated prior year indexes, this does not change the applicability of the earlier indexes as published. Rather, prior year figures were recalculated only to reflect newly available data in order to prepare an accurate index for the period beginning October 1, 1985.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. The notice also reflects a legislative change in the effective dates of economic index updates and in the base year period used for calculating the prevailing charge levels in accordance with section 2306 of Pub. L. 98–369. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Administrator certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

BILLING CODE 4120-01-M

Table A.--COMPONENT VALUES OF THE ECONOMIC INDEX 1/

	1971 Base Value	1974 Value	1975 Value	1976 Value	1977 Value	1978 Value	1979 Value	1980 Value	1981 Value	1982 Value	1984 2/ Value	1985 2/ Value
1. Hourly earnings of nonsupervisory workers in finance, insurance, and real estate	3.22	3.77	4.06	4.27	4.54	4.89	5.27	5.79	6.31	6.78	7.38	7.70
2. Housing component of the consumer price index	123.4	148.8	164.5	174.6	186.5	202.6	227.5	263.2	293.2	314.7	323.5	332.5
3. Private transportation component of the consumer price index. 3/	116.6	136.6	149.8	164.5	176.6	185.3	212.9	250.1	279.4	290.1	300.7	312.2
4. Drugs and pharmaceutical component of the producer price index	102.4	112.7	126.6	134.0	140.5	148.1	159.4	174.5	193.5	210.1	229.5	243.9
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	121.3	147.7	161.2	170.5	181.5	195.3	217.7	247.0	272.3	288.6	300.0	310.3
6. Premiums for malpractice insurance	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
7. Average weekly earnings of production and nonsupervisory workers	127.31	154.76	163.53	175.45	189.00	203.70	219.91	235.10	255.20	266.92	284.47	295.52
8. Index of output per man-hour of employed nonfarm worker 3/	89.7	92.9	94.8	97.8	100.0	100.6	99.0	98.3	99.8	100.0	104.3	106.5

1/ All component values of the economic index except line 6 are from the Monthly Labor Review published by the U.S. Department of Labor, Bureau of Labor Statistics.

2 Represents the 12-month period ending March 31 of the year indicated.

3/ BLS revised some of the values on this line since the time of the previous announcement of the economic index.

Table B.--INCREASE VALUES OF THE COMPONENTS OF THE ECONOMIC INDEX

	Ratio 1/ of 1974 Values to 1973 Values	Ratio 2/ of 1975 Values to 1974 Values	Ratio 3/ of 1976 Values to 1975 Values	Ratio 3/ of 1977 Values to 1976 Values	Ratio 3/ of 1978 Values to 1977 Values	Ratio 4/ of 1979 Values to 1978 Values
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate.....	1.1708	1.0769	1.0517	1.0632	1.0771	1.0777
2. Housing component of the consumer price index.....	1.2058	1.1055	1.0614	1.0682	1.0865	1.1229
3. Private transportation component of the consumer price index.....	1.1715	1.0968	1.0981	1.0736	1.0495	1.1489
4. Drugs & pharmaceutical component of the producer price index.....	1.1006	1.1233	1.0585	1.0485	1.0541	1.0763
5. All other, miscellaneous, expenses (tied to the entire consumer price index).....	1.2176	1.0914	1.0577	1.0645	1.0760	1.1167
6. Premiums for malpractice insurance 7/.....	--	1.84	1.417	1.103	1.0065	.9210
7. Average weekly earnings of production & nonsupervisory workers.....	1.2156	1.0567	1.0729	1.0772	1.0778	1.0796
8. Index of output per man hour of employed nonfarm workers.....	1.0357	1.0205	1.0316	1.0225	1.0060	.9641
9. Change in average weekly earnings net of change in output per man hour.....	1.1757	1.0355	1.0400	1.0535	1.0714	1.0970

