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# Contents

Federal Register

Vol. 53, No. 142

Monday, July 25, 1988

---

**Separate Parts In This Issue**

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**
1901.....27819
1951.....27819
1955.....27819
1965.....27819
**Proposed Rules:**
1079.....27863
1944.....27863
1955.....27863

**9 CFR**
78 (2 documents).....27843, 27844
92.....27846
**Proposed Rules:**
327.....27866

**14 CFR**
39.....27847
71 (3 documents).....27848, 27849
**Proposed Rules:**
39.....27869
71.....27870

**16 CFR**
**Proposed Rules:**
13.....27871

**17 CFR**
**Proposed Rules:**
239.....27872
274.....27872

**20 CFR**
615.....27926

**21 CFR**
520.....27850
522.....27850
524.....27850
526.....27850
529.....27850
540.....27850
558.....27852
**Proposed Rules:**
868.....27878

**30 CFR**
250.....27853

**39 CFR**
111.....27853

**40 CFR**
52.....27858
**Proposed Rules:**
131.....27882

**42 CFR**
51d.....27859
51f.....27859
**Proposed Rules:**
60.....27950

**46 CFR**
502.....27859

**47 CFR**
0.....27861
**Proposed Rules:**
22.....27883
80.....27883

**50 CFR**
**Proposed Rules:**
17.....27884
611.....27887

# Rules and Regulations

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988



## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1901, 1951, 1955, and 1965

### Property Management and Security Servicing

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** Farmers Home Administration (FmHA) amends its regulations on property management and security servicing for single family housing (SFH) loans. This action is taken to clarify the intent of the regulations, implement changes required by recent law and to change internal agency management provisions. The intended effect is to broaden, strengthen and clarify FmHA's regulations on disposal of inventory property and security servicing.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This final action has been reviewed under USDA procedures in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no 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. This action is not expected to substantially effect budget outlay or effect more than one agency or to be controversial. The net result is to provide better service to rural communities.

#### Background/Discussion

On April 2, 1987 (52 FR 10577), FmHA published a proposed rule on property management and security servicing for SFH loans. FmHA now publishes these proposed revisions for final rule. In addition, FmHA published a proposed rule on September 1, 1987, (52 FR 32935) on security servicing for SFH loans. This final rule addresses and incorporates those revisions proposed on September 1, 1987. FmHA publishes in final these two proposed rules at the same time since they affect the same CFR Parts and publication concomitantly will minimize the burden on FmHA field personnel and the general public.

On May 23, 1988 (Part II) (53 FR 18392), FmHA published a proposed rule pursuant to the Agricultural Credit Act of 1987 which includes proposed changes to 7 CFR Parts 1955 and 1965. That rulemaking action primarily affects farmer program (CONACT) portions of the aforementioned Parts. This rulemaking action primarily affects housing borrowers/properties and has no impact on the intent or changes in 7 CFR Parts 1955 and 1965 being proposed as a result of the Agricultural Credit Act of 1987.

#### Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.427 Rural Rental Assistance Payments

#### Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404-Emergency Loans, 10.406-Farm Operating Loans, 10.407-Farm Ownership Loans, 10.410-Low Income Housing Loans, 10.416-Soil and Water Loans, and 10.417-Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405-Farm Labor Housing Loans and Grants, 10.411-Rural Housing Site Loans, 10.414-Resource Conservation and Development Loans, 10.415-Rural Rental Housing Loans, 10.418-Water and Waste Disposal Systems for Rural Communities, 10.419-Watershed Protection and Flood Prevention Loans, 10.421-Indian Tribes and Tribal Corporation Loans, 10.422-Business and Industrial Loans, 10.423-Community Facility Loans, and 10.427-Rural Rental Assistance Payments.

#### Environmental Impact Statement

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. 91–90, an Environmental Impact Statement is not required.

#### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does

it add/remove any authorities which would effect small entities.

**Discussion of Comments—April 2, 1987, Proposed Rule**

The proposed rule published in the **Federal Register** (52 FR 10577) on April 2, 1987, provided for a 60-day comment period. Five comments were received during the comment period. Three comments were received late, but nevertheless were considered in the scope of this review. Of the eight comments, three were from FmHA field employees, and five were from sources outside FmHA. Generally, the comments were favorable with two comments (from outside FmHA) strongly supporting the proposed rule. Several comments were outside the scope of the proposed rule, and three commentors strongly opposed certain sections of the proposed rule. The major concerns appeared in the areas of suitability determinations, downpayment requirements and property which does not meet the Agency's definition of "Decent, Safe and Sanitary" (DSS). The area of suitability determinations was not addressed in the proposed rule. Downpayment requirements will be discussed below, and there appeared to be confusion over properties that do not meet DSS standards. The commentor is under the misconception that all "unsuitable" properties do not meet DSS standards. Generally, unsuitable properties do meet DSS standards. The terms, "unsuitable" and "non DSS", are not interchangeable. For example, an inventory property with an inground swimming pool would be considered unsuitable for retention in the program due to an above modest feature (the pool), however this property may be decent, safe and sanitary. To clarify this area of potential confusion, FmHA has changed the terms "suitable" and "unsuitable" to "program" and "nonprogram" respectively. We believe these changes more accurately describe the property and will prevent such confusion in the future.

A summary of the comments relating to the April 2nd proposed rule by section area and changes to the proposed regulation which are being incorporated into the final rule are as follows:

*Section 1955.113*

One commentor suggested that the period of time suitable (program) property is available for sale to anyone after the 45-day retention period be set by the State Director consistent with market conditions in the State. We concur this suggestion has merit, however, we believe consistency within FmHA sales methods throughout the country is more valuable. A uniform policy also makes it easier to establish listing notices, exclusive broker contracts, open listing agreements, etc. Another commentor suggested that three administrative price reductions be authorized with the State Director having authority to authorize additional price reductions instead of the two administrative price reductions as proposed. FmHA considered this when developing the proposed rule, however felt that the two larger administrative price reductions should sell the property within a reasonable period of time. If not, FmHA needs to review the situation to determine why the property is not selling. A new appraisal may be necessary or additional marketing efforts may promote a timely sale. The regulation has been revised to require that a higher level office review the case file, including documentation of marketing efforts, after the two price reductions and provide guidance on future sales efforts. Should FmHA later determine that additional administrative price reductions should be authorized, regulations will be published to that effect.

An additional change has been incorporated into the final rule that will make the date administrative price reductions take effect easier to compute. For computation purposes, each month will be considered to have thirty days.

*Section 1955.114*

Most commentors were in favor of the longer retention period during which suitable (program) property is offered exclusively for sale to eligible (program) applicants, and suggested even longer periods. One commentor suggested the retention period be left at 30 days with the State Director having the authority to establish a longer period of time if necessary. Again, we believe that such a retention time is best left uniform throughout the country for consistency. FmHA policy is to sell suitable (program) property to eligible (program) applicants. This policy was established internally by the Agency to further the objectives of our Housing program. The retention period has been increased 300 percent since 1985. FmHA, however, also has an obligation to dispose of inventory property as quickly as possible to relieve the Government of the tremendously high costs of retaining property in inventory. We believe the 45-day retention period is more than sufficient time for an eligible (program) applicant to make a prudent decision regarding homeownership. It is quite apparent to FmHA, and to any other seller, that if property remains unsold after a month and one-half of active marketing, additional marketing efforts are needed. It should also be noted that although sales are then opened up to any purchaser, an eligible (program) applicant always has preference on suitable (program) property sales.

*Section 1955.116*

One commentor recommended that FmHA include the estimated cost of repairs in advertisements of properties that do not meet "Decent, Safe and Sanitary" (DSS) standards. We do not concur with this recommendation. First, FmHA does not always estimate the cost of repairs when determining the suitability of a house for retention in the program. Second, when FmHA does estimate such a cost, it is an estimate of how much it will cost FmHA to contract for such repairs/renovations. This may be significantly different from the costs for an individual purchaser to make such repairs/renovations. We believe that listing the repairs that are necessary to make the house meet DSS standards is sufficient information for a potential purchaser to make a prudent decision.

One commentor strongly opposed the proposed modification in the DSS language that would eliminate the "standard all encompassing" language currently being used. The commentor states that after a purchaser has made repairs/renovations as required by the sales agreement/quitclaim deed and FmHA has inspected same, the Agency has further responsibilities to ensure that the structure meets DSS standards. FmHA disagrees with this comment. FmHA has no legal or statutory basis by which to require that the purchaser of non DSS inventory property make repairs/renovations beyond those required to remove the DSS occupancy restrictions in the deed to the property. Such a policy, in addition to being unenforceable, would effectively make non DSS properties unsalable.

The commentor further suggests that regulations be expanded to include the requirement that the property be reinspected before the deed restriction is removed. We concur that the regulation is silent in this regard, however, believe it is implied in the instruction and is being accomplished nationwide. Regardless, we have incorporated this requirement in the regulation.

The same commentor suggested that FmHA demolish any property which has been determined unsuitable (nonprogram) due to location or design. We believe such a policy is too harsh and hasty. A property which has been determined to be unsuitable

(nonprogram) due to location may be a structure that is remotely located. A farmer, business or other concern may have interest or use for such a property. Similarly, a property which is unsuitable (nonprogram) due to design may have uses beyond a housing-unit for very-low and low-income FmHA borrowers. We have however, expanded our regulations on sale of property independently as chattel and vacant land.

*Section 1955.118*

Comments were extremely favorable regarding our proposal to reduce downpayment requirements on sales to ineligible (nonprogram) applicants, with two exceptions. One commentor, however, strongly opposed the proposal stating that FmHA had no justification for such action. Section 510(e) of the Housing Act of 1949, as amended, provides the Secretary with broad authority by which to sell acquired property. A downpayment is not required by statute. FmHA reduces downpayment requirements to assist the Agency in selling inventory property. FmHA continues to acquire property into inventory at a steady rate. The costs of retaining these properties in inventory are staggering and present a problem with which the Agency and other Departments are very concerned. We believe the commentor's concern is that ineligible (nonprogram) applicants will be purchasing suitable (program) inventory property. There is nothing to preclude such an action now, yet FmHA sells very few suitable (program) inventory houses to ineligible (nonprogram) applicants. Eligible (program) purchasers always have preference in suitable (program) property sales. They are provided a minimum of 3 exclusive 45-day retention periods in which to purchase a suitable (program) inventory property. The Agency has provided very prudent means by which to sell suitable (program) property to eligible (program) applicants.

The other comment opposing the reduction in downpayment requirements suggested that the reductions only be provided to eligible (program) applicants. There are no downpayment requirements from eligible (program) applicants for the purchase of suitable (program) inventory property. One commentor strongly supported the reduction in the downpayment requirements and suggested FmHA go further by eliminating the downpayment requirement for owner/occupant ineligible (nonprogram) terms financing. FmHA does not concur with this suggestion. Generally, applicants who will qualify for this type of credit will have incomes in excess of FmHA program income levels. We feel a two percent downpayment, together with payment of closing costs from personal funds, is reasonable for this type of debtor to be able to purchase a home.

*Section 1955.130*

Comments on this section were generally favorable with one exception. The commentor does not believe FmHA should pay a real estate commission to a real estate broker who purchases the property for his/her own use. As mentioned in the proposed rule, FmHA policy in not paying commissions in these instances is inconsistent with the Department of Housing and Urban Development (HUD) and the Veterans Administration (VA). The policy is also inconsistent with private sector sales. FmHA has no reason not to pay a commission in these instances. The commentor suggests a real estate broker will not submit an offer from an eligible (program) purchaser but will wait to submit their own offer to purchase the property. Real estate brokers are professionals who are licensed to sell real estate and are guided by professional ethics as well as State laws. It would be unconscionable and possibly unlawful for a real estate broker not to submit a valid offer to the seller. This comment was not incorporated into the final rule.

*Sections 1955.147 and 1955.148*

No comments were received on these sections. However, further changes have been made in the regulation to clarify how suitable (program) property is to be sold by sealed bid or auction. The changes require the bid deposits from eligible (program) purchasers to be the same as an earnest money deposit and not the full ten percent currently required.

*Section 1965.126*

Three comments were received on this section. One recommended the downpayment on ineligible (nonprogram) transfers be based upon the market value of the property, or the unpaid debt, whichever is lower. We concur with this recommendation. In some areas, the FmHA debt exceeds the market value. To not make the downpayment requirement prohibitive, we agree that same be based upon the market value or unpaid debt, whichever is lower.

Another commentor opposed the revision. They believe allowing an ineligible (nonprogram) purchaser to assume the debt of an eligible (program) borrower is an inappropriate use of loan funds. Our existing regulations, which already permit the assumption of an FmHA loan on ineligible (nonprogram) terms, require a 10 percent downpayment to consummate the transaction. FmHA has only proposed to reduce the downpayment. This is an assumption of an existing debt, therefore no new loan funds are involved. Further, when the debt is assumed, it is assumed on ineligible (nonprogram) terms. The interest rate is generally increased, a downpayment is required, and the term of the loan is reduced. We believe the proposed rule will assist borrowers in selling their property should the borrower so desire. The choice of who purchases the property is strictly their own.

*Section 1965.128*

One comment was received relating to this section. The commentor suggested the authority to assign security instruments be expanded to include accounts that have been accelerated after all appeals have been exhausted. We concur this authority should be granted as was done in the predecessor regulation to Subpart C of Part 1965 and have incorporated this suggestion into this final rule.

A minor change affecting the wording in the proposed rule is incorporated into this final rule. In the proposed rule, an assignment of security instruments is authorized when "A junior lienholder has foreclosed its lien and is paying FmHA in full." This should have read if "A junior lienholder is foreclosing and is paying FmHA in full." There would be no reason to provide an assignment of security instruments to a junior lienholder if they have already foreclosed, have title to the property, and wish to pay off FmHA in full.

*Other Sections*

One commentor suggested that FmHA revise its regulations on suitability determinations since they relate closely to the proposed rule. The commentor also stated the proposed regulations did not contain a definition of "suitable" (program) and "unsuitable" (nonprogram) property. 7 CFR Part 1955, Subpart C, does contain the definition of suitable (program) and unsuitable (nonprogram) property. The commentor should refer to § 1955.103. Suitability determinations are made pursuant to Subpart B of Part 1955, which contains guidance on same. FmHA recognizes that clarification of how suitability determinations are made may be necessary and will be publishing proposed revisions to Subpart B of Part 1955 either concomitantly or shortly after this final rulemaking action.

Another commentor suggested that FmHA regulations be expanded to permit the reclassification of property from suitable (program) to unsuitable (nonprogram), and vice versa. Further, if FmHA sells a property as unsuitable (nonprogram), the Agency should permit the designation to be changed to suitable (program) should the property later be repaired/renovated to meet such standards. FmHA concurs with the first comment and will be proposing language that would permit changes in suitability determinations in another rulemaking action, however, it should be noted that generally, an "unsuitable" (nonprogram) property will remain an unsuitable (nonprogram) property. The second half of the comment is a moot issue. If a FmHA property is sold from inventory to a nonprogram purchaser, it loses its label of suitable (program) or unsuitable (nonprogram). Should an FmHA applicant desire to purchase the property at a later date, the property would be considered for financing under the applicable program regulation regardless of its previous suitability designation.

**Discussion of Comments—September 1, 1987 Proposed Rule**

The proposed rule published in the **Federal Register** (52 FR 32935) on September 1, 1987, provided for a 60-day comment period. Three comments were received from the general public. Five written comments were received from FmHA field personnel which dealt primarily with minor clarifications and internal agency management. Of the eight comments, two (from outside the Agency) were received late, however, they have been considered in the development of this rulemaking action.

Of the eight comments received, seven strongly supported the proposed rule. Only one commentor opposed the proposed regulation changes. However, it appears from the content of this letter, the commentor did not fully understand the proposed rule. The commentor believes the proposed regulation is an attempt to preclude FmHA program applicants from purchasing properties which are involved in the "debt exceeds value" situation. This is completely adverse to the intent of the regulation. Current FmHA regulations permit the Agency to receive an amount less than the market value of the property when the sale is to a purchaser financing the property from a source other than FmHA. Since there is cash at the closing, FmHA will accept payment in full for less than market value so necessary and authorized closing expenses can be paid to complete the sale. The problem arises, however, when an FmHA borrower desires to sell to an FmHA applicant and the applicant will be assuming all or a portion of the existing FmHA debt (at market value). Since there is no money at the loan closing, the selling expenses cannot be paid, thus precluding the sale from an FmHA borrower to an FmHA applicant. The proposed regulations would allow FmHA to pay for such expenses (by voucher) thus permitting program transfers. The true beneficiaries of this action are FmHA applicants. We believe this document and review of the proposed rule should clear up any confusion of the commentor.

A different commentor strongly supported the proposed regulation, however, felt that FmHA should only authorize payment of authorized selling expenses when the sale is to an FmHA program applicant. We do not concur with this comment. The intent of this rulemaking action is to assist borrowers whose FmHA debt and authorized selling expenses exceed the market value of the property. For these parties, there is no alternative beyond voluntary conveyance of foreclosure. Who purchases the property is strictly a matter between the FmHA borrower/seller and a potential purchaser. FmHA does not believe it should prescribe or interfere in who can purchase these properties.

Another commentor opposed the requirement that a financial statement be taken from the borrower to ascertain whether they have adequate funds to pay any or all of the authorized selling expenses. The commentor reaffirmed the Agency's intent to assist the borrower in selling their property and avoiding a voluntary conveyance. The proposed policy of taking a financial statement for a voluntary sale was questioned as being counterproductive to the intent of the proposed rule. Further, the proposed rule only affects situations where the debt and authorized selling expenses exceed the market value of the property. In such economically depressed areas, it is extremely unlikely that an FmHA borrower will have funds to pay towards closing. The commentor believes the policy is counterproductive and overly burdensome on the public. We partially concur with this comment, however, for apparent reasons, FmHA does need to know if the borrower has funds available to pay their own closing expense. The regulations have been expanded however, to include that if a current financial statement is on file, a new statement will not have to be taken.

Another commentor recommended that the County Committee action required for certain release from liability actions be amended. County Committees are generally used in the Farmer Program area only and are unfamiliar with housing issues. We concur with this comment. In the past, FmHA was limited by statute for certain of our release from liability actions. Recent changes in the Housing Act of 1949, as amended, now provide us with broader release from liability authorities and we have revised our regulations accordingly.

**Summary of Other Revisions**

The following revisions are included in this final rule and were not published for proposed rule as they clarify the intent of the existing regulation, make changes required by law, make necessary reference changes to other FmHA regulations as the result of changes in Part 1955 and changes determined to be within the scope of internal agency management. A summary of the more significant changes by section number are as follows:

*Subpart A of Part 1955*

1. Section 1955.4 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority granted to said position in this subpart to a State Director. Also, the section is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

2. Section 1955.10(a) is expanded to provide County Supervisors with the authority to accept a voluntary conveyance of a single family housing (SFH) property regardless of the amount of the indebtedness.

3. Section 1955.10(d)(3) is expanded to provide an exception to the requirement that a financial statement be taken for SFH voluntary conveyances since it is Agency policy to accept such voluntary conveyances with release from liability if the borrower has cooperated in good faith, satisfactorily maintained the property, and otherwise fulfilled the covenants of the loan agreements to the best of the borrower's ability.

4. Section 1955.10(e) is revised to give the State Director the authority to procure appraisals from a source outside FmHA for SFH voluntary conveyances.

5. Section 1955.10(h) is revised to provide guidance to FmHA personnel on how to handle unsatisfied accounts after a voluntary conveyance.

6. Section 1955.11(b) is expanded to permit FmHA to pay necessary and proper fees, approved by the bankruptcy court, to secure the conveyance of property from a trustee in bankruptcy

7. Section 1955.15(a)(2) is expanded to give District Directors the authority to accelerate Multiple Family Housing (MFH) loans which are within their loan approval authority.

8. Section 1955.15(b) is expanded to provide guidance on initiating steps to meet the requirements of the National Historic Preservation Act. This affects properties which are over fifty years old and which the Government will likely acquire at the time of the foreclosure sale. Since this is generally a lengthy process, FmHA plans to initiate such steps prior to foreclosure instead of after acquisition to prevent delays in selling the property.

9. Section 1955.15(f) is expanded to provide the State Director with the authority to obtain appraisals by contract from a source outside FmHA when necessary for FmHA to bid at a foreclosure sale.

10. Section 1955.20(d) is expanded to give the State Director the authority to obtain chattel appraisals by contract from a source outside FmHA when necessary.

*Subpart B of Part 1955*

1. Section 1955.53 is expanded to amend the definition of "Contracting Officer" consistent with Federal Acquisition Regulations.

2. As mentioned in the discussion of the comments on the April 2, 1987, proposed rule, FmHA has revised its terminology of "suitable" and "unsuitable" property as they relate solely to SFH and MFH loans. To better fit the intent of the property classification, "suitable" property is renamed "program" property, and "unsuitable" property is renamed "nonprogram (NP)" property. This new terminology better describes the property, and will remove the negative stigma the term "unsuitable" connotes. Similarly, in Subpart C of Part 1955, the terms "eligible" and "ineligible" terms financing, are changed to "program" and "nonprogram" terms financing. This will provide consistency in terminology throughout property management. Therefore the definitions of "suitable" and "unsuitable" property contained in paragraph 1955.53 and throughout Subparts B and C of Part 1955, have been revised. The term "suitable" property is still retained, however, for property other than SFH or MFH (generally FP property).

3. Section 1955.54 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State Director. This paragraph is also revised to correct the titles of employees under the jurisdiction of the Hawaii State Director.

4. Section 1955.55 is expanded to include a new paragraph on emergency advances when liquidation is pending.

5. Section 1955.57 is added to provide guidance on inventory property containing underground storage tanks.

*Subpart C of Part 1955*

1. Section 1955.103 is expanded to include in the definition of "Decent, Safe and Sanitary" that properties must also be safe.

2. As mentioned in the summary of changes in Subpart B, the terms "suitable" and "unsuitable" as they relate to the housing inventory property have been changed to "program" and "nonprogram" (NP). Similarly, references to credit on "eligible" and "ineligible" terms, as they relate to housing property, have been changed to "program" and "nonprogram" (NP). The definitions in § 1955.103 have been revised and alphabetized accordingly, and references to the aforementioned terms have been revised throughout Subpart C.

3. Section 1955.104 is expanded to give the Administrator, and Assistant Administrators, the authority to delegate any authority of said position in this subpart to a State Director. The paragraph is revised to correct the titles of employees under the jurisdiction of the Hawaii State Director; and clarify that servicing officials have the authority to offer for sale, and accept and/or reject bids or offers for inventory property regardless of amount.

4. Section 1955.111 is removed as it contained information regarding the repair policy on inventory property. Inventory property is repaired under Subpart B of this Part. Section 1955.110 is renumbered to § 1955.111 and § 1955.111 is reserved for future use.

5. Section 1955.112(a) is expanded to clarify that earnest money deposits will not be taken in connection with sales by FmHA personnel.

6. Section 1955.112(b) is revised to: 1. Give the County Supervisor the authority to utilize the services of real estate brokers under an open listing agreement (previously, the authority was granted to the State Director); 2. strongly encourage the use of exclusive brokers; 3. and clarify that earnest money deposits are exclusive of any required credit report fee.

7. Section 1955.112(c) is revised to encourage the use of sealed bids and auctions for SFH property when diligent sales efforts and adequate market exposure fail to sell the property.

8. Section 1955.113(a) is revised as provided in the proposed rule with the following changes: 1. For ease in computing dates between administrative price reductions, each month is assumed to have 30 days; and 2. to provide further guidance of sales steps after the two administrative price reductions have been utilized and the property remains unsold.