Table B.--INCREASE VALUE OF THE COMPONENTS OF THE ECONOMIC INDEX

	Ratio 5/ of 1980 Values to 1979 Values	Ratio 6/ of 1981 Values to 1980 Values	Ratio 6/ of 1982 Values to 1981 Values	Ratio 6/ of 1985 Values to 1984 Values
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate.....	1.0987	1.0698	1.0745	1.0434
2. Housing component of the consumer price index.....	1.1569	1.1140	1.0735	1.0278
3. Private transportation component of the consumer price index.....	1.1747	1.1172	1.0383	1.0382
4. Drugs & pharmaceutical component of the producer price index.....	1.0947	1.1089	1.0658	1.0627
5. All other, miscellaneous, expenses (tied to the entire consumer price index).....	1.1346	1.1024	1.0599	1.0343
6. Premiums for malpractice insurance 7/.....	1.0526	1.2357	1.1481	1.1627
7. Average weekly earnings of production & nonsupervisory workers.....	1.0691	1.0855	1.0459	1.0368
8. Index of output per man hour of employed nonfarm workers.....	.9929	1.0153	1.0020	1.0211
9. Change in average weekly earnings net of change in output per man hour.....	1.0767	1.0691	1.0438	1.0173

1/ The weights, excluding the malpractice component, were derived from Medical Economics (November 20, 1972) and Profile of Medical Practice (1974 edition). The values are 0.37, 0.14, 0.06, 0.09, and 0.34 for components one through five, respectively. In addition to the above weights, a 40-60% breakdown or gross income between office practice costs and physicians' earnings was used.

2/ The weights, including the malpractice component, were derived from Medical Economics (December 8, 1975) and Profile of Medical Practice (1974 Edition). The values are 0.37, 0.15, 0.07, 0.09, 0.28 and 0.04 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

3/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1977. The values are 0.43, 0.10, 0.05, 0.08, 0.27, and 0.07 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

4/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1980. The values are 0.44, 0.22, 0.06, 0.11, 0.04 and 0.13 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

5/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1981. The values are 0.43, 0.25, 0.07, 0.10, 0.04, 0.11 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

6/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1982. The values are 0.47, 0.23, 0.07, 0.09, 0.04, 0.10. For components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

7/ Derived from a survey of several major insurers.

Table C.--DETERMINATION OF THE ECONOMIC INDEX
FOR THE PERIOD OCTOBER 1985 THROUGH SEPTEMBER 1986

Fee Screen Year 1/	Increase Factor of the Economic Index for the Period	Economic Index for the Period Adjusted for Revision in BLS Statistics
1976	------	1.1784
1977	1.0698	1.2607
1978	1.0571	1.3327
1979	1.0586	1.4108
1980	1.0707	1.5105
1981	1.0873	1.6424
1982	1.0918	1.7932
1983	1.0871	1.9494
1984	1.0581	2.0627
1985	1.0000	2.0627
1986	1.0315	2.1277

1/ Fee screen years 1976-1984 are the 12-month periods ending June 30, 1976 - 1984, respectively. Fee screen year 1985 is the 15-month period July 1, 1984 through September 30, 1985, when the physicians' prevailing charges were frozen by Public Law 98-369, the Deficit Reduction Act of 1984. Fee screen year 1986 is the 12-month period ending September 30, 1986.

(Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: September 25, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-23466 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

federal register

Monday
September 30, 1985

Part IX

Department of Transportation

Urban Mass Transportation Administration

Apportionment of Lapsed UMTA Formula Grant Funds; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Apportionment of Lapsed UMTA Formula Grant Funds

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: This Notice provides the apportionment of lapsed section 5 formula grant funds (fiscal years 1975 through 1981) to each urbanized area over 200,000 in population and to State Governors for urbanized areas under 200,000 in population, utilizing the section 9 approtionment formula. These funds will be administered under the section 9 formula grant program.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource, Management Division, (202) 426–2053, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance began in fiscal year 1975. Under section 5(c)(4) of the Urban Mass Transportation Act of 1964, as amended, formula funds were available to an urbanized area (or the Governor in the case of smaller areas) for four fiscal years, after which time any unobligated funds were to be reapportioned under the section 5 formula in the following fiscal year. The Urban Mass Transportation Administration (UMTA) began to develop its regional operations just as this section came into play and unfortunately available data concerning funds that were to be reapportioned were unreliable.

Thus, UMTA undertook a lengthy review of all of its formula program grants to identify the exact amount of unobligated funds that were available for reapportionment. It was only during this fiscal year, 1985, that we were ultimately able to determine that $91.7 million in unobligated funds from fiscal years 1975 through 1981 were available for reapportionment. Unobligated fiscal years 1982 and 1983 section 5 funds will lapse at a later date and will become available for reapportionment at that time.

It is clear from the Surface Transportation Assistance Act (STAA) of 1982 that Congress intended to phase out the section 5 program and replace it with the section 9 formula program. Moreover, a provision in a Department of Transportation FY 1986 appropriation bill that recently passed the House of Representatives would also require UMTA to reapportion these funds under section 9. Thus, the funds being reapportioned are being allocated and will be administered under the section 9 program.

This Notice, based on Census information and operating and financial data contained in the section 15 Report and used for the fiscal year 1985 UMTA section 9 Formula Apportionment published on October 26, 1984, apportions these lapsed section 5 funds for urbanized areas. Consistent with Congressional intent, the section 9 apportionment formula has been used for this apportionment. The funds will be administered under the section 9 formula grant program. Thus, application for these funds should be submitted in conformance with UMTA's section 9 Circular 9030.1, published June 27, 1983.

The operating assistance limitations contained in the STAA of 1982 will be applied to these funds; e.g., they should be treated as fiscal-year 1985 section 9 funds. The previous apportionment published in October 1984 plus this apportionment would be subject to the fiscal year 1985 limitations.

For all urbanized areas under 200,000 in population within each State, one figure has been provided for the Governor's apportionment.

The apportioned funds shown in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following fiscal year 1985, after which time any unobligated funds will become available for reapportionment under the section 9 apportionment formula.

Issued on: September 25, 1985.

Ralph L. Stanley,

Administrator.

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APPORTIONMENT OF LAPSED UMTA FORMULA GRANT FUNDS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
Akron, Ohio	$190,862
Albany-Schenectady-Troy, New York	302,592
Albuquerque, New Mexico	166,986
Allentown-Bethlehem-Easton, Pa.-N.J.	139,656
Ann Arbor, Michigan	89,969
Atlanta, Georgia	986,158
Augusta, Georgia-South Carolina	62,435
Austin, Texas	148,204
Bakersfield, California	86,998
Baltimore, Maryland	1,047,955
Baton Rouge, Louisiana	113,816
Birmingham, Alabama	175,522
Boston, Massachusetts	2,604,575
Bridgeport, Connecticut	206,861
Buffalo, New York	412,594
Canton, Ohio	74,204
Charleston, South Carolina	52,202
Charlotte, North Carolina	131,813
Chattanooga, Tennessee-Georgia	86,177
Chicago, Illinois-Northwestern Indiana	7,152,600
Cincinnati, Ohio-Kentucky	484,930
Cleveland, Ohio	980,701
Colorado Springs, Colorado	97,215
Columbia, South Carolina	52,643
Columbus, Georgia-Alabama	71,480
Columbus, Ohio	414,901
Corpus Christi, Texas	71,489
Dallas-Fort Worth, Texas	822,012
Davenport-Rock Island-Moline, Iowa-Illinois	103,102
Dayton, Ohio	480,730
Denver, Colorado	653,862
Des Moines, Iowa	101,260
Detroit, Michigan	1,789,562
El Paso, Texas	220,463
Fayetteville, North Carolina	48,667
Flint, Michigan	108,274
Fort Lauderdale-Hollywood, Florida	351,553
Fort Wayne, Indiana	90,269
Fresno, California	147,004
Grand Rapids, Michigan	146,901
Greenville, South Carolina	48,598
Harrisburg, Pennsylvania	105,827
Hartford, Connecticut	288,570
Honolulu, Hawaii	709,795
Houston, Texas	1,055,799
Indianapolis, Indiana	308,370
Jackson, Mississippi	66,872
Jacksonville, Florida	231,183
Kansas City, Missouri-Kansas	329,883
Knoxville, Tennessee	88,053
Lansing, Michigan	101,862
Las Vegas, Nevada	122,475
Lawrence-Haverhill, Mass.-New Hampshire	107,544
Little Rock-North Little Rock, Arkansas	93,185
Lorain-Elyria, Ohio	38,465
Los Angeles-Long Beach, California	5,505,792
Louisville, Kentucky-Indiana	366,202
Madison, Wisconsin	168,441
Melbourne-Cocoa, Florida	59,028
Memphis, Tennessee-Arkansas-Mississippi	303,137
Miami, Florida	855,174
Milwaukee, Wisconsin	667,014
Minneapolis-St. Paul, Minnesota	748,578
Mobile, Alabama	73,611
Nashville-Davidson, Tennessee	178,474
New Haven, Connecticut	237,810
New Orleans, Louisiana	580,272
Newport News-Hampton, Virginia	122,553