9. Section 1955.114(a), which outlines the sales steps for program property, is completely revised for clarity. Paragraph (a) was lengthy and cumbersome and has been broken down into smaller segments. The paragraph has been expanded and clarified to: 1. Establish the new 45 day retention period for program applicants to purchase program properties; 2. clarify that an acceptable offer must be for at least the sale price; 3. clarify that an offer to purchase property is considered independently of any credit request; 4. require that offers be date stamped when received and be numbered sequentially when being drawn by lot; 5. establish a five-day waiting period during which offers can be received when the property is listed for sale under an exclusive broker contract (this will allow all real estate brokers an equal chance of selling the property); 6. clarify the priority of offers process; 7. provide for back-up offers; 8. clarify that if an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the contract is considered null and void and the sale will continue to others regardless of whether the offeror decides to appeal the adverse decision as to their credit request; and 9. include a subparagraph on sales steps for unsold property.

10. Section 1955.114(b) is expanded to provide further guidance on the handling of offers to purchase Multiple-family housing inventory property. In particular, language is added on establishing a time/date/place for the drawing when multiple offers are received and how to handle offers when the offeror's FmHA credit request is denied.

11. Section 1955.115(a) is expanded to provide additional guidance on: 1. Submitting requests to the State Director to sell nonprogram (NP) property by sealed bid or auction when the property remains unsold after two administrative price reductions; 2. additional guidance on sale on NP property as chattel; 3. additional guidance on sale of vacant land; and 4. provide guidance on steps to take when NP property remains unsold after five months of active marketing.

12. Section 1955.116 is revised as outlined in the proposed rule with the following minor changes: 1. "Decent,

Safe and Sanitary (DSS)" clauses used in advertising do not have to list the items which make the property not meet DSS standards, the advertisement will adivse any interested party to contact the local office for the list, and 2. require that FmHA inspect the property prior to releasing a restrictive covenant.

13. Section 1955.118 is expanded and revised to: 1. Provide additional guidance on accepting, processing and approving offers to purchase inventory property on NP terms; 2. provide additional guidance on modification of security instruments on loans to NP borrowers when certain covenants of standard FmHA security instruments do not apply; and 3. reduce the downpayment requirements as discussed in the proposed rule.

14. Section 1955.130(a) is expanded to: 1. Encourage the use of exclusive real estate brokers; 2. remove the reference to setting a commission rate in exclusive broker contracts since this rate will be part of the evaluation criteria; and 3. remind field personnel that when utilizing the services of real estate brokers under an open listing agreement, the field office is responsible for advertising.

15. Section 1955.130(f) is revised and expanded to provide guidance that: 1. FmHA may not set the commission rate in an exclusive broker contract; the commission will be one of the evaluation criteria; 2. when a real estate broker submits a bid on an exclusive broker contract and the proposed commission rate is lower than the typical rate for such services, they must supply documentation that they have successfully sold property at the lower rate with no compromise in services; 3. commissions paid under an open listing agreement will be the typical rate for such services in the area and will be established by the servicing official (the State Director previously established the rate); 4. incorporate the revision from our proposed rule that a commission will be paid when the sale is to the broker and they are not receiving FmHA credit for the purchase of the property. In these cases where an exclusive broker is involved, if a sale is to a cooperating broker and they are receiving FmHA credit for the purchase, one-half the respective commission will be paid to the exclusive broker.

16. Section 1955.131(b) is revised for consistency. As with other FmHA contracts for sale services, FmHA may not set the commission rate in an auctioneer contract. The rate of commission will be one of the evaluation criteria in the contract. However, any bidder that submits a bid with a commission rate lower than the typical rate for such services in the area, must supply documentation that they have successfully sold properties at the lower commission rate with no compromise in services.

17. Section 1955.135 is expanded and revised to clarify how FmHA will adjust and pay taxes when inventory property is sold.

18. Section 1955.137 is expanded to include two new subparagraphs on advising potential purchasers of FmHA inventory properties with reportable underground storage tanks and how to handle property (exclusive of buildings) which is considered unsafe.

19. Section 1955.141 is expanded to provide District Directors in Puerto Rico with the authority to execute nonwarranty deeds for the sale of inventory property. This authority currently lies with State Directors. In Puerto Rico, the party executing the deed must be present at the time title to the property is transferred. It is too burdensome and costly for the State Director in Puerto Rico to attend the closing of every inventory property sale, therefore, this authority is delegated to a more local level.

20. Section 1955.143 is expanded to provide additional guidance to field personnel on reporting inventory property that has not sold within a reasonable period of time to a higher level office for review and guidance.

21. Section 1955.146 is expanded to provide more emphasis and guidance on advertising inventory property for sale.

22. Section 1955.147 is expanded to: 1. Provide guidance in determining a minimum sale price for a sealed bid sale; and 2. provide that when program or suitable property is sold by sealed bid that credit on program terms will be offered and that bid deposits will be comparable to an earnest money deposit instead of the ten percent bid deposit required from other purchasers.

23. Section 1955.147(b) is revised as discussed in the proposed rule and to clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Also the paragraph provides guidance that if a bid is received which requests FmHA credit in excess of market value, that the bidder will be given the opportunity to reduce their credit request with no accompanying change in the offered price.

24. Section 1955.148 is expanded and clarified to: 1. Provide guidance on how to establish a minimum sale price; 2. clarify that any FmHA credit extended may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security; and 3. provide that, as addressed in the proposed rule, program applicants receive no preference in auction sales.

*Subpart E of Part 1901*

1. Revised to correct references to exclusive broker contracts and establish when Affirmative Fair Housing Marketing Plans are required.

*Subpart G of Part 1951*

1. Revised references to "suitable" property.

*Subpart M of Part 1951*

1. Revised to correct a procedure reference and add a reference to the SFH NP interest rate.

*Subpart C of Part 1965*

1. Revised references from "eligible" and "ineligible" rates/terms/applicants to "program" and "nonprogram (NP)" rates, terms/applicants. Similarly, references to "suitable" and "unsuitable" properties are revised to "program" and "nonprogram (NP)" properties.

2. Section 1965.104(c) has been partially revised to authorize the State Director to approve protective advances for house maintenance when continuing with the borrower. Previously, National Office review and consent was required, which could cause unnecessary delays in making a protective advance.

3. Section 1965.106 has been expanded to: 1. Clarify that subordination granted to enable a borrower to graduate also includes refinancing without Agency request; and 2. provide the State Director with the authority to approve subordinations regardless of the amount of indebtedness.

4. Section 1965.125(a) has been partially revised to require County Supervisors to inform borrowers of apparent equity in voluntary liquidation actions. Previously, this section required County Supervisors to inform borrowers of the amount of equity in the property. Without doing a full appraisal, and computing interest credit recapture based upon estimates of allowable sale expenses, which would be impractical, it is not possible for a County Supervisor to provide a borrower with an accurate estimate of equity.

5. Section 1965.126(b)(4)(ii) has been clarified. This paragraph provides guidance of determining the suitability of properties for retention in the program when an assumption of the existing FmHA debt is being considered.

6. Section 1965.126(b)(5) is expanded to clarify that "as is" market values will be considered in assumption cases.

7. Section 1965.126(b)(13) is expanded to clarify that FmHA will not suggest, encourage or require a transferor to make repairs as a condition for approving a transfer with assumption.

8. Section 1965.126(c)(2) is expanded to clarify that in those specific cases where a same terms assumption is authorized, if the current interest rates/terms are more favorable to the assuming party, an assumption on new terms may be accomplished provided the assuming party meets program eligibility requirements. Although the current regulation does not preclude such an action, wording is being added to clarify this point.

9. Paragraph 1965.126(d) is revised to exclude the requirement that to assume an existing FmHA loan on NP owner/occupant terms, the applicant must be unable to secure other financing. Assumptions on NP terms are authorized to assist borrowers with the sale of their property. Since this credit is extended at a higher interest rate and on shorter terms than those authorized for program applicants, there is no reason to carry over the program requirement of inability to secure other financing to NP applicants.

10. Section 1965.127 is revised to remove: 1. The requirement for County Committee certification in NP transfers; 2. the restriction that borrowers cannot be released from liability on NP transfers with a term in excess of five years; 3. the restriction that a jointly liable borrower cannot be released from liability unless the value of the property is at least equal to the debt; and 4. the requirement that repayment ability be considered in sale for less than the debt cases.

11. Section 1965.137 is expanded to require that the borrower's case file and/or all related files or pertinent information be submitted to the National Office when requesting an exception under the exception authority.

**List of Subjects**

*7 CFR Part 1901*

Civil rights, Compliance reviews, Fair housing, Minority groups.

*7 CFR Part 1951*

Account servicing, Low and moderate income housing loans—Servicing, Reporting requirements, subsidies.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

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

## PART 1901—PROGRAM RELATED INSTRUCTIONS

1. The authority citation for Part 1901 continues 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 E—Civil Rights Compliance Requirements *C*

2. In § 1901.203, paragraphs (c)(4)(iv) and (c)(5)(iv) are revised to read as follows:

**§ 1901.203 Title VIII of the Civil Rights Act of 1968.**

* * * * *

(c) * * *

(4) * * *

(iv) For real estate brokers listing housing properties on an exclusive basis, at any time more than 5 properties are listed for sale by FmHA in the same subdivision.

* * * * *

(5) * * *

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing contract, one year or until all properties covered under the plan have been sold, whichever is later.

* * * * *

## PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for Part 1951 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 G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

4. In § 1951.315, the first sentence is revised to read as follows:

**§ 1951.315 Refinancing.**

Refinancing of Section 502 loans is authorized when the property meets program standards and either interest credit would not be available because the loan was approved prior to August 1, 1968, or the loan was made as an above-moderate income or NP loan and the borrower would now be eligible for a loan with interest credit and, through circumstances beyond the borrower's control, the borrower is in danger of losing his/her home. * * *

### Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

5. In § 1951.612, paragraph (a)(1)(iii) is revised to read as follows:

**§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.**

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this Subpart, the recipient may be allowed to enter into an accelerated repayment agreement according to § 1965.125(a)(3) of Subpart C of Part 1965 of this chapter, if an SFH loan, except that the above-moderate or nonprogram (NP) interest rate which was in effect on the date the loan was approved will be used according to Exhibit C of this Subpart (Available in any FmHA office). This provision should be used only where repayment can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be classified as a NP loan.

* * * * *

## PART 1955—PROPERTY MANAGMENT

6. The authority citation for Part 1955 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—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

7. In § 1955.1, the following sentences are added between the fourth and fifth sentences:

**§ 1955.1 Purpose.**

* * * For Community Programs and insured B&I actions involving loans secured by other than real estate or chattel property, such loans will be handled in accordance with the provisions of this subpart which do not deal specifically with real or chattel property. Prior to liquidation, these cases will be submitted to the National Office for prior review and guidance. * * *

8. In § 1955.2, the period at the end of the text is changed to a comma, and the following words are added:

**§ 1955.2 Policy.**

* * * unless specifically referenced in this subpart.

**§ 1955.3 [Amended]**

9. Section 1955.3 is amended by removing all paragraph designations.

10. Section 1955.4 is revised to read as follows:

**§ 1955.4 Redelegation of authority.**

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director is authorized to redelegate, in writing, any authority in this subpart to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(c) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(1) of this subpart may not be redelegated. However, a duly designated Acting District Director may approve or disapprove foreclosure. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor is authorized to redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7, or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska and Area Supervisors in the Western Pacific Territories and American Samoa.

(e) The monetary limitations on acceptance of voluntary conveyance as provided in § 1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower level official.

11. In § 1955.5, paragraph (d) is revised to read as follows:

**§ 1955.5 General actions.**

* * * * *

(d) *Payment of costs.* Costs related to liquidation of a loan or acquisition of property will be paid by preparation of Standard Form 1034, "Public Voucher For Purchases and Services Other Than Personal," Standard Form 1143, "Advertising Order," or Form AD 838, "Purchase Order," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," or Form FmHA 838B, "Invoice—Receipt Certification," as appropriate, according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined in § 1955.53 of this subpart.

12. In § 1955.10, paragraphs (a)(1), (a)(2)(iii), (d)(3), (d)(7), (e), the introductory text of paragraph (f)(1), the first sentence after the indented text in the introductory text of paragraph (f)(2), paragraph (h)(1) are revised, paragraphs (h)(5) and (h)(6) are renumbered as paragraphs (h)(6) and (h)(7) respectively and a new paragraph (h)(5) is added to read as follows:

**§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.**

* * * * *

(a) * * *

(1) *Loans to individuals.*

(i) *SFH loans.* The County Supervisor is authorized to accept voluntary conveyances regardless of amount of indebtedness.

(ii) *FP loans.* The County Supervisor is authorized to accept voluntary conveyance of property secured by Farmer Program loans if the total indebtedness against the property including prior and junior liens, does not exceed his/her approval authority for the type of loan (or combination of types) involved. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office). The State Director is authorized to approve voluntary conveyances regardless of amount of indebtedness.

* * * * *

(2) * * *

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance offer. Submissions will include the case file; OGC's opinion on settling any other liens involved; a statement of essential facts; and recommendations of the State Director and Program Chief. Submissions are to be addressed to the Administrator, ATTN: (appropriate program division.)

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services;" or FmHA 1930–1 or FmHA 442–3, "Balance Sheet," and information on present income and potential earning ability. Exception: A financial statement is not required from a borrower who is indebted for an SFH loan(s) only and will be released from liability.

* * * * *

(7) The borrower may be required to provide a title insurance policy or a final title opinion from a designated attorney when the State Director determines it is necessary to protect the Government's interest. Such title insurance policy or final title opinion will show title vested to the Government subject only to exceptions and liens approved by the County Supervisor.

* * * * *

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the market value of the property in its existing condition if an appraisal reflecting current market value is not part of the file. If a qualified FmHA appraiser is not available to appraise property securing a loan other than MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office.) For property securing MFH, prior authorization must be obtained by the Assistant Administrator, Housing, to secure an appraisal from a source outside FmHA.

(f) * * *

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt.

However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA, less prior liens, if any. The conveyance will be processed as follows:

* * * * *

(2) * * *

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, less prior liens (if any), and the borrower will determine if he/she wishes to make a new offer on that basis. * * *

* * * * *

(h) * * *

(1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and the statement must be signed by the servicing official.

* * * * *

(5) When the FmHA account is not satisfied and the borrower not released from liability, the account balance, after deducting the "asis" market value and prior liens, if any, will be accelerated utilizing Exhibit F of this subpart (available in any FmHA office.)

* * * * *

13. In § 1955.11, the first sentence of paragraph (b)(1) is revised to read as follows:

**§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.**

(b) * * *

(1) FmHA may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. * * *

* * * * *

14. In § 1955.15, paragraph (a)(2)(i) is revised, (b)(3) is added, (d)(4) is revised, the fourth sentence of (e)(2) is revised, (f)(3) is revised, and the following two sentences are added to (f)(5) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

(a) *Authority.*

(2) * * *

(i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

* * * * *

(b) * * *

(3) *Historic preservation.* If it is likely that FmHA will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in § 1955.137(b) of Subpart C of Part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as outlined in § 1955.137(b). Formal steps should not be initiated until the conclusion of all appeals, however, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

* * * * *

(d) * * *

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be processed in accordance with the FMI. When an official statement of account is not required, account balances and recapture information may be obtained from the field office terminal.

* * * * *

(e) * * *

(2) * * * At the time indicated by OGC in the foreclosure instructions, Form FmHA 1951–6, "Borrower Account Description Flag," will be processed in accordance with the FMI.

(f) * * *

(3) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA 1962–20, "Notice of Judgment," will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

* * * * *

(5) * * * Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

15. In § 1955.18, the first sentence of paragraph (a) is revised, the introductory text of paragraph (b) and paragraph (c), and paragraph (d) are revised as follows:

**§ 1955.18 Actions required after acquisition of property.**

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will process Form FmHA 1955–3, "Advice of Property Acquired," and Form FmHA 1955–3A, "Acquired Property-Maintenance," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," and Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," (if the project has had rental assistance units) according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. * * *

* * * * *

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be placed in the case file. Any oral lease will be reduced to writing on Form FmHA 1955–20, "Lease of Real Property." A lease account will be established in the Finance Office records. If an existing lease is terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this chapter, except for MFH property for which leasing as a project is generally not authorized.

* * * * *

(c) *Existing management agreement.* For MFH and C&BP, if a property is being managed on behalf of the borrower prior to acquisition, the State Director will request the assistance of the National Office in determining if the agreement should be canceled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this chapter.

* * * * *

(d) *Inventory account.* The Finance Office will establish an inventory account under the Property ID Number assigned. The value of the property entered into the inventory account will be the market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens).

* * * * *

16. In § 1955.20, paragraph (d) is revised to read as follows:

**§ 1955.20 Acquisition of chattel property.**

* * * * *

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property." If a qualified appraiser is not available to appraise chattel property, the State Director may obtain an appraisal from a qualified source outside FmHA by contract in accordance with FmHA Instruction 2024–A (available in any FmHA office.)

* * * * *

## Subpart B—Management of Property

17. Section 1955.53 is revised by removing all paragraph designations, revising the definitions of "Contracting Officer," "Suitable property" and "Surplus property," removing the definition of "Unsuitable property" and adding in alphabetical order definitions of "Nonprogram (NP) property" and "Program property" to read as follows:

**§ 1955.53 Definitions.**

* * * * *

*Contracting Officer (CO).* CO means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized representatives of the CO acting within the limits of their authority as delegated by the CO.

* * * * *

*Nonprogram (NP) property.* SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however, is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

* * * * *

*Program property.* SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

* * * * *

*Suitable property.* Property, other than SFH or MFH, that could be used to carry out the objectives of an FmHA loan program with financing provided through that program.

*Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

18. Section 1955.54 is revised to read as follows:

**§ 1955.54 Redelegation of authority.**

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(b) Except as provided in paragraph (a) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(c) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(d) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

19. In § 1955.55, paragraph (b)(2)(iii) is revised, paragraph (d) is revised and redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

**§ 1955.55 Taking abandoned real or chattel property into custody and related actions.**

* * * * *

(b) * * *

(2) * * *

(iii) Costs incurred in connection with procurement of such things as management services will be handled in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

(d) *Emergency advances where liquidation is pending.* Although security property may not be defined as abandoned in accordance with paragraph (a) of this section, if the borrower is not occupying the property and refuses or is unable to protect the security property, the servicing official is authorized to make expenditures necessary to protect the Government's interest. This would include, but is not limited to, securing or winterizing the property or making emergency repairs to prevent deterioration. Expenditures will be handled in accordance with paragraph (e) of this section. Situations where this authority may be used include, but are not limited to, where a borrower has a sale pending or when a voluntary conveyance is in process.

(e) *Income and costs.* Income received from the property will be handled in accordance with FmHA Instruction 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Expenditures will be charged to the borrower's account as a recoverable cost. Costs will be paid by preparing Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and processing Form FmHA 2024–1, "Miscellaneous Payment System," or Form AD 838, "Purchase Order" and processing Form FmHA 838B, "Invoice-Payment Certification," as appropriate, according to FmHA Instruction 2024–A (available in any FmHA office) and the respective FMI's.

20. Section 1955.57 is added to read as follows:

**§ 1955.57 Real property containing underground storage tanks.**

Within 30 days of acquisition of real property into inventory, FmHA must report certain underground storage tanks to the State agency identified by the Environmental Protection Agency (EPA) to receive such reports. Notification will be accomplished by completing an appropriate EPA or alternate State form, if approved by EPA. A State Supplement will be issued providing the appropriate forms required by EPA and instructions on processing same.

(a) Underground storage tanks which meet the following criteria must be reported:

(1) It is a tank, or combination of tanks (including pipes which are

connected thereto) the volume of which is ten percent or more beneath the surface of the ground, including the volume of the underground pipes; and

(2) It is not exempt from the reporting requirements as outlined in paragraph (b) of this section; and

(3) The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance; or

(4) The tank contained a regulated substance, was taken out of operation by FmHA since January 1, 1974, and remains in the ground. Extensive research of records of inventory property sold before the effective date of this section is not required.

(b) The following underground storage tanks are *exempt* from the EPA reporting requirements:

(1) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) Pipeline facilities (including gathering lines) regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968;

(ii) The Hazardous Liquid Pipeline Safety Act of 1979; or

(iii) For an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in paragraph (b)(4) (i) or (ii) of this section;

(5) Surface impoundments, pits, ponds, or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

(c) A copy of each report filed with the designated State agency will be forwarded to and maintained in the State Office by program area.

(d) Prospective purchasers of FmHA inventory property with a reportable underground storage tank will be informed of the reporting requirement and provided with a copy of the form filed by FmHA.

(e) In a State which has promulgated additional underground storage tank reporting requirements, FmHA will comply with such requirements and a State Supplement will be issued to provide necessary guidance.

(f) Regardless of whether an underground storage tank must be reported under the requirements of this section, if FmHA personnel detect or believe there has been a release of petroleum or other regulated substance from an underground storage tank on an inventory property, the incident will be reported to the appropriate State Agency, the State Environmental Coordinator and appropriate program chief. These parties will collectively inform the servicing official of the appropriate response action.

**§ 1955.63 [Amended]**

21. In § 1955.63, paragraph (c) is amended by changing the terms "suitable" and "unsuitable" to "program" and "nonprogram," respectively, wherever mentioned in the paragraph.

**§ 1955.64 [Amended]**

22. In § 1955.64, paragraph (a)(1) is amended by changing the term "Unsuitable" to "Nonprogram" in the fourth sentence.

23. In § 1955.65, paragraph (c)(4) is revised as follows:

**§ 1955.65 Management of inventory and/or custodial real property.**

* * * * *

(c) * * *

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form AD 838 or SF 1034 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, in accordance with the respective FMI's. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of SF 1034 or AD 838 and processing Forms FmHA 2024–1 or FmHA 838B, as appropriate, according to the respective FMI's.

* * * * *

24. In § 1955.66, paragraph (b) is revised to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(b) *Selection of lessees for other than farm property.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as a program applicant for purchase of the property (if the property is suited for program purposes) and ability to preserve the property. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necessary to assure payment ability and creditworthiness of the prospective lessee.

* * * * *

25. In § 1955.68, paragraphs (a) and (c) are revised to read as follows:

**§ 1955.68 Payment of taxes.**

* * * * *

(a) *Suitable or program property.* When property is suited for program purposes, the servicing official will prepare SF 1034 and process Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienholder will pay the taxes.

* * * * *

(c) *Nonprogram (NP) housing property.* When property is classified as NP and the value is limited to the extent that taxes which accrue before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

## Subpart C—Disposal of Inventory Property

26. Section 1955.102 is revised to read as follows:

**§ 1955.102 Policy.**

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When a property is of a nature that it will enable a qualified applicant for one of Farmers Home Administration's (FmHA's) loan programs to meet the objectives of the loan program, preference will be given to program applicants. Sales are authorized for

program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: A dwelling which secured an Emergency loan may be sold as a Single-Family Housing (SFH) unit if suited for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rural Rental Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

27. Section 1955.103 is revised by removing all paragraph designations, revising the definitions of "Decent, safe and sanitary housing (DSS)," "Eligible terms," "Ineligible terms," "Regular FmHA sale," "Suitable property," and "Surplus property," removing the definition of "Unsuitable property," and adding in alphabetical order definitions of "Nonprogram (NP) property," "Nonprogram (NP) terms," "Program property," "Program terms," and "Servicing official," to read as follows:

**§ 1955.103 Definitions.**

* * * * *

*Decent, safe and sanitary (DSS) housing.* Standards required for the sale of Government acquired SFH, MFH and LH structures acquired pursuant to the Housing Act of 1949, as amended. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements:

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems,

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this chapter, and

(5) Are safe; that is, a hazard does not exist that would endanger the safety of dwelling occupants.