APPORTIONMENT OF LAPSED UMTA FORMULA GRANT FUNDS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
New York, N.Y.-Northeastern New Jersey	23,272,823
Norfolk-Portsmouth, Virginia	343,958
Ogden, Utah	98,232
Oklahoma City, Oklahoma	160,555
Omaha, Nebraska-Iowa	242,962
Orlando, Florida	165,366
Oxnard-Ventura-Thousand Oaks, California	143,386
Pensacola, Florida	53,841
Peoria, Illinois	88,472
Philadelphia, Pennsylvania-New Jersey	4,330,835
Phoenix, Arizona	439,619
Pittsburgh, Pennsylvania	1,318,385
Portland, Oregon-Washington	674,143
Providence-Pawtucket-Warwick, R.I.-Mass.	536,788
Raleigh, North Carolina	72,451
Richmond, Virginia	215,251
Rochester, New York	283,566
Rockford, Illinois	77,258
Sacramento, California	348,348
St. Louis, Missouri-Illinois	761,888
St. Petersburg, Florida	291,788
Salt Lake City, Utah	344,283
San Antonio, Texas	532,568
San Bernardino-Riverside, California	301,749
San Diego, California	939,168
San Francisco-Oakland, California	3,996,289
San Jose, California	808,976
San Juan, Puerto Rico	599,785
Sarasota-Bradenton, Florida	94,854
Scranton-Wilkes-Barre, Pennsylvania	143,579
Seattle-Everett, Washington	1,348,857
Shreveport, Louisiana	98,886
South Bend, Indiana-Michigan	91,615
Spokane, Washington	167,876
Springfield-Chicopee-Holyoke, Mass.-Conn.	285,456
Syracuse, New York	282,582
Tacoma, Washington	232,716
Tampa, Florida	214,514
Toledo, Ohio-Michigan	251,798
Trenton, New Jersey-Pennsylvania	264,921
Tucson, Arizona	218,788
Tulsa, Oklahoma	144,431
Washington, D.C.-Maryland-Virginia	2,587,514
West Palm Beach, Florida	148,898
Wichita, Kansas	186,864
Wilmington, Delaware-New Jersey-Maryland	154,351
Worcester, Massachusetts	188,238
Youngstown-Warren, Ohio	99,685
TOTAL	83,268,576

GOVERNORS' APPORTIONMENT FOR AREAS BETWEEN 50,000 AND 200,000 POPULATION

STATE	APPORTIONMENT	STATE	APPORTIONMENT
ALABAMA	$223,044	MONTANA	74,656
ALASKA	45,227	NEBRASKA	70,265
ARIZONA	19,478	NEVADA	56,516
ARKANSAS	65,724	NEW HAMPSHIRE	84,497
CALIFORNIA	667,202	NEW JERSEY	66,246
COLORADO	147,456	NEW MEXICO	32,036
CONNECTICUT	579,260	NEW YORK	211,210
DELAWARE	0	NORTH CAROLINA	361,968
FLORIDA	308,270	NORTH DAKOTA	63,462
GEORGIA	171,697	OHIO	285,562
HAWAII	44,085	OKLAHOMA	44,765
IDAHO	63,860	OREGON	143,052
ILLINOIS	423,589	PENNSYLVANIA	409,617
INDIANA	260,914	PUERTO RICO	286,197
IOWA	145,533	RHODE ISLAND	22,773
KANSAS	62,560	SOUTH CAROLINA	71,550
KENTUCKY	132,353	SOUTH DAKOTA	45,450
LOUISIANA	154,591	TENNESSEE	77,860
MAINE	66,735	TEXAS	716,173
MARYLAND	58,583	UTAH	58,044
MASSACHUSETTS	291,964	VERMONT	22,632
MICHIGAN	259,885	VIRGINIA	162,217
MINNESOTA	88,256	WASHINGTON	136,712
MISSISSIPPI	83,708	WEST VIRGINIA	149,384
MISSOURI	183,170	WISCONSIN	339,670
		WYOMING	42,656
TOTAL			8,422,154

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S. 444 / Pub. L. 99-96

To amend the Alaska Native Claims Settlement Act. (Sept. 25, 1985; 99 Stat. 460) Price $1.00

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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