*Eligible terms.* Credit terms, for other than SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For SFH and MFH properties, see the definition of "Program terms."

*Ineligible terms.* Credit terms, for other than SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as surplus. Loans made on ineligible terms are classified as Nonprogram (NP) loans and are serviced accordingly. For SFH and MFH properties, see the definition of "Nonprogram (NP) terms."

* * * * *

*Nonprogram (NP) property.* SFH and MFH property acquired pursuant to the Housing Act of 1949, as amended, that cannot be used by a borrower to effectively carry out the objectives of the respective loan program; for example, a dwelling that cannot be feasibly repaired to meet the FmHA requirements for existing housing as described in Subpart A of Part 1944 of this chapter. It may contain a structure which would meet program standards, however is so remotely located it would not serve as an adequate residential unit or be an older house which is excessively expensive to heat and/or maintain for a very-low or low-income homeowner.

*Nonprogram (NP) terms.* Credit terms for SFH or MFH property sales, offered for the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is classified as nonprogram (NP). Loans made on NP terms are classified as NP loans and are serviced accordingly. For property other than SFH and MFH, see the definition of "Ineligible terms."

* * * * *

*Program property.* SFH and MFH inventory property that can be used to effectively carry out the objectives of their respective loan programs with financing through that program. Inventory property located in an area where the designation has been changed from rural to nonrural will be considered as if it were still in a rural area.

*Program terms.* Credit terms for SFH or MFH property sales, prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting eligibility requirements set forth for the respective loan program. For property sales other than SFH and MFH, see the definition of "Eligible terms."

*Regular sale.* Sale by FmHA employees or real estate brokers other than by sealed bid, auction or negotiation.

* * * * *

*Servicing official.* For loans to individuals, as defined in § 1955.53 of Subpart B of Part 1955 of this chapter, the servicing official is the County Supervisor. For all other loans, excluding insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

*Suitable property.* Property, other than SFH or MFH, that can be used to carry out the objectives of an FmHA loan program with financing provided through that program.

*Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as contained in the definition of "CONACT or CONACT PROPERTY" of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

* * * * *

28. Section 1955.104 is revised to read as follows:

**§ 1955.104 Authorities and responsibilities.**

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program objectives and available resources.

(1) Any authority in this subpart which is specifically provided to the Administrator or to an Assistant Administrator may only be delegated to a State Director. The State Director cannot redelegate such authority.

(2) Except as provided in paragraph (a)(1) of this section, the State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(3) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(4) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS-7 or above, who is

determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, the Director for the Western Pacific Territories, and Area Supervisors in the Western Pacific Territories and American Samoa.

(b) *Responsibility.* (1) National Office program directors are responsible for reviewing and providing guidance to State, District and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and insuring compliance with FmHA regulations.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State Supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The servicing official has the authority to offer for sale, accept and/or reject bids or offers for inventory property regardless of amount. Any credit request, however, must be approved by an approval official within his/her respective loan approval authority as outlined in the applicable Exhibits of FmHA Instruction 1901–A (available in any FmHA office).

**§ 1955.111 [Removed]**

**§ 1955.110 [Redesignated as § 1955.111 and Reserved]**

29. Section 1955.111 is removed, § 1955.110 is redesignated as § 1955.111, § 1955.110 is reserved for future use, and §§ 1955.111, 1955.112, 1955.113, 1955.114, 1955.115, 1955.116, 1955.117, 1955.118, and 1955.119 are revised to read as follows:

**§ 1955.111 Sale of real estate that secured RH loans (housing).**

Section 1955.112 through 1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

**§ 1955.112 Method of sale (housing).**

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with §§ 1955.114 and 1955.115 of this subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method is used. No earnest money will be collected in connection with sales by FmHA. For MFH, this method will always be used unless another method is authorized by the Assistant Administrator, Housing.

(b) *Real estate brokers.* The County Office will utilize the services of real estate brokers for regular sales when there are five or more properties in inventory at any one time during the calendar year. When real estate brokers are used, first consideration will be given to utilizing such services under an exclusive broker contract as provided for in § 1955.130 of this subpart. Only when it is determined that an exclusive broker contract is not practicable, will the services of real estate brokers under an open listing agreement be utilized. The use of real estate brokers in offices having less than five properties in inventory at any one time during the calendar year is optional provided staffing and workload permit diligent and timely sales by FmHA. When broker services for SFH are utilized, the FmHA office will not conduct direct sales, but will refer inquiries to the broker or list of participating brokers. However, if FmHA has been approached by a potential buyer desiring to purchase a specific property and a sales contract has been accepted, the property will not be listed for sale with real estate brokers. Earnest money held by real estate brokers will be used to pay the purchaser's closing costs with any balance of the costs to be paid by the purchaser. Any required earnest money deposit is exclusive of any required credit report fee. Brokers may only be used for MFH with authorization of the Assistant Administrator, Housing.

(c) *Sealed bid or auction.* The use of sealed bids or auctions is an effective method by which to sell inventory property. If the State Director determines that NP SFH property has been given adequate market exposure and that diligent sales efforts have not produced buyers, or under unusual circumstances as outlined in § 1955.115(a)(1) of this subpart, he/she will authorize sale by sealed bid or auction unless additional sales methods appear more prudent. Program SFH property will be sold by regular sale *only*, unless the Assistant Administrator, Housing, authorizes sale by sealed bid or auction. The State Director will request such authorization when all reasonable marketing efforts fail to produce buyers and the conditions of § 1955.114(a)(6) of this subpart have been met. The case file, including documentation of all marketing efforts, will be forwarded to the Assistant Administrator, Housing, ATTN: Single Family Housing Servicing and Property Management (SFH/SPM) Division, to request authority to sell program property by sealed bid or auction. The decision to utilize a sealed bid or auction must be carefully weighed when the property is located in a subdivision, since the resultant sale may have an adverse effect on surrounding property values. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

**§ 1955.113 Price (housing).**

Real property will be offered or listed for its present market value, as adjusted by any administrative price reductions provided for in this section. Market value will be based upon the condition of the property at the time it is made available for sale. However, when a section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or market value, less administrative price reductions, if any.

(a) *SFH price reduction.* SFH property will be appraised at any time additional market data indicates this action is warranted. If SFH inventory has not sold after being actively marketed, the price will be administratively reduced. An administrative price reduction will be made without changing the SFH appraisal. For ease in computing dates for administrative price reductions, each month is assumed to have thirty days. The following schedule of administrative price reductions will be followed:

(1) *Program property.* If program property has not sold after being actively marketed at the current appraised value for at least 45 days during which time program applicants have exclusive rights to purchase the property, plus an additional 30 days to any offeror, the price will be administratively reduced by 10 percent of the appraised value. During the first 45 days after the price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If at the end of this 75-day period the property remains unsold, a second price reduction of 10 percent of the appraised

value will be made. During the first 45 days after the second price reduction, the property will be actively marketed with program applicants having exclusive rights to purchase the property, and at the expiration of this 45-day period, the property may be sold to any offeror. If the property does not sell within 75 days of the second price reduction, further guidance is provided in § 1955.114(a)(6) and Exhibit D (available in any FmHA office) of this subpart.

(2) *Nonprogram (NP) property.* If NP property has not been sold after being actively marketed for 45 days, the price will be administratively reduced by 10 percent of the appraised value. If the property remains unsold after an additional 45-day period of active marketing, one further price reduction of 10 percent of the appraised value will be made. If the property does not sell within 45 days of the second price reduction, further guidance is provided in § 1955.115(a)(1) and Exhibit D (available in any FmHA office) of this subpart.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions in price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

**§ 1955.114 Sales steps for program property (housing).**

Program property will be sold by regular sale unless the Assistant Administrator, Housing, authorizes another method. If the State Director determines that program property has been given adequate market exposure and that diligent sales efforts including the use of real estate brokers has not produced purchasers, the State Director may request the Assistant Administrator, Housing, to authorize sale by sealed bid or public auction as specified in § 1955.112(c) of this subpart.

(a) *Single family housing (SFH).* Sale prices will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property or list it with real estate brokers for regular sale under the provisions of § 1955.112 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for program property

(1) The following provisions apply to all offers to purchase SFH inventory property:

(i) Program property will be available for purchase only by program applicants for the first 45 days from the date of the initial offering or listing, and for the first 45 days following the date of any reduction in price. During these 45-day period(s), offers from others may be received and held until the first business day following the 45-day period (the 46th day) when any such offer(s) will be considered as received on the 46th day along with offers received on that same (46th) day. After the expiration of each 45-day exclusive period for program applicants, program property may be purchased by offerors requesting credit on program terms, nonprogram (NP) terms or for cash in the order of priority set forth in paragraph (a)(3) of this section.

(ii) In regular sales, an acceptable offer *must* be for at least the sale price. No offer for less than the sale price will be considered, accepted or held. Offers will be considered as acceptable or unacceptable independent of any accompanying credit request (on program or NP terms).

(iii) All offers will be date-stamped when received. Selection of equally acceptable offers, considering offers in the category order outlined in paragraph (a)(3) of this section, received on the same business day will be made by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as back-up offers pending sale to the successful offeror, unless the offeror has specifically noted on the offer that it may not be held as a back-up offer.

(iv) Offers may be *received* and *accepted* at any time after the effective date the property is available for sale unless listed with real estate brokers under an exclusive broker contract. For properties listed under an exclusive broker contract, offers may be *received* at any time after the effective date the property is listed for sale, however, will *not* be *considered* or *accepted* until five business days after the effective date the property is available for sale or any reduction in price. Offers received during the five-business-day period will be considered to be received at the same time on the 6th day along with offers received on the same (6th) day.

(v) If an offer subject to FmHA financing is accepted, and the offeror's credit request is later denied, the next offer (if any) will be accepted regardless of whether the rejected applicant appeals the adverse decision (NP applicants do not receive appeal rights). In cases involving program property, if no back-up offers are on hand, the property will be reoffered/relisted for sale utilizing the balance of any outstanding retention period. Property will not be held off the market pending the outcome of an appeal.

(2) *Effective date and method of offering.* When ready for sale, each property will be offered for sale by use of Form FmHA 1955–43 unless FmHA has on hand a signed offer from a program applicant to purchase a specific program property or an offer from any offeror to purchase a specific NP property. The date the form is posted or mailed to real estate brokers is the effective date the offer for sale has begun.

Listings will provide for sales on program and NP terms, as appropriate.

(3) *Priority of offers.* For program properties, acceptable offers received after the 45-day retention period specified in paragraph (a)(1)(i) of this section have priority in the order given in paragraphs (a)(3) (i), (ii), (iii) and (iv) of this section. For NP properties, acceptable offers have priority in the order given in paragraphs (a)(3) (ii), (iii) and (iv) of this section. Program applicants may purchase NP property, however, credit may only be extended on NP terms.

(i) Offers with requests for credit on program terms. An offer from an applicant requesting credit on program terms in excess of the sale price will be considered as equally acceptable with other acceptable offers from program applicants and will be sold for the sale price.

(ii) Cash offers, in descending order from highest to lowest, provided the cash offer is higher than any other offer which falls into the parameters of paragraph (a)(3)(iii) of this section multiplied times the current cash preference percentage listed in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

(iii) Offers with requests for credit on NP terms in descending order from highest to lowest, for *more* than the sale price. An offer with a request for credit in excess of the market value of the property will not be accepted. If an offer of this type is received, the offeror will be given the opportunity to reduce the credit request to the market value (or lower) with no change to be made in the offered price.

(iv) Offers with requests for credit on NP terms for the sale price.

(4) *Back-up offers and notification to offerors.* Back-up offers will be taken in accordance with paragraph (a)(1)(iii) of

this section. County offices utilizing the services of real estate brokers will advise the brokers of changes in the status of the property. County offices not utilizing real estate brokers will advise offerors of changes in the status of the property utilizing Exhibit E of this subpart (available in any FmHA office) or similar format. Use of Exhibit E is optional in offices utilizing real estate brokers.

(5) *Finalizing sales.* Credit sales on program terms will be made in accordance with § 1955.117 of this subpart and Subpart A of Part 1944 of this chapter. Cash sales or credit sales on NP terms will be made in accordance with § 1955.118 of this subpart.

(6) *Unsold property.* If program property remains unsold after eight months of active marketing, the case file, with documentation of all marketing efforts, will be forwarded to the State Office for review with a recommendation of future sales efforts. The State Director will determine whether a request should be made to the Assistant Administrator, Housing, to sell the property by sealed bid or auction, or whether additional guidance such as, but not limited to advertising, reappraisal, offering a special effort sales bonus, or 20-year amortization factor (with balloon after 10 years) on NP financing may facilitate a sale.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director, or designee. The sale date/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with Subpart B of Part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as a back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer, the selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization of the Assistant Administrator, Housing.

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant Administrator, Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suited for the SFH program, it may be offered for sale as a SHF unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to a program RH applicant on *program terms only*—not for cash or on NP terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

**§ 1955.115 Sales steps for nonprogram (NP) property (housing).**

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect changes in market conditions, repairs and improvements, if any. Form FmHA 1955–43 for SFH and 1955–40 for MFH will be completed to offer the property for sale. The advertising requirements and deed restrictions in § 1955.116 of this subpart apply if the property does not meet FmHA DSS standards.

(a) *Single family housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash or on NP terms as provided in § 1955.118 of this subpart. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

(1) *Sale by sealed bid or auction.* If a NP property has not sold within 150 days after being offered for sale, the inventory case file with documentation of marketing efforts will be submitted to the State Director. The State Director will authorize sale by sealed bid or auction in accordance with §1955.112(c) of this subpart unless additional sales methods appear more prudent. Use of the sealed bid or auction method may be considered as an initial sales effort

under special or unusual circumstances such as, but not limited to, structures which have been substantially destroyed by fire or other causes.

(2) *Sale as chattel.* If efforts to sell NP property by sealed bid or auction prove unsuccessful, the structure(s) may be sold as chattel (for chattel or salvage value, as appropriate) when authorized by the State Director. When the structure is to be sold as chattel (exclusive of land) further guidance is provided in §§ 1955.121, 1955.122 and 1955.141(b) of this subpart. If no offer is received, the structure(s) may be demolished and removed from the site and then the site offered for sale. If this method is utilized, FmHA will attempt to have the structure removed in exchange for the salvageable materials by contract, otherwise, will solicit for contracts to have the structure removed in accordance with FmHA Instruction 2024–A (available in any FmHA office).

(3) *Sale of vacant land.* When FmHA has vacant land in inventory which was security for an SFH loan, the land will be sold in accordance with this subparagraph. When the lot meets the requirements of Subpart A of Part 1944 of this chapter, and a program applicant desires to purchase the lot and construct a dwelling, a credit sale will not be made. Instead, one section 502 loan will be made which will include funds for the purchase of the lot and construction of a dwelling. Otherwise, the lot will be sold for cash or on NP terms with a loan not to exceed ten years in term and amortization.

(b) *Multiple family housing.* Sales steps will be the same as for program MFH property as provided in § 1955.114(b) of this subpart except that sales must be for cash or on NP terms as set forth in § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell NP MFH property, authority to use that method of sale must be requested from the Assistant Administrator, Housing. Inventory files, including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review.

**§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).**

For real property (exclusive of improvements) which is unsafe, refer to § 1955.137(e) of this subpart for further guidance. For all other housing inventory property which does not meet decent, safe and sanitary (DSS) standards, the provisions of this section apply.

(a) *Notices and advertising.* If the inventory property has a single family dwelling or MFH unit thereon which does not meet DSS standards as defined in § 1955.103 of this subpart, but which could meet such standards through the repair or renovation activities of the future owner, any "Notice of Real Property For Sale," "Notice of Sale," or other advertisement used in conjunction with advertising the property for sale must include the following language which is contained in Form FmHA 1955–44, "Notice of Residential Occupancy Restriction":

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which this property will be conveyed will contain a covenant restricting the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is repaired, renovated or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480. The property must be repaired and/or renovated as follows:*.

* For advertisements, the sentence preceding the asterisk may be deleted and replaced with the following, or similar sentence: "Contact FmHA (or any real estate broker/name of exclusive broker) for a list of items which must be repaired/renovated." For notices other than advertising, insert those items which are necessary to make the dwelling unit(s) meet DSS standards. Examples are:

—Replace flooring and floor joists in kitchen and bathroom.

—Drill new well to provide for an adequate and potable water supply.

—Hook-up to community water and sewage system now being installed.

—Provide a functionally adequate, safe and operable * system. * Insert heating, plumbing, electrical and/or sewage disposal, etc., as appropriate.

—Install *. * Insert new roof, foundation, sump pump, bathroom fixtures, etc., as appropriate.

—Install R-* insulation in basement walls or ceiling, R-* insulation in attic, and storm windows/doors throughout. * Insert appropriate R-Values to meet Thermal Performance Standards.

(b) *Sale agreements.* If a housing structure in inventory does not meet DSS standards, Form FmHA 1955–44 must be attached to Forms FmHA 1955–45 or FmHA 1955–46, as appropriate, to provide notification of the deed restriction and required repairs/renovations before the dwelling can be used for residential purposes.

(c) *Quitclaim Deed.* The following, the original of Form FmHA 1955–44, or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the Quitclaim Deed for properties which do not meet DSS standards at the time of sale but which could through the repair/renovation activities of the future owner:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to the Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired and/or renovated as follows: *." * Insert the same items referenced in the listing notice(s) and sale agreement which are necessary to make the dwelling unit(s) meet DSS standards.

(d) *Release of restrictive covenant.* Upon request of the property owner for a release of the restrictive covenant, FmHA will inspect the property to ensure that the repairs/renovations outlined in the restrictive covenant have been properly completed or the structure(s) razed. A State Supplement outlining the procedure for releasing the restrictive covenant will be issued with the advice of OGC.

**§ 1955.117 Processing credit sales on program terms (housing).**

The following provisions apply to all credit sales on program terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales. The contract is accepted prior to processing Form FmHA 410–4, "Application for Rural Housing Assistance (Non-Farm Tract)," for SFH property with the provision that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being

extended will be followed in making credit sales on program terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security, less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 3 percent of the purchase price as a cash downpayment. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restrictions specified by the respective program requirements.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is required.

(d) *Downpayment.* When a downpayment is made, it will be collected at closing, identified by property identification number, purchaser's name and case number (and project number for MFH sales) and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA will be the lower of the interest rate in effect at the time of loan approval or closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH credit sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

**§ 1955.118 Processing cash sales or credit sales on NP terms (housing).**

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on NP terms:

(a) *Offers.* Form FmHA 1955–45 or FmHA 1955–46, as appropriate, will be used to document the offer and acceptance. Contract acceptance is made prior to processing a request for credit on NP terms.

(b) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability and creditworthiness. Standards forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type involved.

(c) *Approval.* Forms FmHA 1940–1 or FmHA 1944–51, as appropriate, will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(d) *Downpayment.* For credit sales, a downpayment will be collected at closing and will be remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office). For SFH properties, purchasers who fall into the category specified in § 1955.118(f)(1)(i) of this subpart (owner/occupants), a downpayment of not less than 2 percent is required. For purchasers who fall into the category specified in § 1955.118(f)(1)(ii) of this subpart (nonoccupant/investors), a down payment of not less than 5 percent is required. For MFH properties, a downpayment of not less than 10 percent is required.

(e) *Interest rate.* The NP SFH interest rate will be charged on all credit sales of SFH property on NP terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(f) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *SFH.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (f)(1)(i) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(2) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using up to a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(g) *Modification of security instruments.* If applicable to the type property being sold, modification of security instruments may be made. On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted. Special care should be taken to ensure that only the aforementioned covenants are deleted. Deletions are made by lining through only the specific inapplicable language with both the NP borrower and FmHA initialing the changes.

(h) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay his/her own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by FmHA from the downpayment.

(3) The County Supervisor or District Director will provide the closing agent

with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(i) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(j) *Classification.* Credit sales on NP terms will be classified as NP loans and serviced accordingly.

**§ 1955.119 Payment of points (housing).**

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a non-FmHA loan, the County Supervisor may authorize the payment by FmHA of not more than three points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will *not* be paid to reduce the purchaser's interest rate. The payment will be deducted from the funds to be received by FmHA at closing.

30. Section 1955.127 is revised to read as follows:

**§ 1955.127 Selection and use of contractors to dispose of inventory property.**

Sections 1955.128 through 1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instruction 2024–A (available in any FmHA office) is applicable for procurement of nonpersonal services.

31. Section 1955.130 is revised to read as follows:

**§ 1955.130 Real estate brokers.**

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings.* The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract.* An exclusive broker contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1—100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA sales, advertising plans, proposed innovative promotion methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices.* Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Program SFH.* See § 1955.114(a) of this subpart.

(2) *Program MFH.* Offers will be considered from program applicants only.

(3) *NP SFH.* See § 1955.115(a) of this subpart.

(4) *NP MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money.* The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission*—(1) *Amount*—(i) *Exclusive broker contract.* FmHA may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower than the typical rate for such services in the area must provide documentation that thay have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement.* A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types

of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses.* The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official by completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Form FmHA 1955–42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA 1955–45.

**§ 1955.131 [Amended]**

32. In § 1955.131, paragraph (b) is revised to read as follows:

* * * * *

(b) *Commission.* FmHA may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA official completing Form AD–838 and processing Form FmHA 838–B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

* * * * *

**§ 1955.134 [Amended]**

33. In § 1955.134, paragraph (b) is revised to read as follows:

* * * * *

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

34. Section 1955.135 is revised to read as follows:

**§ 1955.135 Taxes on inventory property.**

Where FmHA owned property is subject to taxation, taxes and assessment installments will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms FmHA 1955–45 or FmHA 1955–46. The purchaser will be responsible for paying all taxes and assessment installments accrued after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessment installments for property improvements (water, sewer, curb and gutter, etc.) accrued as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, payment of taxes and assessment installments due to be paid by FmHA will be accomplished in the following order:

(a) Deducted from any cash proceeds FmHA is to receive as a result of the sale;

(b) Paid by voucher to the local taxing authority if they will accept payment at that time;

(c) Deducted from the sale price (which may result in a promissory note less than the sale price), if acceptable to the purchaser; or

(d) Paid by voucher to the purchaser. If appropriate, for program purchasers, this money may be placed in a Supervised Bank Account until the taxes can be paid.

35. In § 1955.137, paragraph (a)(2)(ii)(A) is revised, the second sentence of paragraph (3)(i) is revised, and new paragraphs (d) and (e) are added to read as follows:

**§ 1955.137 Real property located in special areas or having special characteristics.**

(a) * * *

(2) * * *

(ii) * * *

(A) When sending Forms FmHA 1955–40, FmHA 1955–43, or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

* * * * *

(3) * * *

(i) * * * Flood insurance must be provided at closing of loans on program/eligible and nonprogram (NP)/ineligible terms. * * *

* * * * *

(d) *Notification to purchasers of inventory property with reportable underground storage tanks.* If FmHA is selling inventory property containing a storage tank(s) which was reported to the Environmental Protection Agency (EPA) pursuant to the provisions of § 1955.57 of Subpart B of Part 1955 of this chapter, the potential purchaser(s) will be informed of the reporting requirement and provided a copy of the report filed by FmHA.

(e) *Real property that is unsafe.* If FmHA has in inventory, real property, exclusive of any improvements, that is unsafe, that is it does not meet the definition of "safe" as contained in § 1955.103 of this subpart and which cannot be feasibly made safe, the State Director will submit the case file, together with documentation of the hazard and a recommended course of action to the National Office, ATTN: appropriate Assistant Administrator, for review and guidance.

36. In § 1955.138, the introductory text and paragraph (a) are revised to read as follows:

**§ 1955.138 Property subject to redemption rights.**

If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) A credit sale of a program or suitable property subject to redemption rights may be made to a program applicant when the property meets the standards for the respective loan program. In areas where State law does

not provide for full recovery of the cost of repairs during the redemption period, a program sale is generally precluded unless the property already meets program standards.

* * * * *

37. In § 1955.139, paragraph (a)(2), and the first sentence of (a)(3)(iv) are revised to read as follows:

**§ 1955.139 Disposition of real property rights.**

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not change the classification from program/suitable to NP or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) * * *

(iv) Property interests under this paragraph may be conveyed by negotiation with any eligible recipient without giving public notice if the conveyance would not change program/suitable property to NP or surplus. * * *

* * * * *

38. Sections 1955.140, 1955.141, 1955.142 and 1955.143 are revised to read as follows:

**§ 1955.140 Sale in parcels.**

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is classified surplus because it is larger than a family-size farm, the State Director will subdivide the property into one or more suitable farm tracts and sell the suitable tracts to program applicants in accordance with § 1955.106 of this subpart. Any remaining surplus property will be disposed of in accordance with § 1955.107 of this subpart. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of property must not change its character from program/suitable to NP or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block if it is determined this will facilitate the sale.

**§ 1955.141 Transferring title.**

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director or duly designated Acting State Director. This authority may not be redelegated except in Puerto Rico, where the State Director may delegate this authority to a District Director. A District Director in Puerto Rico may not redelegate this authority except to a duly designated Acting District Director. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where funds are being disbursed by the closing agent.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the Country supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH program real property sold to program applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and/or sewage systems are functional and adequate for property not being served by public water and/or sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase, the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to program applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter respectively.

**§ 1955.142 Reporting sale.**

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will process Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

**§ 1955.143 Report of inventory not sold.**

Properties which are subject to a sale moratorium are excluded from this requirement. Applicable property reports due in the National Office will be grouped together and submitted simultaneously by the State Director to the appropriate Assistant Administrator each March 31st and September 30th unless the servicing official determines that earlier guidance is appropriate.

(a) *SFH properties*—(1) *Program property.* After the requirements of § 1955.114(a)(6) of this subpart are met, and the property has been in inventory for one year, a report will be submitted to the Assistant Administrator, Housing. The submission will include the case file, documentation of marketing efforts and a request to sell the property by sealed bid or auction in accordance with § 1955.112(c) of this subpart and/or provide a recommendation for future sales efforts.

(2) *NP property.* After the requirements of § 1955.115(a)(1) of this subpart are met, and the property has been in inventory for nine months, a report will be submitted to the Assistant Administrator, Housing. The submission will include the case file, documentation of marketing efforts, and a recommendation for future sales efforts.

(b) *Properties other than housing.* For any real or chattel property not sold within 18 months after acquisition (6 months for chattel), the County Supervisor or District Director, as appropriate, will send the case file, documentation of marketing efforts and a recommendation for future sales

efforts to the State Director for review. The State Director or appropriate program official will review the submission and provide any additional recommendations. If the property is not sold within an additional 6 months (3 months for chattels), the State Director will forward the case file, documentation of marketing efforts, and a recommendation for future sales efforts to the appropriate Assistant Administrator for guidance.

39. In § 1955.144, the title is revised and the first sentence of (a) is revised to read as follows:

**§ 1955.144 Disposal of NP or surplus property to, through, or acquisition from other Agencies.**

(a) * * * If NP or surplus real or chattel property cannot be sold (or only token offers are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). * * *

40. Section 1955.145 is revised to read as follows:

**§ 1955.145 Land acquisition to effect sale.**

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be NP due to location and where it is economically feasible to relocate the structure thereby making it a program property, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining NP parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined NP for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make NP property a program property, if economically feasible.

41. In § 1955.146, paragraph (a) is revised to read as follows:

**§ 1955.146 Advertising.**

(a) *General.* When property is being sold by FmHA or through real estate brokers, it is the servicing official's responsibility to ensure adequate advertising of property to achieve a timely sale. The primary means of advertisements are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notice using Form FmHA 1955–41, "Notice of Sale," and notification of known interested parties. Other innovative means are encouraged, such as the use of a bulletin board to display photographs of inventory properties for sale with a brief synopsis of the property attached; posting Forms FmHA 1955–40 or FmHA 1955–43, as appropriate, in the reception area to attract applicant and broker interest; posting notices of sale at employment centers; door-to-door distribution of sales notices at apartment complexes; radio and/or television spots; group meetings with potential applicants/investors/real estate brokers; and advertisements in magazines and other periodicals. If FmHA personnel are not available to perform these services, FmHA may contract for such services in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

42. In § 1955.147, the introductory text and paragraph (b) are revised, and the word "Form" in the first sentence of paragraph (e) is replaced with the word "Instruction" as follows:

**§ 1955.147 Sealed bid sales.**

This section provides guidance on the sale of all FmHA inventory property, except suitable FP real property which will not be sold by sealed bid. Before a sealed bid sale, the State Director will determine and document the minimum sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP or surplus property, credit may be extended to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with any accompanying deposit in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. For program and suitable property, the minimum deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property, the minimum deposit will be ten percent (10%). The bid will be considered delivered when actually received at the FmHA office. All bids will be date and time stamped. Advertisements and notices will request bidders to submit their bid in a sealed envelope marked as follows: "SEALED BID OFFER _____*_____." (*Insert "PROPERTY IDENTIFICATION NUMBER _____").

* * * * *

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. For SFH and FP (surplus property) sales, preference will be given to a cash officer on NP or surplus property sales which is at least ____*____ percent of the highest offer requiring credit [*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] Otherwise, equal bids will be accepted by public lot drawing. For program or suitable property sales, no preference will be given to program purchasers unless two identical high bids are received, in which case the bid from the program purchaser will receive preference. If a bid is received from any purchaser with a request for credit that (considering any deposit) exceeds the market value of the property or requests a term which exceeds the period for which the property will serve as adequate security, the bidder will be given the opportunity to reduce the credit request and/or term with *no* accompanying change in the offered price.

* * * * *

43. Section 1955.148 is revised to read as follows:

**§ 1955.148 Auction sales.**

This section provides guidance on the sale of all FmHA inventory property by auction, except suitable FP real property which will not be sold by auction. Before an auction, the State Director, with the advice of the National Office for organizational property, will determine and document the minimum

sale price acceptable. In determining a minimum sale price, the State Director will consider the length of time the property has been in inventory, previous marketing efforts, the type property involved, and potential purchasers. Program financing will be offered on sales of program and suitable property. For NP and surplus property, credit may be offered to facilitate the sale. Credit, however, may not exceed the market value of the property nor may the term exceed the period for which the property will serve as adequate security. For program and suitable property sales, no preference will be given to program purchasers. The State Director will also consider whether an FmHA employee will conduct an auction or whether the services of a professional auctioneer are necessary due to the complexity of the sale. When the services of a professional auctioneer are advisable, the services will be procured by contract in accordance with FmHA Instruction 2024–A (available in any FmHA Office). Chattel property may be sold at public auction that is widely advertised and held on a regularly scheduled basis without solicitation. Form FmHA 1955–46 will be used for auction sales. At the auction, successful bidders will be required to make a bid deposit. For program and suitable property, the bid deposit will be the same as outlined in § 1955.130(e)(1) of this subpart. For NP or surplus property sales, a bid deposit of ten percent (10%) is required. Deposits will be in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. Cash and/or personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. Where credit sales are authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept a bid which requests credit in excess of the market value. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or in turn, the next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default, the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B (available in any FmHA office). The bid deposit will be remitted *only* when the bidder defaults; otherwise it will be used at closing towards a downpayment or closing costs, as applicable. The closing will be conducted in accordance with the procedures prescribed in this subpart for the type property and program involved.

## PART 1965—REAL PROPERTY

44. The authority citation for Part 1965 continues 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 C—Security Servicing for Single Family Rural Housing Loans

45. In § 1965.104, paragraph (b)(3) is revised to read as follows:

**§ 1965.104 Preservation of security and protection of liens.**

* * * * *

(b) * * *

(3) *Maintenance.* When the borrower continues to occupy the security property but is not maintaining it, prior authorization from the State Director must be obtained before funds are advanced for essential repairs. In no case will this authority be used if a subsequent loan can be made. The protective advance should be amortized over a period consistent with the borrower's repayment ability, however, in no case may it exceed 96 months. The County Supervisor will submit to the State Director, through the District Director and Rural Housing Chief, the case file together with the following information and any additional information as prescribed in a State Supplement:

(i) An estimate of market value "as-is" and "as improved" based upon a current appraisal;

(ii) Description of the essential repairs and estimate of the cost;

(iii) Documentation, in the running case record, citing the reasons: Why it is in the Government's best interest to advance funds for repairs; whether the property is suited for retention in the program; why the loan should not be liquidated; and why a subsequent loan cannot be made; and

(iv) If there is a prior lien, written documentation that the prior lienholder refuses to make repairs.

* * * * *

46. In § 1965.106, the title of paragraph (a) is revised, and paragraphs (b) and (c) are revised to read as follows:

**§ 1965.106 Subordination of FmHA lien.**

(a) *Subordination of lien for purposes other than graduation/refinancing.*

* * *

* * * * *

(b) *Subordination of lien for recapture to enable a borrower to graduate or refinance.* When a borrower can graduate to other credit pursuant to Subpart F of Part 1951 of this chapter or is refinancing the FmHA debt(s), and elects not to pay recapture at that time, the FmHA lien may be subordinated to secure the recapture receivable only. The amount of the subordination will not exceed the amount required to pay the FmHA debt (exclusive of recapture) plus reasonable closing costs and an amount not to exceed one percent for loan servicing costs if required by the lender. Further subordination of a lien securing a recapture receivable only is not authorized.

(c) *Approval authority.* An approval official, other than the State Director, 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. The State Director may approve a subordination regardless of amount.

* * * * *

47. In § 1965.125, the third sentence of paragraph (a)(1) is revised, paragraph (a)(3) is removed, paragraph (a)(4) is redesignated as paragraph (a)(3), and paragraph (a)(2) is revised to read as follows:

**§ 1965.125 Liquidation.**

(a) *Voluntary liquidation.*

(1) * * * The County Supervisor will advise the borrower if there appears to be any equity in the property. * * *

* * * * *

(2) *Consent to sale when the FmHA debt and authorized selling expenses exceed market value.* If a borrower proposes to sell the property for an amount which will be insufficient to pay the FmHA debt, prior lien(s), if any, and authorized selling expenses, an appraisal will be completed and the County Supervisor may consent to the sale if the proposed sale price is not less than the market value. If a current financial statement is not in the case file, a financial statement on Form FmHA 1944–3, "Budget and/or Financial Statement" will be taken to determine if the borrower has the ability to pay all or a substantial portion of the authorized selling expenses taking into account the borrower's moving/relocation expenses and the Government's prospects of acquisition of the property by voluntary conveyance or foreclosure.

(i) *Authorized selling expenses.* Authorized selling expenses are those which the seller customarily or legally must pay to convey title and include but are not limited to: a real estate broker's

commission which does not exceed the most typical rate for the sale of similar property in the area, no more than three points to enable the buyer to obtain credit from another lender provided they are not being paid to reduce the purchaser's interest rate, real estate taxes, preparation of the deed, abstract and/or title fees, termite and/or other related inspections, title insurance, surveys, and deed or other revenue stamps. Junior liens may also be settled in the same manner as outlined in § 1955.10(c)(2) of Subpart A of Part 1955 of this chapter, however, the State Director must approve settlement of the junior lien regardless of the amount.

(ii) *Closing the transaction.* In no case will the borrower (seller) receive any cash proceeds from the sale. Distribution of funds will be handled as follows:

(A) Where there are sufficient cash proceeds at closing, the entire sale proceeds, minus prior liens, if any, and authorized selling expenses, must be applied to the FmHA debt.

(B) Where cash proceeds are not available (such as in the case of an assumption) or are insufficient to pay authorized selling expenses, FmHA may pay said expenses necessary to consummate the transaction by preparation of Standard Form 1034, "Public Voucher For Purchases And Expenses Other Than Personal," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI). Expenses will only be vouchered when the County Supervisor has determined that it is in FmHA's financial interest to pay such selling expenses instead of the prospects of accepting a voluntary conveyance or foreclosure, taking into account the estimated additional costs which would arise were the property to be acquired and sold from inventory. Any real estate taxes due from the transferee for which there are insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing as a recoverable cost item. All other authorized selling expenses will be charged to the Rural Housing Insurance Fund (RHIF) as a related program expense prior to loan closing. A subsequent loan will be processed for any equity (market value "as-is" minus FmHA indebtedness) in the property and/or the amount of any needed repairs (amount of repairs *or* the difference between the market value "as-improved" and market value "as-is", whichever is lower). Amounts for the seller's equity and/or repairs will *not* be vouchered and charged to the borrower's account. Authorized selling expenses will not be considered or included in the amount assumed. See Exhibit C of this subpart (available in any FmHA office) for examples on how to determine amounts for vouchers, subsequent loans, and/or assumption agreements.

(iii) *Release from liability.* When consent under this paragraph is given, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with a 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(a)(3) and (b) of this subpart. In cases where the borrower is released from liability, and the loan is not being assumed, the note(s) will be stamped "Satisfied For Less Than Indebtedness—Borrower Released From Liability."

* * * * *

48. In § 1965.126, the first sentence of the introductory text, paragraphs (a) and (b)(1) introductory text, the second and last sentences of (b)(3), paragraphs (b)(4)(i), (b)(4)(ii), (b)(5), (b)(13), the introductory text of (c) and (c)(2), (d), and (e)(4)(ii) are revised to read as follows:

**§ 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 program or nonprogram (NP) terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. * * *

(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 program or NP terms and release borrowers and cosigners 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) * * *

(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 program terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suited for the housing program. The following loans may be assumed on program or NP terms under paragraph (c) or (d) of this section:

* * * * *

(3) * * * It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. * * * When the balance of the transferor's debt is paid or when only a portion of the security property was transferred which adequately secures the debt assumed by the transferee, and it is necessary to release the remaining portion of the security property, OGC will be requested to prepare the release document.

(4) * * *

(i) A single-family dwelling presently financed by FmHA may be transferred to a program applicant on program 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 retained in the program although they contain more square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling according to Subpart A of Part 1944 of this chapter. 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 not be suited for retention in the program. In those instances, assumption may be on NP 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 in size, design and/or cost.

(B) When a determination is made that the property should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by FmHA but which does not conform to current policies. This includes older and/or larger houses of a type that have been proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(D) A dwelling which is obsolete due to location, design, construction or age.

(5) *Amount of assumption.* Except for transfers covered in paragraphs (b)(12) and (c)(2) of this section, the transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the "as-is" market value of the property, in which case the transferee will assume an amount equal to the "as-is" market value of the property, less the amount of prior liens, if any. In the situations outlined in paragraphs (b)(12) and (c)(2) of this section, the amount of the debt will not be changed. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on "as-is" market value of the security property must be calculated and included as part of the total indebtedness.

* * * * *

(13) *Repairs.* When a loan is to be assumed on program terms, repairs necessary to bring the property to program standards will be accomplished with a subsequent loan in accordance with Subpart A of Part 1944 of this chapter, unless the transferee has sufficient funds to make the repairs with his/her own resources. In no case will FmHA suggest, encourage, or require that the transferor make necessary repairs as a condition for approving a transfer with assumption.

(c) *Assumption on program terms.* A loan may be assumed on program 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 are as follows:

* * * * *

(2) In the situations outlined in paragraphs (b)(12) and (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this section *only*, the assuming party will execute Form FmHA 460–9, "Assumption Agreement (Same Terms)," unless, due to more favorable terms available at the time, the assuming party desires to assume the loan on new terms. If the assuming party desires to assume the loan on new terms, they must meet all eligibility requirements of Subpart A of Part 1944 of this chapter. If a same terms assumption is consummated, the Finance Office will be involved only by submission of Form 450–10 to change the name and case number on the account being assumed. Same terms assumptions under this paragraph are authorized without considering the assuming party's eligibility for program assistance. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule) will not be changed by virtue of the assumption. After assumption, compliance with loan conditions is required. If a same terms transfer is consummated and the account is delinquent, it may be reamortized in accordance with § 1951.314(a)(7) of Subpart G of Part 1951 of this chapter. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

* * * * *

(d) *Assumption on NP 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 suited for retention in the housing program, the debt may be assumed on NP terms if the assuming party has repayment ability, is creditworthy, 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 NP terms, the loan will be classified as a NP loan. The assumption agreement will bear interest at the SFH–NP rate in effect on the date the assumption is approved. The term of the assumption may not exceed the period for which the property will serve as adequate security for the debt. Other terms are as follows:

(1) When the purchaser does not own an adequate home and intends to occupy the house, the terms may be for a period not to exceed 30 years. A payment of two percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will not be for more than 10 years unless the State Director determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. A payment of five percent of the debt (including any subsidy due) or the current "as-is" market value of the property, whichever is lower, must be made at closing to reduce the amount assumed.

(e) * * *

(4) * * *

(ii) Flood insurance is required on any house located in an identified flood or mudslide hazard area where flood insurance is available. If the house was built prior to implementation of the flood insurance program and flood insurance has never been available or is no longer available, assumption on program or NP terms may be approved without flood insurance provided the house is determined by the County Supervisor to be made (that is, any hazard that exists would not likely endanger the safety of dwelling occupants.) If not safe, or if water rises inside the living space of the house frequently, the property will be classified as NP and therefore subject to assumption on NP terms only. If the house is located in an identified flood or mudslide hazard area and flood insurance is not available when the assumption is approved, the County Supervisor will note in the appropriate space on Form FmHA 1940–1 that approval is subject to the requirement for having flood insurance if it becomes available in the future.

* * * * *

49. In § 1965.127, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3) and (b)(1) are revised to read as follows:

**§ 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, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) A person who is jointly liable for a loan 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 withdrawing party's interest in the security party is conveyed to the person with whom the loan will be continued; and

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

(3) 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 cosigner, if any) may be released from liability when the determination is made that the

transferor (and cosigner, if any) has acted in good faith, adequately maintained the security property and otherwise fulfilled the loan covenants to the best of their ability. If a cosigner is involved, the transferor will not be released unless the co-signer is also released. The County Supervisor will determine if a release will be granted, will document such facts in the case file, and is authorized to release the transferor (and co-signer, if any) from liability.

* * * * *

(b) * * *

(1) When the transferor (and co-signer, if any) is released from liability, the account will be satisfied in the records of the Finance Office when one of the following is processed:

(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 copy of Form FmHA 1965–8 attached, indicating release from liability is transmitted to the Finance Office. The note will be marked "Satisfied and Borrower Released From Liability" and returned to the borrower.

(ii) Form FmHA 1965–22 indicating the transferor is released from liability.

* * * * *

50. Section 1965.128 is revised to read as follows:

**§ 1965.128 Assignment of promissory notes and security instruments.**

With the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis as outlined in this section. For loans subject to recapture of subsidy, recapture must be calculated based upon current market value and any recaputure due must be considered as part of the indebtedness at the time of assignment. The assignment will be made using a form approved by OGC on an individual case basis or on a State form approved by OGC and prescribed in a State Supplement. The State Director is authorized to execute the assignment, and this authority may not be redelegated. Assignment is authorized in the following instances:

(a) A borrower has requested it in writing when FmHA is being paid in full.

(b) An insurance company is paying FmHA in full following a property loss.

(c) A junior lienholder is foreclosing its lien and is paying FmHA in full.

(d) An account has been accelerated, all appeals have been exhausted, the case has been accepted by OGC for foreclosure, and FmHA is being paid in full.

51. In § 1965.129, the introductory text is revised to read as follows:

**§ 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 or program or NP terms, as applicable.

* * * * *

52. Section 1965.137 is revised to read as follows:

**§ 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 statute or other applicable law if the Administrator determines that application of the requirement or provision, or failure to take an action in the case of an omission, would adversely affect the Government's interest and/or have an inequitable effect on a borrower. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exception must be made in writing and contain the borrower's case file and/or related files and pertinent information to support and/or 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.

Dated: June 23, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88–16416 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–07–M

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## Animal and Plant Health Inspection Service

## 9 CFR Part 78

**[Docket No. 88–074]**

## Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arizona from a split status of Class Free-Class A to all Class Free. We have determined that Arizona now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arizona.

**DATES:** Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–074. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.*

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

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

The standards for the different classifications of states or areas entail maintaining (1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and

slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Arizona—except those portions of Mohave and Coconino Counties north of the Grand Canyon—was classified as a Class A state because of its herd infection rate and its MCI reactor prevalence rate. Those portions of Mohave and Coconino Counties north of the Grand Canyon were classified as Class Free. However, after reviewing its brucellosis program records, we have concluded that the entire state of Arizona meets the standards for Class Free status.

To attain and maintain Class Free status, a state or area must (1) remain free from field strain Brucella abortus infection for 12 consecutive months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. The entire state of Arizona now meets the standards for classification as Class Free.

Therefore, we are removing an area of Arizona from the list of Class A states in § 78.41(b) and adding it to the list of Class Free states in § 78.41(a). This action changes the status of Arizona from Class Free and Class A to all Class Free, and relieves certain restrictions on moving cattle interstate from Arizona.

### Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists warranting publication of this rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Arizona.

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

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or 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. Changing the status of Arizona from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Arizona. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be certain herd owners in Arizona, as well as buyers and importers of Arizona cattle. Approximately 60,826 cattle are tested for brucellosis in Arizona each year, at an average cost to the seller of $7 per test. Therefore, Class Free status could result in a potential savings of $425,782 for Arizona's livestock industry. Since Arizona has 3,700 herds, the annual savings to each herd owner will be approximately $115 per herd. We have therefore determined that changing Arizona's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

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

### Paperwork Reduction Act

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

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

### List of Subjects in 9 CFR Part 78

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

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

## PART 78—BRUCELLOSIS

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

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

### § 78.41 [Amended]

2. Section 78.41, paragraph (a) is amended by removing "(those portions of Mohave and Coconino Counties north of the Grand Canyon)" immediately after "Arizona".

3. Section 78.41, paragraph (b) is amended by removing "Arizona (except those portions of Mohave and Coconino Counties north of the Grand Canyon),".

Done in Washington, DC, this 20th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16682 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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## 9 CFR Part 78

**[Docket No. 88–119]**

## Brucellosis in Cattle; State and Area Classifications

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Virginia

from a split status of Class Free/Class A to all Class Free. We have determined that Virginia now meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Virginia.

**DATES:** Interim rule effective July 20, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Please state that your comments refer to Docket Number 88–119. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

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

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for states or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become increasingly less stringent as a state approaches or achieves Class Free status.

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

Before the publication of this interim rule, Virginia—except Clarke County—was classified as a Class Free state because of its herd infection rate and its MCI reactor prevalence rate. Clarke County, Virginia, was classified as Class A. However, after reviewing its brucellosis program records, we have concluded that the entire state of Virginia meets the standards for Class Free status.

To attain and maintain Class Free status, a state or area must (1) remain free from field strain Brucella abortus infection for 12 consective months or longer, (2) maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd. The entire state of Virginia now meets the standards for classification as Class Free.

Therefore, we are removing an area of Virginia from the list of Class A states in § 78.41(b) and adding it to the list of Class Free states in § 78.41(a). This action changes the status of Virginia from Class Free and Class A to all Class Free, and relieves certain restrictions on moving cattle interstate from Virginia.

### Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, had determined that there is good cause to publish this rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Virginia.

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

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or 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. Changing the status of Virginia from Class Free/Class A to all Class Free reduces certain testing and other requirements governing the interstate movement of cattle from Virginia. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis free herds moving interstate are not affected by this change.

The groups affected by this action will be certain herd owners in Virginia, as well as buyers and importers of Virginia cattle. Approximately 8,454 cattle are tested for brucellosis in Virginia each year, at an average cost to the seller of $7 per test. We estimate that approximately 105 of these tests are conducted on cattle in Clarke County, Virginia. Therefore, Class Free status could result in a potential savings of approximately $735 for Clarke County's livestock industry. Since Clarke County, Virginia, has approximately 251 cattle herds, the annual savings to each herd owner will be approximately $2.93 per herd. We have therefore determined that changing Virginia's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

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

**Paperwork Reduction Act**

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

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 78**

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

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

## PART 78—BRUCELLOSIS

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

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

**§ 78.41 [Amended]**

2. Section 78.41, paragraph (a) is amended by removing "(except Clarke County)" immediately after "Virginia".

3. Section 78.41, paragraph (b) is amended by removing "Virginia (Clarke County)".

Done in Washington, DC, this 20th day of July, 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16683 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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**9 CFR Part 92**

**[Docket No. 88–107]**

## Importation of Animals Through the Harry S Truman Animal Import Center; Special Use by the Agricultural Research Service During 1989

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are granting to the Agricultural Research Service of the United States Department of Agriculture the exclusive right to use the Harry S Truman Animal Import Center (HSTAIC) for an importation during calendar year 1989. We are taking this emergency action because the Agricultural Research Service has a singular opportunity to import swine from the People's Republic of China. This project should improve the germplasm of breeding animals in the United States, eventually improving the productivity and international competitiveness of U.S. swine. Negotiations cannot proceed until we authorize the Agricultural Research Service to schedule an importation through HSTAIC. Our failure to act immediately would jeopardize those negotiations. Because of the many unforeseeable contingencies involved in any HSTAIC importation, we are granting the Agricultural Research Service the exclusive right to use HSTAIC for an importation to be scheduled during calendar year 1989.

**DATES:** Interim rule effective July 25, 1988. Consideration will be given only to comments postmarked or received on or before September 23, 1988.

**ADDRESSES:** Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Specifically refer to Docket No. 88–107. You may review comments in Room 1141 of the South Building, 14th St. at Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8695.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 92, § 92.41 (referred to below as the regulations) set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida.

An important mission of the Agricultural Research Service, which is an agency of the United States Department of Agriculture, is to develop means of increasing the productivity of animals. This involves improving the germplasm available for breeding. The Agricultural Research Service advises us that it has, at this time, an unprecedented opportunity to effect a swine importation of potential benefit to breeders in the public sector. Capitalizing on this opportunity requires that these swine from the People's Republic of China undergo an extended quarantine at HSTAIC. The presence of foot-and-mouth disease and certain other diseases in China means that importation of these animals into the United States is possible only through HSTAIC.

The Secretary of Agriculture has determined that U.S. agricultural interests, both short- and long-term, will be well-served by this decision to grant the Agricultural Research Service this special request for use of HSTAIC.

For the Agricultural Research Service to take advantage of its singular opportunity to import animals through HSTAIC during 1989, this authorizing action must be effective immediately. Without this official confirmation of HSTAIC's availability during 1989, the Agricultural Research Service cannot conclude negotiations with Chinese veterinary officials. Negotiations cannot proceed until we authorize the Agricultural Research Service to schedule an importation through HSTAIC. Nothing conclusive can transpire until scheduling specifics are confirmed. Because of the delays and other unforeseeable problems inevitable during the complicated HSTAIC-importation process, it is a matter of urgency that we authorize the Agricultural Research Service to schedule its importation of swine from China at the earliest possible moment. Protocols governing the procedures for this importation will be published for comment prior to the importation.

Private-sector importations through HSTAIC will resume following this use by the Agricultural Research Service.

**Executive Order 12291 and Regulatory Flexibility Act**

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

For this action, the Office of Management and Budget has waived its

review process required by Executive Order 12291.

If the Agricultural Research Service's HSTAIC-importation proceeds according to plan, breeders in the public sector should eventually benefit.

However, the Administrator of the Animal and Plant Health Inspection Service is unable at this time to determine whether this action will have a significant economic impact on a substantial number of small entities.

The emergency, discussed below, makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Impact Statement, if necessary, will address the issues required in section 604 of Pub. L. 96–354, the Regulatory Flexibility Act.

**Immediate Action**

Dr. James Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this rule without prior opportunity for public comment. Immediate action is necessary to enable the Agricultural Research Service to proceed with its swine-importation project. By granting the Agricultural Research Service the exclusive right to use HSTAIC during calendar year 1989 only, we provide the Agricultural Research Service with the flexibility necessary to ensure that this special project may succeed. At the same time, we ensure that private-sector importations through HSTAIC will resume following use by the Agricultural Research Service. The action we are taking at this time resolves uncertainty about the viability of negotiations between the Agricultural Research Service and its foreign counterpart, so that an agreement can be signed and the importation can proceed in 1989.

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

**Paperwork Reduction Act**

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

**Executive Order 12372**

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

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.41 is revised by adding paragraph (g) to read as follows:

**§ 92.41 [Amended]**

* * * * *

(g) The Agricultural Research Service may, in calendar year 1989, import swine from the People's Republic of China into the United States through the Harry S Truman Animal Import Center in accordance with procedures determined by the Secretary of Agriculture.

Done in Washington, DC, this 19th day of July.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16681 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 88–NM–19–AD; Amdt. 39–5984]**

## Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which currently requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the Avionics Standard Communications Bus (ASCB). That action was prompted by reports of dual, simultaneous and unannunciated failures of the Model ATR–42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. This amendment provides terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS, and reconnecting Number 1 AHRS to the ASCB.

**DATE:** Effective September 3, 1988.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, by revising AD 87–11–08, Amendment 39–5628 (52 FR 19305; May 22, 1987), applicable to Aerospatiale Model ATR–42 series airplanes, to provide terminating action for the requirements of the existing AD by replacing the inservice AHRS with a modified AHRS and reconnecting the Number 1 AHRS to the ASCB, was published in the **Federal Register** on April 29, 1988 (53 FR 15403).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received, which supported the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Should an operator choose to install the optional modification, it will take approximately 5 manhours per airplane to accomplish, and the average labor cost will be $40 per manhour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $200 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

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, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). 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**

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 Regulations as follows:

**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 revising AD 87–11–08, Amendment 39–5628 (52 FR 19305; May 22, 1987), as follows:

**Aerospatiale:** Applies to ATR–42 series airplanes, certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after June 8, 1987 (the effective date of Amendment 39–5628, AD 87–11–08), accomplish the following:

1. Isolate the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR–42–34A–0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544–411, Mod-level U or subsequent, have been installed.

2. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

a. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

b. "Approach operations are limited to Category I or higher weather minima."

B. Replacement of the Attitude and Heading Reference Systems (AHRS) with a modified AHRS, and connection of four (4) wires between terminal blade 67VT1 and connector 1FP1–AA, in accordance with Aerospatiale Service Bulletin ATR42–34–340018, Revision 1, dated September 22, 1987, constitutes terminating action for the requirements of paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

D. 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 the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This document 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.

This Amendment amends AD 87–11–08, Amendment 39–5628.

This Amendment becomes effective September 3, 1988.

Issued in Washington, DC, on July 20, 1988.

**Thomas E. McSweeney,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88–16692 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–13]**

## Control Zone Establishment; Waukegan, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to establish the Waukegan, IL, airport control zone to serve Waukegan Regional Airport, Waukegan, IL. This results from the establishment of an Air Traffic Control Tower (ATCT) at Waukegan, IL, which is expected to be commissioned in October, 1988. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Tuesday, June 7, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone near Waukegan, IL (53 FR 20864).

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, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations establishes a control zone area near Waukegan, IL.

The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Waukegan Regional Airport, Waukegan, IL. The control zone would be effective during

the specific dates and times established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory.

In addition, aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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; (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, when promulgated, 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 Part 71**

Aviation safety, Control zones.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is 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.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Waukegan, IL [New]**

Within a five (5) mile radius of the Waukegan Regional Airport, Waukegan, IL, (Lat. 42°25'20" N., Long. 087°52'04" W.). The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Des Plaines, Illinois, on July 15, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88-16694 Filed 7-22-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 88-AGL-16]**

## Alteration of Various Control Zones and Transition Areas Within the Great Lakes Region

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the published descriptions for the Milwaukee Timmerman Airport, WI, and Bloomington, IL, control zones and Bloomington, IL, and Marion, IN, transition areas by changing the acronyms VOR to VOR/DME. Due to the addition of a DME capability to existing VOR facilities; and, because the existing VOR facilities are identified in the existing descriptions, the published descriptions require modification.

**EFFECTIVE DATE:** 0901 u.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Milwaukee Timmerman Airport, WI, Bloomington, IL, and Marion, IN, by changing the acronyms VOR to VOR/DME. There wil be no changes to the existing designated airspace area or designated altitudes for the associated control zones and/or transition areas.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

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 Part 71**

Aviation safety, Control zones, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations 14 CFR Part 71 is 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.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the control zones listed below.

**Milwaukee Timmerman Airport, WI [Amended]**

**Bloomington, IL [Amended]**

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

In all instances where the acronym VOR appears; remove and replace with VOR/DME for the transition areas listed below.

**Bloomington, IL [Amended]**

**Marion, IN [Amended]**

Issued in Des Plaines, Illinois, on July 11, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88-16699 Filed 7-22-88; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 88-AGL-8]**

## Transition Area Revocation; Petersburg, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to revoke the transition area airspace currently designated for Petersburg, MI, by returning the airspace to a non-

controlled status for use by the aviation flying public. The VOR–A SIAP was cancelled effective June 2, 1988. Notification of this cancellation was made to the public under separate docket action. The Federal Aviation Administration believes that since the SIAP is cancelled the transition area is no longer necessary or warranted.

**EFFECTIVE DATE:** 0901 U.t.c., October 20, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, May 27, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Petersburg, MI, transition area airspace (53 FR 19311).

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, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revokes the designated transition area for Petersburg, MI.

The Petersburg, MI, transition area airspace was established to accommodate a VOR–A Standard Instrument Approach Procedure (SIAP) to Lada Airport, Petersburg, MI. The transition area was necessary to ensure the segregation of aircraft utilizing the SIAP from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace.

The VOR–A SIAP was cancelled effective June 2, 1988. Notification of this cancellation was made to the public under separate docket action. The Federal Aviation Administration believes that since the SIAP is cancelled the transition area is no longer necessary or warranted.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

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 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 Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is 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.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Petersburg, MI [Removed]**

Issued in Des Plaines, Illinois, on July 11, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16698 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 520, 522, 524, 526, 529, and 540

### Animal Drugs, Feeds, and Related Products; Change of Sponsor, Fort Dodge Laboratories

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Bristol-Myers Animal Health to Fort Dodge Laboratories. Fort Dodge Laboratories requested the sponsor change.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

**SUPPLEMENTARY INFORMATION:** Fort Dodge Laboratories, Fort Dodge, IA 50501, has informed FDA that it is now sponsor of several NADA's formerly held by Bristol-Myers Animal Health, Evansville, IN 47721, formerly Bristol Laboratories, Syracuse, NY 13221–4755. Bristol-Myers also informed FDA of the sponsor change. The NADA's affected are:

| NADA | Product | Ingredient |
|---|---|---|
| 41–836 | Kantrim® Injection | Kanamycin sulfate. |
| 42–548 | Amforol® Suspension | Kanamycin sulfate, aminopentamide hydrogen sulfate. |
| 42–661 | Kantrim® Ophthalmic Ointment | Kanamycin sulfate. |
| 42–841 | Amforol® Tablets | Kanamycin sulfate, aminopentamide hydrogen sulfate. |
| 42–883 | Kantrim® Ophthalmic Solution | Kanamycin sulfate. |
| 43–078 | Centrine® Tablets | Aminopentamide hydrogen sulfate. |
| 43–079 | Centrine® Injection | Aminopentamide hydrogen sulfate. |
| 43–304 | Ketaset® Injection | Ketamine hydrochloride. |
| 43–784 | Kanfosone® Ointment | Kanamycin sulfate, calcium amphomycin, hydrocortisone acetate. |
| 47–997 | Amphoderm® Ointment | Kanamycin sulfate, calcium amphomycin, hydrocortisone acetate. |
| 55–021 | Hetacin-K® Capsules | Hetacillin potassium. |
| 55–022 | Hetacin-K® Tablets | Hetacillin potassium. |
| 55–030 | Polyflex® Injection | Ampicillin trihydrate. |
| 55–032 | Dicloxin® Capsules | Dicloxacillin sodium. |
| 55–048 | Hetacin-K® Oral Liquid | Hetacillin potassium. |

| NADA | Product | Ingredient |
|---|---|---|
| 55-054 | Hetacin-K® Intramammary Infusion | Hetacillin potassium. |
| 55-058 | Dry-Clox® Intramammary Infusion | Cloxacillin benzathine. |
| 65-169 | Flo-Cillin® Injection | Benzathine penicillin G, procaine penicillin G. |
| 92-116 | Ketaset® Plus Injection | Ketamine hydrochloride, promazine hydrochloride, and aminopentamide hydrogen sulfate. |
| 97-222 | Cefa-Lak® Intramammary Infusion | Cephapirin sodium. |
| 102-990 | Torbutrol® Injection | Butorphanol tartrate. |
| 103-390 | Torbutrol® Tablets | Butorphanol tartrate. |
| 108-114 | Cefa-Dri® Intramammary Infusion | Cephapirin benzathine. |
| 119-688 | Cefa®-Tablets | Cefadroxil. |
| 127-892 | Amiglyde® Solution | Amikacin sulfate. |
| 135-780 | Torbugesic® Injection | Butorphanol tartrate. |

This sponsor change does not involve any changes in facilities, equipment, procedures, or production personnel to manufacture the above stated products.

FDA is amending 21 CFR 520.62, 520.246, 520.314, 520.1204, 522.56, 522.62, 522.246, 522.1204, 522.1222a, 522.1222b, 524.1200a, 524.1200b, 524.1204, 526.363, 529.50, 529.365, 540.119, 540.129a, 540.129c, 540.207b, 540.255c, 540.814, and 540.829 to reflect the change of sponsor.

List of Subjects

*21 CFR Parts 520, 522, 524, 526, and 529*

Animal drugs.

*21 CFR Part 540*

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520, 522, 524, 526, 529, and 540 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 520.62 [Amended]**

2. Section 520.62 *Aminopentamide hydrogen sulphate tablets* is amended in paragraph (c) by removing No. "000015" and adding in its place No. "000856."

**§ 520.246 [Amended]**

3. Section 520.246 *Butorphanol tartrate tablets* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.314 [Amended]**

4. Section 520.314 *Cefadroxil tablets* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.1204 [Amended]**

5. Section 520.1204 is amended by revising the section heading to read as follows and in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 520.1204 Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite oral**

* * * * *

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

6. The authority citation for 21 CFR Part 522 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 522.56 [Amended]**

7. Section 522.56 *Amikacin sulfate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.62 [Amended]**

8. Section 522.62 *Aminopentamide hydrogen sulfate injection* is amended in paragraph (c) by removing No. "000015" and adding in its place No. "000856."

**§ 522.246 [Amended]**

9. Section 522.246 *Butorphanol tartrate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1204 [Amended]**

10. Section 522.1204 *Kanamycin sulfate injection* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1222a [Amended]**

11. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c)(1) by removing No. "000015" and adding in its place No. "000856."

**§ 522.1222b [Amended]**

12. Section 522.1222b *Ketamine hydrochloride with promazine hydrochloride and aminopentamide hydrogen sulfate injection* is amended in paragraph (c) by removing "000015" and adding in its place No. "000856."

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

13. The authority citation for 21 CFR Part 524 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 524.1200a [Amended]**

14. Section 524.1200a *Kanamycin ophthalmic ointment* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 524.1200b [Amended]**

15. Section 524.1200b *Kanamycin ophthalmic aqueous solution* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 524.1204 [Amended]**

16. Section 524.1204 *Kanamycin sulfate, calcium amphomycin, and hydrocortisone acetate* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

## PART 526—INTRAMAMMARY DOSAGE FORMS NOT SUBJECT TO CERTIFICATION

17. The authority citation for 21 CFR Part 526 is revised to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 526.363 [Amended]**

18. Section 526.363 *Cephapirin benzathine* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

19. The authority citation for 21 CFR Part 529 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 529.50 [Amended]**

20. Section 529.50 *Amikacin sulfate intrauterine solution* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

**§ 529.365 [Amended]**

21. Section 529.365 *Cephapirin sodium for intramammary infusion* is amended in paragraph (b) by removing No. "000015" and adding in its place No. "000856."

## PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

22. The authority citation for 21 CFR Part 540 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 540.119 [Amended]**

23. Section 540.119 *Sodium dicloxacillin monohydrate capsules* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.129a [Amended]**

24. Section 540.129a *Potassium hetacillin tablets* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.129c [Amended]**

25. Section 540.129c *Potassium hetacillin oral suspension* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.207b [Amended]**

26. Section 540.207b *Sterile ampicillin trihydrate for suspension* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

**§ 540.255c. [Amended]**

27. Section 540.255c *Sterile benzathine penicillin G and procaine penicillin G suspension* is amended in paragraph (c)(2)(i) by removing No. "000015" and in paragraph (c)(2)(ii) by removing No. "000015" and numerically adding No. "000856."

**§ 540.814 [Amended]**

28. Section 540.814 *Benzathine cloxacillin for intramammary infusion* is amended in paragraph (c)(2)(i) by removing No. "000015" and adding its place No. "000856."

**§ 540.829 [Amended]**

29. Section 540.829 *Potassium hetacillin for intramammary infusion* is amended in paragraph (c)(2) by removing No. "000015" and adding in its place No. "000856."

Dated: July 18, 1988.

**Richard A. Carnevale,**

*Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.*

[FR Doc. 88–16624 Filed 7–22–88; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Virginiamycin

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products. The application provides for the use of several concentrations of virginiamycin Type A medicated articles to make Type C medicated feeds to be used for increased rate of weight gain and improved feed efficiency in growing turkeys.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

**SUPPLEMENTARY INFORMATION:** SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, filed supplemental NADA 91–467 providing for use of the firm's currently approved (in swine and broiler chickens) virginiamycin Type A medicated articles to make Type C medicated turkey feeds containing 10 to 20 grams of virginiamycin per ton. The resulting medicated feeds are indicated for increased rate of weight gain and improved feed efficiency in growing turkeys. The supplemental NADA is approved and 21 CFR 558.635 is amended by adding paragraph (f)(2)(iv) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA 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, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83

2. Section 558.635 is amended by adding paragraph (f)(2)(iv) to read as follows:

**§ 558.635 Virginiamycin.**

* * * * *

(f) * * *

(2) * * *

(iv) 10 to 20 grams per ton for increased rate of weight gain and improved feed efficiency in growing turkeys.

* * * * *

Dated: July 19, 1988.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 88–16625 Filed 7–22–88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 250

### Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This action amends the final rule issued by Minerals Management Service (MMS) on April 1, 1988, and effective May 31, 1988, by extending until May 31, 1990, the period of time for the compliance of certain operating personnel with the provision of § 250.212(a) of the rule which requires personnel engaged in offshore operations to successfully complete a training program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices every 4 years.

**EFFECTIVE DATE:** May 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Telephone (703) 648–7816 (FTS 959–7816).

**SUPPLEMENTARY INFORMATION:** The final rule issued by MMS on April 1, 1988, consolidated and restructured various existing rules contained in regulations, OCS Orders, and Notices to Lessees and Operators. The final rule contains a subpart on training (Subpart O) which includes a requirement in § 250.212(a) that "Lessee and contract personnel installing, inspecting, testing, and maintaining antipollution safety devices and systems and personnel operating offshore production platforms shall be qualified under a program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices. The aforementioned personnel shall repeat the basic API RP T–2 course every 4 years." The requirement that lessee and contract personnel be qualified under API RP T–2 is not new as it is contained in existing training requirements. However, the requirement to repeat the training every 4 years is new.

The new requirement for repetition of the training course was effective on May 31, 1988, and lessee and contract personnel who last completed the required API RP T–2 training prior to May 31, 1984, are not, absent this amendment, in compliance with the training requirements of § 250.212(a). The MMS recognizes the probability that there may be a significant number of offshore operating pesonnel in this status. The difficulty of obtaining the required repeat training for a large number of personnel on such short notice is an unintended and unwarranted hardship which should not be borne by lessee and contract personnel. Therefore, it has been determined that this requirement should be modified effective immediately to provide a grace period of 2 years for compliance with the new requirement for repeating the API RP T–2 training course every 4 years.

Section 250.212(a) is therefore being amended to provide that lessee and contract personnel who previously qualified by successful completion of a basic API RP T–2 course prior to May 31, 1986, will be considered to be in compliance with the provisions of § 250.212(a) provided that such personnel complete a repeat of the basic API RP T–2 course by May 31, 1990.

For the reasons cited above, MMS finds that there is good cause to forego the customary notice of proposed rulemaking and opportunity for public comment. Such notice and procedures are impracticable, unnecessary, and not in the public interest for the reasons described. The MMS is therefore issuing this amendment as a final rule effective immediately under the authority of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)).

Similarly, because this amendment relieves a restriction, publication of the rule not less than 30 days before its effective date is not required in accordance with the APA (5 U.S.C. 553(d)(1)).

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by big enterprises that are not considered small entities.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

This rule does not contain any information collection which requires approval by the Office of Management and Budget in 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by Mary McDonald, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Minerals Management Service, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: June 3, 1988.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

For reasons set forth in the preamble, 30 CFR Part 250 is to be amended as follows:

## PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

**Authority:** Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.212(a) is revised to read as follows:

**§ 250.212 Safety device training.**

(a) Lessee and contract personnel installing, inspecting, testing, and maintaining antipollution safety devices and systems and personnel operating offshore production platforms shall be qualified under a program identified in API RP T–2, Qualification Programs for Offshore Production Personnel Who Work With Anti-Pollution Safety Devices. The aforementioned personnel shall repeat the basic API RP T–2 course every 4 years. Personnel who have previously qualified by completion of a basic API RP T–2 course prior to May 31, 1986, shall be considered to be in compliance with the provisions of this section provided that such personnel complete a repeat of the basic API RP T–2 course prior to May 31, 1990.

[FR Doc. 88–16641 Filed 7–22–88; 8:45 am]

BILLING CODE 4310–MR–M

## POSTAL SERVICE

### 39 CFR Part 111

### Regulations for Penalty Business Reply Mail Accounting Fees

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rulemaking is to make postal regulations

concerning business reply mail used by the Federal government (penalty BRM) follow more closely the procedures and requirements of business reply regulations that apply to commercial mailers. In addition, the changes in this rulemaking are intended to help integrate penalty BRM with the Official Mail Accounting System (OMAS), which is an automated accounting system for official mail revenue.

**EFFECTIVE DATE:** September 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** James S. Stanford, (202) 268–3250.

**SUPPLEMENTARY INFORMATION:** On December 21, 1987 (52 FR 48281), the Postal Service published proposed regulations for penalty BRM to: 1) Adapt the BRM fee structure and payment options used by our commercial customers for Federal agencies; 2) centralize the assignment of penalty BRM permit numbers at Postal Service Headquarters; and, 3) require Federal agencies to apply for a BRM permit at each post office where they wish to have BRM returned

The fee structure for BRM, as proposed in connection with item (1), above, was subsequently changed when new postage rates, fees, and classifications became effective on April 3, 1988 (53 FR 9888). These changes involved combining the annual BRM permit fee with the annual BRM accounting fee into a single annual fee (called the annual BRM permit and accounting fee, a $260 fee) which is to be charged at each post office where a business reply account is desired, and changing the payment schedule for annual fees from once each calendar year to once each 12-month period, effective from the month and day of payment. This new fee structure is incorporated in these final regulations.

The Postal Service received two written comments on the proposed rule. One commenter objected to the annual BRM permit fee, and also requested that an agency have the option of electing to pay all costs associated with its permit by using penalty mail postage meters or stamps at each post office to which the BRM is returned. The commenter believes the requested procedure will help agencies budget and track postage costs at the user level, thereby encouraging better mail management.

The annual BRM permit fee and the terms under which it is charged are part of the Domestic Mail Classification Schedule, and cannot be eliminated or modified as part of this rulemaking. The option requested by this commenter to pay all costs using penalty mail postage meters or stamps is available under the "payment upon delivery" option, with the following limitations:

Since some agencies may have BRM returned under the "payment upon delivery" option at more than one post office under a single permit number, the only feasible method for collecting the single $60 annual permit and renewal fee required is central billing. In addition, use of the "payment upon delivery" option requires a higher surcharge per piece than the BRM account option, but does not require the higher annual BRM permit and accounting fee.

Under the current fee structure, the cost at any location receiving more than 800 BRM pieces per year will be higher using the "payment upon delivery" option than using the BRM account option. Thus, agencies probably would not want to use this option at higher volume locations. The higher surcharge per piece for "payment upon delivery" reflects the additional carrier costs associated with this option.

It should also be noted that agencies will be able to identify BRM charges which are centrally billed to individual locations or cost centers in the same way that they identify meter charges to those locations—by using data from the Official Mail Accounting System. Thus, the commenter's objectives are fully met.

The second commenter made three points. The first point was that both BRM payment methods—the BRM account option and the "payment upon delivery" option—should be available for Federal agency use without regard to volume. Discussion in the proposed regulation regarding a 1,000-piece break-even volume was advisory and suggested only one criterion that agencies might use in making a selection. (It should also be noted that the rates implemented on April 3, 1988, actually changed the break-even volume discussed in the proposed regulations to about 800 pieces per location.) The intent of these regulations was, and remains, that agencies may choose either of the payment options at each post office where mail will be returned.

The second point was that any changes made by Postal Service Headquarters to existing BRM permit numbers be coordinated with the affected agency. The Postal Service intends to use the BRM permit numbers currently assigned to agencies, except where changes are necessary to eliminate duplication or unused permits. In any case, the Postal Service will coordinate necessary changes with the affected agency.

The third point expressed the commenter's desire that the changes in this regulation will not adversely affect the close working relationships that have developed between agency offices and their servicing post offices. We believe these new procedures will actually promote better working relationships at the local level by eliminating much of the confusion and misunderstandings that have existed in the past concerning Federal government business reply mail.

**List of Subjects in 39 CFR Part 111**

Postal Service.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

**PART 111—[AMENDED]**

1. The authority citation in 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 137—OFFICIAL MAIL

2. In 137.276, revise g to read as follows:

*137 276 Penalty Reply Mail*

* * * * *

*g. Penalty Business Reply*

(1) *General.* An agency may pay for penalty business reply mail (BRM) by setting up a BRM account to be billed through the Official Mail Accounting System (OMAS), or by paying for BRM upon delivery of the mail. Under a BRM account, the agency will be billed an annual permit and accounting fee by each post office ZIP Code where its mail will be returned, the appropriate postage, and a per piece charge. Under the "payment upon delivery" option, the agency pays the appropriate postage and a per piece charge. Under this option, the agency will be billed an annual BRM permit and renewal fee for each assigned permit number. The postage, fees, and charges are the same as in 917.3.

*(2) Applying for a BRM Permit.* An agency must apply for an authorization to use a business reply permit at each post office where its business reply mail will be returned. An agency must complete and submit to each post office a copy of Form 3614, *Application for a BRM Permit* (Exhibit 137.276g(2)), which must include the following:

*(a)* BRM permit number (use BRM permit numbers from the list in 137.252)

*(b)* Agency code

*(c)* Agency subcode (if desired)

*(d)* Whether the agency desires to set up a BRM account.

If an agency uses the "payment upon delivery" option at any post office where its mail will be returned, it will be assessed an annual BRM *permit and renewal fee* for each permit number. This fee will be assessed each year by the Official & International Mail Accounting Division at Postal Service Headquarters. At each post office where an agency wishes to use the BRM account option, the post office that handles the account will assess an annual BRM *permit and accounting fee* by completing Form 3636–G, *Fee Assessment for Official Mail,* and returning the original copy to the agency. (An agency cannot pay in cash for any official mail transaction.) A contractor may submit an application on behalf of the agency if it is signed by an authorized agency representative.

*(3) Formatting BRM.* Penalty business reply mail envelopes must bear the address of one of the authorized agencies listed in 137.252, or one of their component units. Envelopes must be printed in the format required by 917.5, with the following exceptions:

*(a)* The address may be printed, typewritten, or handstamped directly on the mailpiece, or a printed gummed label may be affixed in the address area. The address must not be handwritten. All other preparation requirements for the address side in 917.5 must be met.

*(b)* The legend required by 917.524 must read *Postage Will Be Paid By* (name of authorized agency). *Exception:* The legend must not appear on Postal Service business reply mail.

*(c)* The space for the permit holder's use described in 917.525e must include the statement, *Official Business, Penalty for Private Use $300.* Space above this statement may be used for return address, logos, distribution codes, etc.

*(d)* Exhibit 137.276g(3)(d) illustrates the penalty business reply mail format.

*(4) Renewing a BRM Permit and BRM Permit and Accounting Fees.*

BILLING CODE 7710-12-M

# Application for a BRM Permit

*This permit allows the holder to distribute business reply cards, envelopes, self-mailers,cartons, and labels prepared and mailed for return without prepayment of postage under Section 917, Domestic Mail Manual (DMM). First-Class rates and the additional per piece charge for business reply mail will be paid on all pieces returned under this privilege. The permit holder must prepare mailing pieces in accordance with DMM 917, and understands that failure to conform with these requirements may be considered basis for revocation of this permit. The annual business reply permit fee or the annual BRM permit and accounting fee, if payment is from a BRM account, must accompany this form. The permit is valid for 12 months from the date of issue. If it is not renewed prior to the expiration date, BRM will not be delivered.*

Permit Holder's Name, Street Address, City & State, ZIP + 4 code

| Telephone Number | Federal Agency Code - Subcode |
|---|---|

Post Office to which application is submitted (include City & State, ZIP Code):

| Signature & Title of Applicant | Date |
|---|---|

**The Postmaster must complete and return bottom portion to applicant.**

| Permit Number | Date Issued | BRM Account yes ☐ no ☐ |
|---|---|---|

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*You are authorized to distribute business reply cards, envelopes, self-mailers, cartons, and labels under the provisions of Domestic Mail Manual (DMM) 917. Your permit number must appear on each item and you must notify this office of any name or address change or permit cancellation. Only mail prepared in accordance with DMM 917 will be accepted as business reply mail. Your permit is valid for 12 months fromthe date of issue. You must renew your permit prior to the expiration date or BRM will not be delivered.*

| Permit Number | BRM Annual Permit & Renewal Fee Receipt No. |
|---|---|
| BRM Account yes ☐ no ☐ | BRM Annual Permit & Accounting Fee Receipt No. |
| Date Issued | Postmaster's Signature |

Permit Holder's Name, Street Address, City & State, ZIP + 4 code

Exhibit 137.276g(2) - *Application for a BRM Permit*

PS Form **3614,** July1988

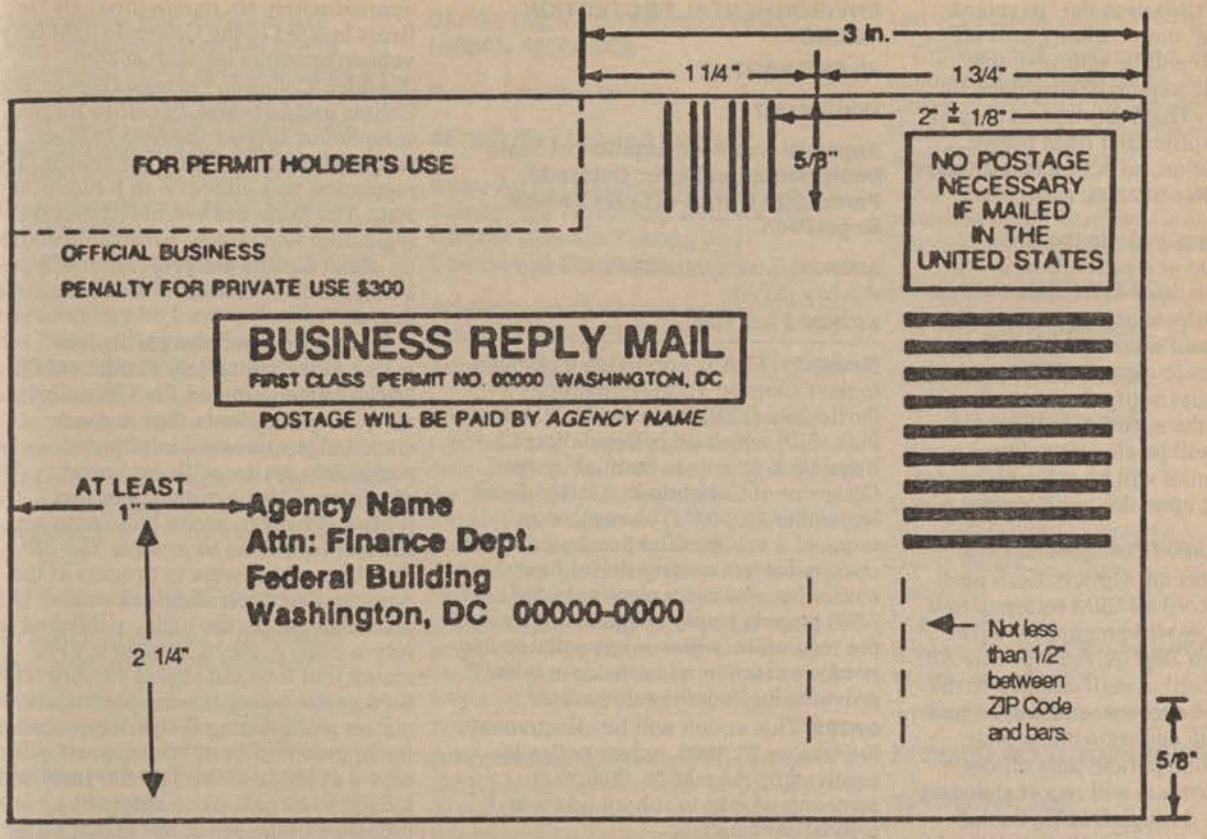


Exhibit 137.276g((3)(d) - Penalty Business Reply Mail Format

BILLING CODE 7710-12-C

*(a)* If an agency uses the "payment upon delivery" option at any post office where its mail will be returned, the agency will be automatically billed by Postal Service Headquarters an annual fee for each authorized BRM permit. Under this option, no action is necessary for renewal. See 917.33a.

*(b)* If an agency elects the BRM account option at a post office, it will receive a Form 3636–G from that office every 12 months to assess its annual BRM permit and accounting fee. If an agency wishes to cancel a BRM account, the agency must notify the post office that handles the account. In this case, the account will be closed and postage for the BRM mail will be collected under the "payment upon delivery" option.

*(5) Paying BRM Postage and Fees.*

*(a)* BRM Account Option. Each post office will record all BRM returned to it each day. They will prepare for each agency a Form 3582–A, *Postage Due Bill*, as a daily record of mail charged to the agency's BRM account, and will submit the form to the agency with its mail. Each accounting period, post offices with BRM accounts will report summary BRM activity through OMAS. Postal Service Headquarters will distribute this information to agencies in a quarterly OMAS report.

*(b)* Payment Upon Delivery Option. Under this option, an agency must use penalty mail postage meter strips or penalty mail stamps to pay for BRM when the mail is delivered. The meter strip must be in the exact amount of the postage due, and bear the current date. Postage collected under this option will be included in a quarterly OMAS report under meter or stamp postage, but will not appear under BRM postage.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 88–16627 Filed 7–22–88; 8:45 am]

BILLING CODE 7710–12–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

[FRL–3414–7]

## Approval and Promulgation of State Implementation Plans; Colorado; Particulate Matter—Diesel Vehicle Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Colorado Total Suspended Particulate (TSP) State Implementation Plan (SIP) which adds Regulation 12. Regulation 12 was submitted by the Governor of Colorado in a letter dated December 21, 1987. The regulation requires a self-certification program for opacity for heavy-duty diesel fleets consisting of nine or more vehicles over 7,500 pounds empty weight. Approval of the regulation, which is expected to help reduce emissions of particulate matter, provides for Federal enforcement.

**DATES:** This action will be effective on September 23, 1988, unless notice is received by August 24, 1988, that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC 20460

**FOR FURTHER INFORMATION CONTACT:** Dale M. Wells, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202, (303) 293–1773, (FTS) 564–1773.

**SUPPLEMENTARY INFORMATION:** The Colorado Air Quality Control Commission adopted Regulation 12, "The Reduction of Diesel Vehicle Emissions", on December 18, 1986. This regulation establishes a heavy-duty diesel fleet self-inspection and maintenance program requiring opacity inspections and adherence to prescribed maintenance procedures. The regulation would ensure that vehicles are in compliance with the State diesel opacity standards. The regulation requires bi-annual opacity compliance testing at approximately six month intervals for fleets located in the Colorado light-duty vehicle emission inspection area (Boulder, Colorado Springs, Denver, Fort Collins and Greeley). Penalties for non-compliance subject the fleet to fines ranging from $25 to $300 per vehicle. The regulation was effective on January 30, 1987. The State has estimated that the regulation will reduce particulate matter by about 58 tons per year, all of which being particles less than 10 micrometers in size.

The EPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standards. The revised standard is expressed in terms of particulate matter with a nominal diameter of 10 micrometers or less ($PM_{10}$). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new $PM_{10}$ standard was promulgated. (In the policy published on July 1, 1987, p. 24679, column 2, EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period proceding the approval of State plans specifically aimed at $PM_{10}$.) If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication in the **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 23, 1988.

### Final Action

EPA hereby approves the revisions to Regulation 12 as part of the Colorado Particulate SIP.

EPA finds good cause exists for making the action taken in this notice immediately effective because the

implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Incorporation by reference.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the **Federal Register** on July 1, 1982.

Date: July 11, 1988.

**Lee M. Thomas,**

*Administrator.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401—7642.

2. Section 52.320 is amended by adding paragraph (c)(39) to read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

(39) Regulation 12, to control emissions from diesel fleets with nine or more vehicles over 7,500 pounds empty weight, registered in the AIR Program area (the Colorado I/M program), was submitted by the Governor on December 21, 1987.

(i) Incorporation by reference

(A) Colorado Air Quality Control Commission, Regulation No. 12, adopted December 18, 1986, and effective January 30, 1987.

[FR Doc. 88-15928 Filed 7-22-88; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 51d and Part 51f

### Removal of Obsolete Regulations on Hemophilia Treatment Centers and Genetic Disease Testing and Counseling Programs

**AGENCY:** Health Resources and Services Administration, PHS, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule removes obsolete regulations governing grants for hemophilia treatment centers and grants for genetic disease testing and counseling programs. These regulations have been replaced by unified regulations governing the maternal and child health project grant program including the hemophilia and genetic programs. This action will eliminate duplicative regulations applicable to the maternal and child health project grant program.

**EFFECTIVE DATE:** Because this action simply removes obsolete regulations, we have found that notice of proposed rulemaking and public comment thereon are unnecessary and not in the public interest. Accordingly, the rescission is effective on July 25, 1988.

**ADDRESS:** Bureau of Maternal and Child Health and Resources Development, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roger McClung, (303) 443-4273.

**SUPPLEMENTARY INFORMATION:** The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) revised Title V of the Social Security Act (SSA) to establish the Maternal and Child Health Services Block Grant. Section 502(a) of the SSA, as amended (42 U.S.C. 702(a)), authorizes grants and contracts for special projects of regional and national significance, for research and training projects related to maternal and child health or children with special health care needs, for genetic testing, counseling and information projects, and for comprehensive hemophilia diagnostic and treatment centers.

Regulations governing the hemophilia and genetic disease grant programs are currently found at 42 CFR Parts 51d and 51f respectively. Publication on March 5, 1986 (51 FR 7727), of final regulations for the maternal and child health program grants, codified at 42 CFR Part 51a, effectively rendered Parts 51d and 51f obsolete.

**List of Subjects in 42 CFR 51d and 51f**

Colleges and universities, Federal support programs—Health, Infants and children, Maternal and child health, Blood diseases, Genetic diseases, Health care, Health facilities.

For the reasons set out in the preamble, Title 42 of the Code of Federal Regulations is amended as follows:

## PART 51d [REMOVED]

1. Part 51d is removed.

## PART 51f [REMOVED]

2. Part 51f is removed.

Date: June 16, 1988.

Approved:

**Robert E. Windom,**

*Assistant Secretary for Health.*

**Otis R. Bowen,**

*Secretary.*

July 12, 1988.

[FR Doc. 88-16629 Filed 7-22-88; 8:45 am]

BILLING CODE 4160-15-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 502

**[Docket No. 88-10]**

### Amendment To Rules of Practice and Procedure

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is amending § 502.92 of its Rules of Practice and Procedure which govern the filing of special docket applications by repealing the requirement for the joinder of conferences in special docket applications filed by their member lines, clarifying language regarding designation of the appropriate tariff for notice purposes, and making other changes to conform to the Shipping Act of 1984.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Room 11101, Washington, DC 20573-0001, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** By publication in the **Federal Register** on April 14, 1988 (53 FR 12440) the Federal Maritime Commission ("FMC" or "Commission") invited comments on a "Notice of Proposed Rulemaking" ("Notice") which proposed to amend § 502.92 of Title 46 CFR by deleting the requirement for the joinder of

conferences in special docket applications filed by their members. The amendment also proposed to clarify language regarding designation of the appropriate tariff for notice purposes and to make other changes to conform to the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701–1721.

Two comments were received in response to the Notice. The Asia North America Eastbound Rate Agreement, Mediterranean North Pacific Coast Freight Conference and South Europe/U.S.A. Freight Conference filed a joint comment supporting the proposed rule without change. A joint comment was also filed by the U.S. Atlantic-North Europe Conference, North Europe-U.S. Atlantic Conference, Gulf-European Freight Assocation and North Europe-U.S. Gulf Freight Association ("hereinafter NEC").

While generally supporting the proposed rule, NEC suggests certain changes and comments. These are discussed, in turn, below:

A. NEC suggests deletion of the reference to "common carriers by water in foreign commerce" and substituting therefor, "common carriers" to encompass within the scope of the rule non-vessel operating common carriers. This suggestion has merit and will be adopted since section 8(e) of the 1984 Act, 46 U.S.C. app. 1707(e), references "common carriers" and was intended to include non-vessel operating common carriers.

B. NEC asserts that the Commission's intent to allow conferences to file on behalf of its members should be expressly set forth in the rule itself rather than only mentioned in the Supplementary Information. We see no reason to provide a specific reference for conference filings. Our intent is to place conferences in the same posture as other entities, such as tariff publishing services, practitioners, or attorneys, which also file special docket applications for their carrier clients. Specific inclusion of conferences in the rule would require an itemization of all entities which might file on behalf of carriers.

C. NEC suggests that service should be made by the filing carrier on the shipper for whose benefit the application is filed; that all pleadings, documents, etc. filed by any person in a special docket proceeding should be served on all other parties to the proceeding; that any person required to be served in a special docket proceeding, shall be a party to said proceeding and entitled to be heard pursuant to the applicable provisions of the Commission's Rules of Practice and Procedure, and be served with copies of all notices, rulings, decisions, etc., issued by the Administrative Law Judge and the Commission; and that service requirements shall also apply to a conference filing on behalf of a member.

Generally, while NEC's concerns about procedural safeguards in connection with service requirements are appropriate for adversary type proceedings, special docket applications are, by their nature, non-adversarial. In almost every instance the carrier, or its agent, files the application for the benefit of the shipper and there is full accord among the parties as to the relevant facts in the application. The fact that the 1984 Act allows shippers to file special docket applications on their own behalf, may lead to an occasional adversary proceeding where the carrier disputes the facts in the application. Indeed, this was the situation in Special Docket No. 1496, *Application of Leslie Enterprises, Inc. for the Benefit of International Trade Operations, Inc.* ("Leslie"), 24 SRR 146 (1987). In that proceeding, the presiding administrative Law Judge established procedures in order to afford each party an opportunity to meet the evidence presented by the other.

Shipper-filed special docket applications are a rarity, and the fact that a shipper files an application does not necessarily mean that the carrier will contest the facts. Given the non-adversarial nature of the great majority of special docket proceedings, there does not appear to be any necessity to expand the procedural safeguards as suggested by NEC. The basic requirement regarding service of the application is already contemplated by the existing rule and we have expanded on this by specifically requiring that the conference be served when a conference rate is involved. Similarly, the necessity of service on the carrier when the application is filed by the shipper, has been reaffirmed in the rule.

Further, special docket proceedings are relatively informal; section 502.92(c) acknowledges this by stating that "[f]ormal proceedings as described in other rules of this part need not be conducted." Imposing additional procedural requirements as NEC proposes would tend to unnecessarily formalize this type of proceeding. Where a situation arises as in *Leslie*, the presiding Administrative Law Judge can fashion appropriate procedures to ensure that each party is fully protected and a proper record developed.

D. Finally, NEC suggests that the proposed requirement regarding content and designation of the tariff notice be made applicable in situations where the Commission, upon review, issues its own decision. While it was our intention that any Commission decision requiring a new or revised tariff notice would follow the guidelines set down for the initial decision, specific language to this effect in the rule would be appropriate. We will accordingly incorporate NEC's suggested language in the final rule.

The Commission has determined that this final rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this final rule because the amendments to Part 502 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

**List of Subjects in 46 CFR Part 502**

Administrative practice and procedure.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. section 1716(a), Part 502 of Title 46, Code of Federal Regulations, is amended as follows:

## PART 502—[AMENDED]

1. The Authority Citation for Part 502 continues to read as follows:

**Authority:** 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.92 is amended by revising paragraphs (a) (1), (2), (3)(i), and (c) to read as follows:

**§ 502.92 Special docket applications and fee.**

(a)(1) A common carrier or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier, the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

(3)(i) The application for refund or waiver must be filed with the Commission within one hundred eighty (180) days from the date of shipment and served upon other persons involved pursuant to Subpart H of this part. When a rate published in a conference tariff is involved, the carrier or shipper must serve a copy of the application on the conference and so certify in accordance with Rule 117 (46 CFR 502.117) to that service in the application. A shipper must also make a similar service and certification with respect to the common carrier. An application is filed when it is placed in the mail, delivered to a courier, or, if delivered by another method, when it is received by the Commission. Filings by mail or courier must include a certification as to date of mailing or delivery to the courier.

* * * * *

(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and three (3) copies to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573–0001. Each application shall be acknowledged with a reference to the assigned docket number and referred to the Office of Administrative Law Judges. The presiding Administrative Law Judge may, in his or her discretion, require the submission of additional information or oral testimony. Formal proceedings as described in other rules of this part need not be conducted. The presiding Administrative Law Judge shall issue an initial decision to which the provisions of § 502.227 shall be applicable. If the application is granted, the initial decision or, as may otherwise be applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

*Exhibit No. 1 to Subpart F—[Amended]*

3. Exhibit No. 1 to Subpart F is amended to delete the reference to "conference" in the introductory paragraph.

4. The requirement for an "Affidavit of Carrier(s) and/or Conference" is amended by removing "and/or Conference" and the language in brackets is amended by removing everything after the word "rate."

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88–16615 Filed 7–22–88; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 0

### Amendment of Part 0 of the Commission's Rules; Private Printing of FCC Forms

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action establishes § 0.409 of the Commission's Rules, Commission Policy on Private Printing of FCC Forms.

This action is taken by the Commission in an effort to avoid further public misinterpretation of the origin and cost liability of FCC forms printed by private companies at their own expense as a convenience to their clients or consumers.

There have been instances in which a form originally procured through the U.S. Government Printing Office (GPO), containing the GPO indicia, was privately reproduced with a marginal notation added indicating the name of a foreign country in which it was printed. This has unfortunately resulted in appearing as though the Commission, through GPO, procured these forms from a foreign source.

This section will provide the public with guidelines most preferable to the Commission for the private reproduction of FCC forms.

**EFFECTIVE DATE:** July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Terry Johnson, Office of Managing Director, (202) 634–1535.

**Federal Communications Commission**

*Order*

Adopted: June 21, 1988.

Released: July 19, 1988.

In the Matter of Amendment of Part 0 of the Commission's Rules.

1. The Commission has established a policy on private printing of blank FCC forms. This was done to provide guidelines to companies which elect to print the forms at their own expense as a convenience to their clients or consumers.

2. The Commission is creating a new rule section to codify this policy. Section 0.409 will specify the requirements and restrictions necessary to conform to the policy.

3. Authority for this action is contained in section 4(i) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules. Since this amendment is procedural in nature, the notice and comment procedure and effective date provisions of 5 U.S.C. 553 do not apply.

4. Accordingly, IT IS ORDERED, THAT Part 0 of the Rules is AMENDED in accordance with the attached appendix, effective on the date of publication in the **Federal Register.**

5. For further information on this matter contact Terry Johnson at (202) 634–1535.

Federal Communications Commission.

**Edward J. Minkel,**

*Managing Director.*

**List of Subjects in 47 CFR Part 0**

Printed publications.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Implement: 5 U.S.C. 552, unless otherwise noted.

### PART 0—[AMENDED]

2. A new § 0.409 is added to read as follows:

**§ 0.409 Commission policy on private printing of FCC forms.**

The Commission has established a policy regarding the printing of blank FCC forms by private companies if they elect to do so as a matter of expediency and convenience to their clients or consumers. The policy is as follows:

(a) Blank FCC forms may be reproduced by private companies at their own expense provided the following conditions are met:

(1) Use a printing process resulting in a product that is at least comparable in quality to the original document, without

change to the page size, image size, configuration of pages, folds or perforations, and matching as closely as possible the paper weight, paper color and ink color.

(2) Delete in its entirety any and all U.S. Government Printing Office (GPO) indicia that may appear in the margin(s).

(3) If the printer wishes to identify a foreign country in which the forms are printed, a marginal notation must be added stating "No U.S. Government funds were used to print this document."

(4) Do not add to the form any other symbol, word or phrase that might be construed as personalizing the form or advertising on it.

(5) Except as specified above, do not delete from or add to any part of the form, or attach anything thereto.

(6) Assure that the form being reproduced is an edition currently acceptable by the Commission, which will endeavor to keep the public advised of revisions to its forms, but cannot assume responsibility to the extent of eliminating any element of risk against the use of obsolete forms.

(b) These guidelines do not apply to forms which respondents may wish to reproduce as completed facsimiles on automated equipment to satisfy application or report requirements. Requests for permission to submit such forms to the Commission should be addressed to the Office of Managing Director.

[FR Doc. 88-16657 Filed 7-22-88; 8:45 am]
BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1079

[Docket No. AO-295-A38; DA-88-111]

### Milk in the Iowa 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 proposals to amend the Iowa milk marketing order, originally scheduled to begin on July 26, 1988, has been rescheduled to begin August 9, 1988.

**DATE:** The rescheduled hearing will convene at 9:00 a.m., local time, on August 9, 1988.

**ADDRESS:** The rescheduled hearing will be held at Jumers Castle Lodge, I-74 at Sprucehill Drive, Bettendorf, Iowa 52722 (319) 359-7141.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

**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 July 11, 1988 (53 FR 26446), giving notice of a public hearing to be held at Jumers Castle Lodge, I-74 at Sprucehill Drive, Bettendorf, Iowa 52722, beginning at 9:00 a.m., local time, on July 26, 1988, with respect to proposed amendments to the marketing agreement and order regulating the handling of milk in the Iowa 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 on August 9, 1988, at the same place and time as originally scheduled (Jumers Castle Lodge, Bettendorf, Iowa, beginning at 9.00 a.m., local time).

Prior documents in the proceeding:

Notice of hearing: Issued July 11, 1988; published July 13, 1988 (53 FR 26446).

Correction to Notice of Hearing: published July 20, 1988 (53 FR 27450).

**List of Subjects in 7 CFR Part 1079**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: July 21, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88-16836 Filed 7-22-88; 9:28 am]

BILLING CODE 3410-02-M

### Farmers Home Administration

### 7 CFR Parts 1944 and 1955

### Single Family Housing (SFH) Loan Making and Management of Inventory Property

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** Farmers Home Administration (FmHA) proposes to amend its regulations on the making of single family housing (SFH) subsequent loans and the management of SFH inventory property. This action is taken to expand and clarify the intent of the regulations. The intended effect is to make FmHA's regulations on loan making and the management of SFH inventory property clearer and responsive to the needs of the Agency and the public.

**DATE:** Comments must be submitted on or before September 23, 1988.

**ADDRESSES:** Submit written comments in *duplicate* to the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written commends made pursuant to this publication will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Villano, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1452.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This proposed rulemaking action has been reviewed under USDA procedures in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, there will be no 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. This action is not expected to substantially affect budget outlay or effect more than one agency or to be controversial. The net result is to provide better service to rural communities.

**Background/Discussion**

On April 2, 1987 [52 FR 10577], FmHA published a proposed rule on property management and security servicing for SFH loans. Although that rulemaking action primarily addressed SFH security servicing and the disposal of inventory property, comments were received regarding the management of inventory property and in particular, suitability determinations. A suitability determination is made when FmHA acquires property into inventory and a decision must be made as to whether the property should be retained in the housing program or sold off the program. Properties suitable for retention in the program are classified as "program" (suitable) houses, and properties not suited for retention in the program are classified as nonprogram (unsuitable)

property. Program (suitable) property meets or can realistically be made to meet FmHA housing standards of decent, safe and sanitary housing which is adequate but modest in size, design and cost and can provide a very-low or low income borrower with housing.

Commentors to the aforementioned proposed rule suggested that FmHA revise and/or clarify its regulations on suitability determinations. Based upon these comments, FmHA proposes to revise the appropriate sections of Subpart B of Part 1955 to clarify the suitability determination process and repair policy. We are also proposing other minor changes to Subpart B of Part 1955. A brief summary of the proposed changes to Subpart B of Part 1955 are as follows:

1. Section 1955.55 is expanded to include a new paragraph on off-site procurements. Off-site improvements, such as roads, sewer systems, etc., are often necessary for the Agency to procure to adequately maintain and/or sell inventory property.

2. Section 1955.60 is revised to authorize repairs on inventory property subject to redemption rights of the former borrower if State law permits full recovery of the costs of improvements. This will permit the Agency to make repairs during the redemption period so that inventory properties can be sold more readily and expediently.

3. Section 1955.63 is expanded and clarified concerning how the Agency determines the suitability of housing properties. The language is clarified to provide that the costs of repairs will generally not be obtained until after a determination of suitability is made and the cost of repairs is generally not considered when making a suitability determination. Examples are also provided on properties that are classified "nonprogram."

4. Section 1955.64 is expanded to clarify the basic repair policy of SFH properties and to distinguish between the policy as it relates to program and nonprogram property. Also, where vandalism is a problem, the requirement to repair program properties before offering same for sale may be waived by the State Director.

5. Section 1955.72 is expanded to include language regarding the availability of SFH inventory property for rental by community-based organizations to shelter the homeless.

In addition, FmHA is proposing a minor revision to Subpart A of Part 1944. The revision would permit the Agency to make a subsequent loan for essential repairs when it is necessary to protect the security interests in the property and the subsequent loan would cause the total FmHA indebtedness to exceed the market value of the property. In certain cases, such as where economic conditions have caused market values to decline, a subsequent loan for essential repairs cannot be made because the debt would exceed the market value. Although the FmHA debt may not be fully secured, we believe it is prudent for FmHA to provide financial assistance to its borrowers to make essential repairs which if not made could adversely affect the security, safety and habitability of the property.

On May 23, 1988 [Part II] [53 FR 18392], FmHA published a proposed rule pursuant to the Agriculture Credit Act of 1987 which includes proposed changes to 7 CFR Part 1955. That rulemaking action primarily affects farmer program (CONACT) portions of the aforementioned Parts. This rulemaking action primarily affects housing properties and has no impact on the intent or changes in 7 CFR Part 1955 being proposed as a result of the Agricultural Credit Act of 1987.

### Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.427 Rural Rental Assistance Payments

### Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, 10.410 and 10.417 are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials. The remaining programs are subject to intergovernmental consultation with State and local officials.

### Environmental Impact Statement

This proposed rule 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. 91-90, an Environmental Impact Statement is not required.

### Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add/remove any authorities which effect small entities.

### List of Subjects

*7 CFR Part 1944*

Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural Housing, Subsidies.

*7 CFR Part 1955*

Government acquired property, Government property management.

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

## PART 1944—HOUSING

1. The authority citation for Part 1944 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—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. In § 1944.17, paragraph (f) is added to read as follows:

**§ 1944.17 Maximum loan amounts.**

* * * * *

(f) When a subsequent loan is needed for repairs essential to protecting the Government's security interests, the total FmHA indebtedness may exceed the market value of the security by no more than the amount of the subsequent lans plus a reasonable amount for closing costs.

## PART 1955—PROPERTY MANAGEMENT

3. The authority citation for Part 1955 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 B—Management of Property

4. In § 1955.55, paragraph (e) is added to read as follows:

**§ 1955.55 Taking abandoned real or chattel property into custody and related actions.**

* * * * *

(e) *Off-site procurements.* Circumstances may require off-site

procurement action(s) to be taken by FmHA to protect custodial, security or inventory real property from damage or destruction and/or to protect the Government's investment in the property. Such procurements may include, but are not limited to construction or reconstruction of roads, sewers, drainage work or utility lines. This type work may be accomplished either through FmHA procurement or cooperative agreement. However, if FmHA is obtaining a service or product for itself only, it must be a procurement and any such actions will be in accordance with FmHA Instruction 2024–A (available in any FmHA office). Funding will come from the appropriate insurance fund.

(1) *Conditions for procurement.* Such expenditures may be made *only* when *all* of the following conditions are met:

(i) A determination is made that failure to procure work would likely result in a property loss greater than the expenditure;

(ii) There are no other feasible means (including cooperative agreements) to accomplish the same result;

(iii) The recovery of such advance(s) is not authorized by security instruments in the case of security or custodial property (no such limitation exists for inventory property):

(iv) Written documentation supporting subparagraphs (i) (ii) and (iii) has been obtained from the authorized program official;

(v) Approval has been obtained from the appropriate Assistant Administrator.

(2) *Direct procurement action.* Where direct procurement action is contemplated, an opinion must be obtained from the Regional Attorney that:

(i) FmHA has the authority to enter the off-site property to accomplish the contemplated work, or

(ii) A specific legal entity has authority to grant an easement (right-of-way) to FmHA for the contemplated work and such an easement, in a form acceptable to the Regional Attorney, has been obtained.

(3) *Cooperative agreements.* Cooperative agreements between FmHA and other entities may be made to accomplish the requirement where the principal purpose is to provide money, property, services or items of value to state or local governments or other recipients to accomplish a public purpose. Exhibit A of this subpart (available in any FmHA office) is an example of a typical cooperative agreement. A USDA handbook providing detailed guidance for all parties is available from the USDA—Office of Operations and Finance. Although cooperative agreements are not a contracting action, the authority, responsibility and administration of these agreements will be handled consistent with contracting actions.

(4) *Consideration of maintenance requirements.* Maintenance requirements must be considered in evaluating the economic benefits of off-site procurements. Where feasible, arrangements or agreements should be made with state, local government or other entities to ensure continued maintenance by dedication or acceptance, letter agreements, or other applicable device.

5. Sections 1955.60 and 1955.61 are revised to read as follows:

**§ 1955.60 Inventory property subject to redemption by the borrower.**

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. Routine care and maintenance will be provided according to § 1955.64 of this subpart to preserve and protect the property. Repairs are limited to those essential to prevent further deterioration of the property or remove a health or safety hazard to the community in accordance with § 1955.64(a) of this subpart unless State law permits full recovery of costs of repairs in which case usual policy on repairs is applicable.

**§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.**

Advice and assistance will be obtained from OGC where eviction from realty or dispossession of chattel property is necessary. Where State law permits and *OGC has given written authorization,* eviction may be effected through State courts rather than Federal courts when the former borrower is involved or through local courts instead of Federal courts when the party occupying/possessing the FmHA property is not the former borrower. In those cases, a State Supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice form OGC.

6. In § 1955.63, paragraph (c) is revised to read as follows:

**§ 1955.63 Suitability determination.**

* * * * *

(c) *Housing property.* Property which secured housing loans will be classified as "program" or "nonprogram (NP)." After a determination of whether the property is suited for retention in the respective program, the repair policy outlined in § 1955.64(a) of this subpart will be followed. In determining whether a property is suited for retention in the program, items such as size, design, possible health and/or safety hazards and obsolescence due to functional, economic, or locational conditions must be carefully considered. Generally, program property will meet, or can be realistically repaired to meet, the standards for existing housing outlined in Subpart A of Part 1944 of this chapter except the requirements relating to size and/or design features will not be considered provided the property is typical of modest homes in the area. The cost of repairs will generally not be considered in determining suitability. Since houses, sites and location vary widely throughout the country, discretion and sound judgment must be used in determining suitability. The majority of houses FmHA acquires will be suited for retention and classified as "program" property. In some instances, property will not be suited for retention in the program and will be classified as "nonprogram (NP)" property. Situations of this type include, but are not limited to:

(1) A dwelling which has been enlarged or improved to the point where it is clearly above modest in size, design and/or cost.

(2) When a determination is made that the property should not have been financed originally.

(3) A dwelling brought into the program as an existing dwelling which met program standards at the time it was originally financed by FmHA but which does not conform to current policies. This includes older and/or larger houses of a type which have been proven to create excessive energy and/or maintenance costs to very-low and low-income borrowers.

(4) A dwelling which is obsolete due to location, design, construction or age.

(5) A dwelling which requires major redesign/renovation to be brought to program standards.

* * * * *

7. In § 1955.64, the introductory text and paragraphs (a) introductory text and (a)(1) are revised, paragraphs (b) and (c) are combined and revised as paragraph (b) to read as follows:

**§ 1955.64 Securing, maintaining, and repairing inventory property.**

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE" (with Equal Housing Opportunity logo and telephone number of the appropriate contact person) or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of the inventory property is preserved. If real property (exclusive of improvements) is unsafe, refer to § 1955.137(e) of Subpart C of this Part for further guidance. Substantial improvement or repair to property located in a flood or mudslide hazard area is subject to the limitation outlined in Exhibit C, Paragraph 3b(1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policy.* After a determination of suitability is made, repairs will be accomplished in accordance with the following provisions. Properties that are listed or are eligible for listing on the National Historic Register of Historic Places, in whole or in part, will be repaired as necessary to protect their historic integrity after consultation with the State Historic Preservation Officer and the advisory Council on Historic Preservation regarding any repairs. Also, if any property presents a health or safety hazard, except SFH or MFH properties sold with "Decent, Safe and Sanitary" (DSS) clauses, necessary steps will be taken to remove the hazard, and if necessary, after seeking advice from appropriate agencies having related expertise or jurisdiction.

(1) *SFH.*—(i) *Program property.* Program property will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest time possible. Attention should be given to the interior and exterior of the structure(s), landscaping, driveways, walks, and other site improvements which will enhance marketability. Exceptions to this policy are only authorized when a prospective program purchaser has indicated a willingness to purchase a specific program property "as-is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale. In areas where severe vandalism is prevalent, the State Director is authorized to waive the repair policy in specific locations when the County Supervisor requests a waiver based upon documentation to support the request. In these cases a subsequent loan for the cost of repairs may be made in conjunction with the credit sale. A "Neighborhood Watch" program or similar effort should be considered to reduce vandalism.

(ii) *Nonprogram (NP) property.* NP property should be cleaned, free of trash (dwelling and lot), and made presentable to enhance marketability. Repairs will generally not be made unless they increase the "as-is" market value by at least the cost of repairs. NP property which does not meet "Decent, Safe and Sanitary" (DSS) standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter will be repaired to meet these standards when economically feasible.

* * * * *

(b) *Authority.* Program and contracting authority are contained in FmHA Instruction 2024–A (available in any FmHA office.)

8. In § 1955.66, paragraphs (a)(2)(i) and (d)(2) are revised, the title of paragraph (e) is revised, and an additional sentence is added to the end of paragraph (e) to read as follows:

**§ 1955.66 Lease of real property.**

* * * * *

(a) * * *

(2) * * *

(i) *SFH.* SFH inventory will generally *not* be leased; however, if unusual circumstances indicate leasing may be prudent, the County Supervisor is authorized to approve the lease.

* * * * *

(d) * * *

(2) *SFH property.* The lease amount will be the market rent unless the lessee is a potential program applicant, in wihch case the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of the price of the house and income of the lessee, plus ½ of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

* * * * *

(e) *Property containing wetlands or located in a flood or mudslide area.* * * * Property containing floodplains and wetlands will be leased subject to the same use restrictions as contained in § 1955.137(a)(1) of Subpart C of Part 1955 of this chapter.

* * * * *

9. § 1955.72 is revised to read as follows:

**§ 1955.72 Utilization of inventory housing by Federal Emergency Management Agency (FEMA) or under a Memorandum of Understanding Between FmHA and the Department of Health and Human Services (HHS) for the homeless.**

(a) *FEMA.* By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit B of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

(b) *HHS.* By a Memorandum of Understanding between FmHA and HHS, inventory housing property not under lease or sales agreement may be made available by lease to community based organizations to shelter the homeless. See Exhibit C of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

Copies of all executed leases and/or questions regarding this program should be referred by State Offices to the Single Family Housing Servicing and Property Management Division in the National Office.

Dated: June 23, 1988.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 88–16417 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–07–M

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## Food Safety and Inspection Service

## 9 CFR Part 327

**[Docket No. 88–006P]**

## Restoration of Mexico to the List of Countries Eligible To Import Meat Products Into the United States

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** On February 6, 1986, the Food Safety and Inspection Service (FSIS) published a "confirmation of interim rules" (51 FR 4585). This regulation

confirmed the removal of Mexico from the list of countries eligible to import meat products into the United States. Such action was necessary because Mexico had failed to implement satisfactory residue testing and species verification programs, resulting in its no longer meeting the provisions of the Federal Meat Inspection Act. The country of Mexico has now corrected the deficiencies in its inspection system and FSIS is, therefore, proposing to relist it as eligible to import cattle, sheep, swine, and goat products into the United States.

**DATE:** Comments must be received on or before September 20, 1988.

**ADDRESS:** Written comments to Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Skinner, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have a significant effect 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. The proposal would restore Mexico as a country from which meat products are eligible to be imported into the United States. It is estimated that approximately 2.5 million pounds of meat products will be imported annually. This amount represents only about .03 percent of domestic production, based on fiscal year 1987 data.

### Effect on Small Entities

The Administrator has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, because the amount of product estimated to be imported represents only .03 percent of domestic production (based on fiscal year 1987 data). Because the demand for boneless beef for domestic use exceeds the domestic supply, no affect on those domestic producers of boneless beef is anticipated.

### Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office. Please include the docket number which appears in the heading of this document. All comments submitted in response to the proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

### Background

Pursuant to the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service (FSIS) the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products appear in Part 327 of the Federal meat inspection regulations (9 CFR Part 327). In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat products into the United States may become eligible to do so.

The Agriculture and Food Act of 1981 (Farm Bill) amended Section 20 of the FMIA (21 U.S.C. 620) to clarify that imported meat products must meet the same inspection, sanitation, quality, species verification, and residue standards applied to domestically prepared product. It directed the Secretary to enforce the Farm Bill through random inspections of imported product at ports of entry for residues and species verification and requires exporting countries to conduct random sampling and testing of internal organs and fat of carcasses for residues at points of slaughter in accordance with methods approved by the Secretary. Regulations implementing the Farm Bill requirements were published in the **Federal Register** on February 10, 1983 (48 FR 6091). All countries eligible to import product into the United States were notified of these regulations.

Residue testing information is collected from exporting countries on an annual basis by the Department. Using this and additional information collected during regular reviews of the meat inspection systems of exporting countries, notice was given in July 1983 as to specific deficiencies in residue and species verification programs in each exporting country, informing them that all corrections must be made by January 1, 1984. A review of laboratory facilities, equipment, and methodology was made during December 1983 to determine the compliance of exporting countries with the residue and species verification requirements.

For a country's inspection system to be considered "at least equal to" that of the United States, that country had to have provided for testing of appropriate tissues (fat, kidney, muscle and/or liver) for chlorinated hydrocarbons, organophosphates, polychlorinated biphenyls (PCB's), trace metals, antibiotics, and hormones, if applicable, using a method approved by the Secretary. In addition, countries had to conduct an approved species verification program. Since that time, additional testing requirements have been added for sulfa drugs and chloramphenicol.

The Administrator has authority to withdraw the eligibility for a foreign country to import meat products into the United States, under § 327.2(a)(4) (9 CFR 327.2(a)(4)), whenever the Administrator determines that the system of meat inspection maintained by such foreign country does not assure compliance with requirements "at least equal to" all the inspection, building construction standards, and other requirements of the FMIA and the regulations as applied to official establishments in the United States.

Amendments to § 327.2 (b) and (c) of the Federal meat inspection regulations (9 CFR 327.2 (b) and (c)) were published in the **Federal Register** on February 15, 1984, withdrawing the eligibility of Mexico to export meat products to the United States. Mexico lost its eligibility because no testing was being performed for chlorinated hydrocarbons, organophosphates, PCB's, or trace metals, hormones and antibiotics; and no approved species verification program was being conducted. At that time, it was stated that when the Administrator of FSIS is satisfied that the meat inspection officials of Mexico have corrected the deficiencies in their residue testing and species verification programs, and that the inspection system meets all of the provisions of the FMIA and the regulations promulgated thereunder, Mexico may again be added to the list of countries eligible for

importation of cattle, sheep, swine, and goat products into the United States.

Because a considerable amount of time transpired before Mexico corrected the deficiencies in its residue testing and species verification programs, it was necessary for Mexico to provide current information that its inspection system meets all of the provisions of the FMIA and, therefore, could be considered as eligible to import meat products into the United States.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of the inspection system operations. The eligibility process begins when the foreign country provides FSIS with complete information about its inspection system. FSIS assists the country in organizing this material by providing questionnaires in five risk areas: contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations, or publish special directives to achieve equivalency with U.S. requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multidisciplinary team to evaluate all aspects of the country's program. When all requirements of the FMIA are satisfied, the country is considered eligible to import meat products into the United States.

**Document Review**

As part of the document review process, a country's laws are evaluated to assure, among other things, that they provide for inspection and certification of the wholesomeness of product intended for export to the United States; that there are adequate controls over ineligible product to prevent its export; and that the country has adequate controls to prevent persons convicted of wrongdoing (i.e., (1) more than one conviction of any law, other than a felony, based upon the acquiring, handling or distributing of unwholesome, mislabeled or deceptively packaged food or upon fraud in connection with transactions in food, or (2) any felony) from being connected with a firm exporting product to the United States.

A country's legal authority and the regulations thereunder must impose requirements "at least equal to" those of the United States with respect to, among other things, the following areas: (1) Ante-mortem inspection of animals and post-mortem inspection of animal carcasses; (2) official control by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities and product preparation by competent, qualified inspection personnel employed, supervised and paid by the country's central government; (4) separation of operations in certified plants from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified plants; (6) official controls over condemned product; (7) reinspection of boneless meat; and (8) control over chemical and drug residues in meat and/or poultry products prepared for export to the United States.

**On-site Reviews**

The second process in assessing a country's equal to status, performed after the document review has provided to be satisfactory, is on-site reviews of aspects of the system including laboratories and individual plants within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operations.

**Mexico—Review Results**

At the request of Mexico, FSIS personnel recently completed a review of Mexico's meat inspection system. Through the interchange of questions, answers and documentation over a period of several months, FSIS personnel have determined that the laws and regulations concerning the meat inspection system of Mexico can be judged to be equivalent to those of the United States. The document review phase also revealed that the following areas needed more detailed evaluation and would be scrutinized during the on-site reviews. These areas included methods for compliance and prevention of economic fraud, and the adequacy of programs designed to test for residues.

During May 1987, an FSIS review team visited five meat plants and Mexico's residue-testing laboratory. After observing the facilities and holding discussions with various plant, laboratory and inspection personnel, the FSIS review team concluded that the Mexican meat inspection program meets the basic minimum requirements for an "at least equal to" determination. However, the team did note two areas where improvements were needed. These areas were (1) control programs comprising the compliance/economic fraud risk area, and (2) some aspects of the residue control programs. FSIS has since received confirmation and documentation from the Mexican Ministry of Agriculture that the necessary improvements in these areas have been made.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site reviews and the subsequent written assurances of government officials, FSIS believes that the meat inspection system of Mexico is adequate to assure, with respect to establishments within Mexico preparing product for export to the United States, compliance with requirements "at least equal to" those applicable to official establishments within the United States which prepare meat products, and that reliance can be placed upon certificates required under the FMIA from authorities of Mexico.

Accordingly, FSIS is proposing to amend § 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) to restore Mexico to the list of countries from which meat products may be eligible for importation into the United States.

Although a foreign country may be listed as approved for importation of meat products, the meat products of such foreign country must also comply with other Federal laws including restrictions under Title 9 of the Code of Federal Regulations, Part 94, the Animal and Plant Health Inspection Services' regulations (9 CFR Part 94), relating to the importation of meat products from foreign countries into the United States.

**List of Subjects in 9 CFR Part 327**

Imported products, Meat inspection.

**The Proposal**

**PART 327—[AMENDED]**

1. The authority citation for Part 327 would continue to read as follows:

**Authority:** 38 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

**§ 327.2 [Amended]**

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by adding alphabetically "Mexico" to the list of countries eligible to import cattle, sheep, swine and goat products into the United States.

Done at Washington, DC, on July 6, 1988.

Lester M. Crawford,

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 88-16633 Filed 7-22-88; 8:45 am]

BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-83-AD]**

### Airworthiness Directives: Airbus Industrie Model A300 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which currently requires inspection of the shims at the flap track/beam No. 2 attachment, for damage and replacement of the bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This action would require repetitive visual inspections of bolts in the aft attachment of flap track beams 2 to 6 until installation of new steel bolts, washers, and wirelocked nuts. This action is prompted by reports of damaged nut and bolt threads being found on routine inspection of the flap beam aft attachments. This condition, if not corrected, could lead to possible rupture of the bolts located at the aft attachment of the flap beams and the wings.

**DATES:** Comments must be received no later than September 18, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-83-AD, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. 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:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. 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 Regiona, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-83-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### *Discussion*

On May 25, 1985, FAA issued AD 85-09-06, Amendment 39-5052 (50 FR 18856; May 3, 1985), applicable to Model A-300 series airplanes, that requires inspection of the shims at the flap track/beams No. 2 rear attachment for damage, and replacement of the four titanium bolts with steel bolts. That action was prompted by reports of loose bolts found in this structure which could result in bolt failure. This condition, if not corrected, could result in flap asymmetray and create a hazardous flight condition.

Since the issuance of that AD, the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Airbus Industrie A300 series airplanes. There have been numerous reports of damaged nut and bolt threads found during routine inspection of the flap beam aft attachments. The damaged parts have resulted in the loss of tension in the aft attachment of flap beams 2, 3, 4, 5, and 6. This condition, if not corrected, could lead to damage to the flat track beams, its associted drive components, and the aileron.

In light of this, the FAA has determined that the requirements of the existing AD are apparently inadequate in detecting and correcting damage to the flap track/beam attachment.

Airbus Industrie has issued Service Bulletin A300-57-150, Revision 1, dated September 10, 1987, which describes procedures for close visual inspection of flap beams 2, 3, 4, 5, and 6 aft attachments. Airbus Industrie has also issued Service Bulletin A300-57-145, Revision 3, dated February 10, 1988, which describes modification of the aft attachment of the flap track by installation of new steel bolts with a sealant. Inspection of this modification, would terminate the need for the repetitive visual inspection described above. The DGAC has classified both service bulletins as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of the model registered in the United States, and AD is proposed that would supersede AD 85-09-06 to require repetitive inspections of flap track beams 2 to 6, and installation of new parts, in accordance with the service bulletins previously mentioned.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD. It would take approximately 26 manhours per airplane to accomplish the visual inspection, and 52 manhours to accomplish the modification. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,080 for the visual inspections and $108,160 for the modification.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the

preparation of a Federalism Assessment.

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 further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model A300 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.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**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 superseding AD 85–09–06, Amendment 39–5052 (50 FR 18856; May 3, 1985), with the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 series airplanes, as listed in Airbus Service Bulletins A300–57–150, Revision 1, dated September 18, 1987, and A300–57–145, Revision 3, dated February 10, 1988, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of tension in the aft attachment of flap beams 2 to 6, accomplish the following:

A. Within the next 350 landings after the effective date of this AD, perform a detailed visual inspection of flap beams Nos. 2, 3, 4, 5, and 6 aft attachment on both wings for damage. Repeat this inspection within the next 700 landings after the effective date of this AD. If damaged parts are found, replace in accordance with Service Bulletin A300–57–150, Revision 1, dated Spetember 18, 1987, or in accordance with Service Bulletin A300–57–145 Revision 3, dated February 10, 1988.

B. Within 700 landings after the effective date of this AD, replace bolts on flap beam No. 2 with ⅜-inch diameter bolts (Pre-mod 3553), in accordance with Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

C. Within 1,000 landings from the effective date of this AD, replace bolts on flap beams Nos. 2, 3, 4, 5, and 6 with 7/16-inch diameter bolts (Post-mod 3553), in accordance with Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

D. Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300–57–145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

**Note.**—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

F. 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 directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. 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 Washington, DC., on July 20, 1988.

**Thomas E. McSweeny,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88–16691 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 88–AGL–12]**

## Proposed Control Zone Establishment and Transition Area Alteration; Wilmington, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a control zone area and alter the existing transition area airspace near Wilmington, OH. Airborne Express has requested the control zone due to increasing numbers of Visual Flight Rule (VFR) flights in the vicinity of Airborne Airpark Airport, during marginal and below VFR weather and while their air traffic operations are at peak activity. The Wilmington, OH, transition area is being altered to accommodate existing Standard Instrument Approach Procedures (STAPs) at Airborne Airpark Airport, Wilmington, OH. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATES:** Comments must be received on or before August 26, 1988.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 88–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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 proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket 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. 88–AGL–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal 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, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 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.

### The Proposal

The FAA is considering amendments to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a control zone area and modify the existing transition area airspace near Wilmington, OH, respectively.

Airborne Express has requested this control zone due to the increasing number of VFR flights in the vicinity of Airborne Airpark Airport, Wilmington, OH, during marginal and below VFR weather and while their air traffic operations are at peak activity. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a five statute mile radius of the geographic center of Airborne Airpark Airport and with a 4.25 statute miles each side of the 040 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles northeast of the airport; and within 4.25 statute miles each side of the 214 Midwest VOR radial, extending from the five mile radius to 8.5 statute miles southwest of the airport. The control zone would be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory.

The present transition area is being modified to accommodate existing SIAPs to Airborne Airpark Airport. The modification consists of reducing the 10 mile radius to an 8.5 mile radius and adding an extension from the radius to 13 miles northeast of the airport. The width of the extension includes 5.25 miles each side of the Midwest VOR 040 radial.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rule requirements.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were published in Handbook 7400.6D dated January 4, 1988.

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; (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, when promulgated, 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 Part 71

Aviation safety, Control zones, Transition areas.

### The Proposed Amendment

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 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.

### § 71.171 [Amended]

2. Section 71.171 is amended as follows:

**Wilmington, OH [New]**

Within a 5 mile radius of Airborne Airpark Airport, Wilmington, OH, (lat. 39°25'46" N., long. 83°47'58" W.); and within 4.25 miles each side of the 040 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles northeast of the Airborne Airpark Airport, and within 4.25 miles each side of the 214 Midwest VOR radial, extending from the 5 mile radius area to 8.5 miles southwest of the Airborne Airpark Airport. This control zone is effective during specific dates 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.

### § 71.181 [Amended]

3. Section 71.181 is amended as follows:

**Wilmington, OH [Revised]**

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Airborne Airpark Airport, Wilmington, OH, (lat. 39°25'46" N., long. 83°47'58" W.); and within 5.25 miles each side of the 040 Midwest VOR radial, extending from the 8.5 mile radius to 13 miles northeast of Airborne Airpark Airport.

Issued in Des Plaines, Illinois, on July 8, 1988.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 88–16696 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[Docket No. 9040]**

### The Kroger Co.; Prohibited Trade Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of period for public comment on petition to reopen and set aside the order.

**SUMMARY:** The Kroger Company, respondent in the order in Docket No. 9040, has petitioned the Federal Trade Commission to set aside a 1977 consent order concerning the unavailability of advertised grocery products.

**DATE:** Deadline for filing comments in this matter is August 12, 1988.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. McDonald, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2971.

**SUPPLEMENTARY INFORMATION:** The order against The Kroger Company in Docket No. 9040 was published at 42 FR 62912 on December 14, 1977. The

petitioner, the Kroger Company, operates a chain of retail food stores. The order prohibits the Kroger Company from failing to have each advertised sale item readily available for sale; from failing to price each advertised sale time at or below the advertised price; and from failing to sell each advertised sale item at or below the advertised price. The petition to set aside was placed on the public record on July 1, 1988.

**List of Subjects in 16 CFR Part 13**

Food stores, Trade practices.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-16626 Filed 7-22-88; 8:45 am]

BILLING CODE 6750-01-M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Parts 239 and 274**

**[Rel. Nos. 33-6787; IC-16482; File No. S7-13-88]**

## Consolidated Disclosure of Variable Annuity Separate Account Expenses

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposal of form amendments.

**SUMMARY:** The Commission is proposing for comment revisions to the registration forms used by insurance company separate accounts issuing variable annuity contracts under the Investment Company Act of 1940 and the Securities Act of 1933. The proposed amendments would consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is proposing these amendments to improve the quality of expense disclosure in variable annuity prospectuses.

**DATE:** Comments on the proposed amendments should be received on or before September 22, 1988.

**ADDRESSES:** Three copies of all comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-13-88. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Plaze, Special Counsel, or John McGuire, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is publishing for comment proposed revisions to Forms N-3 and N-4 (17 CFR 274.11b and 274.11c), the registration forms under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "1940 Act") and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (the "1933 Act")( for insurance company separate accounts that issue variable annuity contracts. Under the proposal ("Proposal"), a tabular presentation of expenses ("fee table") would be set out as part of the synopsis at the beginning of the prospectus. In addition, the Commission is proposing amendments to Form N-1A (17 CFR 274.11A) that would eliminate the fee table requirement for management investment companies offering shares exclusively to separate accounts.

### Discussion

*1. Background*

On January 28, 1988, the Commission adopted revisions to Form N-1A, the registration form for open-end management investment companies ("mutual funds"), to require inclusion of a fee table in the front part of the prospectus.[1] In the adopting release ("Release 16244") the Commission announced that it would propose amendments to Forms N-3 and N-4 to provide for a similar fee table in variable annuity prospectuses.[2] The Commission is now proposing form amendments that would require inclusion of a fee table in variable annuity prospectuses to improve the quality of expense disclosure in variable annuity prospectuses and permit investors to compare the expense levels among different separate accounts.

*2. The Fee Table*

Insurance company separate accounts that offer variable annuity contracts are organized as either management investment companies, which file registration statements on Form N-3 ("management accounts"), or unit investment trusts, which are funded by management companies ("portfolio companies") and file registration statements on Form N-4 ("trust accounts").[3] Under the Proposal these separate accounts would present a fee table in their prospectuses that would not differ significantly from the table used by mutual funds ("N-1A fee table").

a. Form N-3 Fee Table

The proposed fee table for management account prospectuses ("N-3 fee table") would consist of four parts. The first part would list the contractowner transaction expenses such as sales loads and exchange fees. The second part would list any recurring contractowner account or contract fees. The third part would set out the separate account's management fees, risk fees, and operating expenses. The fourth part (the "Example") would provide an example of the cumulative amount of these fees and expenses over various investment periods.

The proposed N-3 fee table differs from the N-1A fee table in five substantive respects. First, the caption "Rule 12b-1 Expenses" is replaced by the caption "Mortality and Expense Risk Fees" to reflect a fee commonly charged by separate accounts issuing variable annuities.[4] Second, unlike the N-1A fee table, the N-3 fee table would permit disclosure of variations in sales load deducted from payments ("front-end load"). Release 16244 explained that scheduled variations of front-end load were not permitted to be listed in the N-1A fee table because, since the variations generally only apply to very large purchases of shares, inclusion of the schedule would tend to complicate the table with information of limited value to most investors (and already contained in the text of the prospectus).[5] However, the Commission has not drawn such a conclusion with respect to variable annuity contracts because of differences in the market for these contracts,[6] the greater freedom of

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[1] Investment Company Act Rel. No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)). The fee table was proposed in Investment Company Act Rel. No. 14230 (Nov. 9, 1984) (49 FR 45171 (Nov. 15, 1984)) and reproposed in Investment Company Act Rel. No. 15932 (Aug. 18, 1987) (52 FR 32018 (Aug. 25, 1987)).

[2] *Id.* at note 23.

[3] The term "separate account" is defined in section 2(a)(37) of the 1940 Act (15 U.S.C. 80a-2(a)(37)). The term "variable annuity contract" is defined in rule 0-1(e)(1) under the 1940 Act (17 CFR 270.0-1(e)(1)).

[4] For a discussion of mortality and expense risk charges, *see* Investment Company Act Rel. Nos. 14190 (Oct. 11, 1984) (49 FR 48079 (Oct. 18, 1984) at note 6 (proposing rule 26a-3), and 15586 (Feb. 26, 1987) (52 FR 7166 (Mar. 9, 1987)) (reproposing rule 26a-3). If the amounts of these expenses are identified separately in the prospectus, the instructions to the fee table permit them to be listed separately. *See* proposed instruction 14 to Item 3 (a) of Form N-3 and instruction 13 to Item 3(a) of Form N-4. If distribution expenses are deducted pursuant to a plan adopted under rule 12b-1 (17 CFR 270.012b-1), they would be reflected in "Other Expenses" under the proposed amendments. *But see* Investment Company Act Rel. No. 15586.

[5] Release 16244 at note 8 and accompanying text.

[6] Annuity contracts are often made available in connection with tax-advantaged pension plans by employers able to negotiate reduced loads for their employees.

separate accounts to negotiate sales loads,[7] and the greater frequency of large purchases qualifying for reduced loads (especially in connection with single premium deferred annuities). Third, the instructions to the Example have been modified to permit a separate account (or a sub-account) that is amortizing organizational expenses to adjust the expense figures shown in the table to reflect the completion of amortization.[8]

Fourth, the Commission is proposing a new method of presenting contract or account fees in the table. Under the proposed method a Registrant would simply state the amount of the fee in a separate section of the table entitled "Annual Contract Fee."[9]

To reflect the contract fee in the Example, the Commission is proposing an instruction which would require the account to multiply the annual fee by the total number of contractowners who have allocated amounts to the sub-account during the year.[10] The resulting amount would then be divided by the average net assets of the sub-account and added to "Annual Expenses." This method assumes that each investor in a sub-account pays a full account fee, a portion of which is deducted on a daily basis.[11] Comment is requested on this method and the assumptions that underlie the method.[12] The Commission invites comment on alternative methods of reflecting and allocating account fees.

Finally, the Commission requests comment on whether the Example in the fee table should include a line of information illustrating the annual return the separate account must obtain to preserve the value of a contractowner's initial investment. While the N–1A fee table Example effectively illustrates the amount of expenses an investor might expect to incur, it does not illustrate these expenses in the context of fund performance. Therefore, the Commission is considering adding another line to the Example in variable annuity prospectuses that will demonstrate the amount of return necessary to overcome separate account expenses and that these expenses will reduce the return of the portfolio.[13] The Commission is considering proposing a similar amendment to Form N–1A for mutual funds. Comment is requested whether such an amendment is likewise advisable.[14]

Comment is requested as to whether any further differences from the N–1A table are warranted due to the unique characteristics of variable annuity separate accounts. For example, the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract. Comment is invited on whether a third line should be added to the Example assuming annuitization at the end of the one, three, five, and ten year periods that would be applicable to separate accounts charging fees upon annuitization that are different from those charged upon surrender.

b. *Form N–4 Fee Table*

The fee table proposed to be included in trust account prospectuses ("N–4 fee table") is similar to the N–3 fee table. The section captioned "Annual Expenses," however, is divided into two parts, one listing annual expenses deducted from separate account assets and another listing annual portfolio company expenses. This approach has the advantage of permitting the separate account to segregate its expenses from those of the portfolio company, but the disadvantage of creating a fee table that is somewhat different in appearance from that of mutual funds and management accounts, which may result in reduced comparability. Comment is invited on whether the "Annual Expenses" portion of the N–4 fee table should be bifurcated as proposed.

As described above, expenses of the portfolio company are required to be reflected in the trust account fee table to provide a complete, unfragmented depiction of expenses likely to be incurred by the contractowner. While consistent with the Commission's approach of generally treating trust accounts and management accounts on the same basis,[15] this approach would require the trust account to disclose expense information and, in some cases, make estimates about portfolio company expenses. Accordingly, the trust account would assume prospectus liability with respect to such information. Comment is requested as to whether this will raise significant concerns for trust accounts and whether, alternatively, separate fee tables should be required in both trust account prospectuses and portfolio company prospectuses.[16]

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[7] *Compare* rule 22d–2 under the 1940 Act (17 CFR 270.22d–2) with rule 22d–1 (17 CFR 270.22d–1).

[8] The instructions to the example require that the percentage amount listed under "Total Annual Expenses" be extrapolated into the future in computing the Example. *See* proposed instruction 19(a) to Item 3(a) of Form N–3 and proposed instruction 21(a) to Form N–4. This adjustment exception would permit the amount extrapolated to be reduced to the extent the completion of amortization would be expected to reduce the percentage amount listed under "Total Annual Expenses" in the year amortization has ended. The Commission would not object if mutual funds, filing on Form N–1A, similarly adjusted the Example included in their prospectuses.

[9] The N–1A fee table requires that an annual account fee be expressed as a percentage of average account value and disclosed under the "Other Expenses" portion of the Annual Fund Operating Expenses. Only contract, account, or similar fees deducted from all contractowners accounts on some recurring basis must be reflected on this line in the table. *See* proposed instruction 12 to Item 3(a) of Form N–3 and instruction 7 to Item 3(a) of Form N–4. Under this instruction, the fee must be freely avoidable by all contractowners for the fee to be excluded, that is, the inapplicability of the fee to some contractowners, *e.g.*, insurance company employees, is insufficient to exclude the fee. *See* Investment Company Act Rel. No. 15932. Contract fees payable in connection with a transaction should be included in the first section of the table entitled "Contractowners Transaction Expenses." *See* proposed instruction 11 to Item 3(a) of Form N–3 and Instruction 12 to Item 3(a) of Form N–4.

[10] *See* proposed instruction 19(e) to Item 3 of Form N–3 and instruction 21(e) to Item 3 of Form N–4.

[11] The method uses the total number of contractowners who have allocated amounts to the sub-account during the year because ordinarily a full contract fee would be deducted regardless of the length of the period a contractowner owned a variable annuity contract. The assumption that each investor in a sub-account pays a contract fee has been proposed instead of allocating the total amount of contract fees collected among the sub-accounts because the latter method assumes that all contractowners allocated their contract value among all sub-accounts. This would tend to understate the amount of contract fees, especially for separate accounts having a large number of sub-accounts. Finally, the daily deduction assumption reflects the common practice of deducting the fee on the anniversary date of a contractowner's investment. Since a large pool of contractowners would likely have anniversary dates on each day, this assumption appears warranted. Staff Guidelines 32 to Form N–3 and 6 to Form N–4 currently recommend a different approach for reflecting account fees in performance data. If the Commission adopts the proposed method for purposes of the fee table, these staff guidelines would be withdrawn, and the Commission would consider adopting an identical methodology for purposes of calculating performance. Comment is requested on the utility of the proposed method of reflecting account fees in performance.

[12] In a informal question and answer piece for a conference, the staff of the Division of Investment Management suggested a method for allocating an account fee on mutual funds among several series. The Division is withdrawing this informal advice because it believes the method proposed today by the Commission is the better approach.

[13] If the separate account charges a deferred sales load a fourth line, assuming no surrender, would also be required.

[14] The Commission is publishing a proposed staff guideline on preparing the Example. Comments received on the guideline will be considered in developing the final guideline.

[15] Investment Company Act Rel. No. 15651 (Mar. 30, 1987) (52 FR 11187 (April 8, 1987)) at Section A. 4 (adopting rule 6e–3 (T) (17 CFR 270.6e–3(T)) on a temporary basis).

[16] One possible approach a trust account might take to limit its exposure to liability is to provide for

Continued

*3. Portfolio Companies*

The portfolio companies underlying variable annuity trust accounts have separate registration obligations under the 1940 and 1933 Acts and register on Form N–1A. Item 2 (a)(ii) of Form N–1A permits such a company to omit the fee table from its prospectus if the variable annuity trust account prospectus contains a table of expenses similar to the table required by Form N–1A. Since all variable annuity trust account prospectuses will contain a fee table if these amendments to Form N–4 are adopted, the Commission proposes to amend Item 2(a)(ii) to eliminate any requirement that a portfolio company prospectus contain a fee table.

Item 2(a)(ii) of Form N–1A also permits portfolio companies of variable life insurance separate accounts to omit the fee table from their prospectuses. In adopting this provision the Commission explained that variable life insurance separate account prospectuses contain tables of hypothetical account values that serve similar purposes as the fee table.[17] These tables illustrate contract cash values and death benefits over time assuming various growth rates and different characteristics of contractowners relevant to the cost of insurance coverage. They do not, however, illustrate the effects of different portfolio company expenses, because the expenses illustrated are the average of expenses among the portfolio companies. The differences among the expenses of the portfolio companies may be small relative to the insurance-related expenses reflected in the contract value tables and therefore may not be material to the investment decision between contracts offered by different insurance companies. However, they may be material as to the selection of investment alternatives within a single contract. This suggests the desirability of a portfolio company fee table, in which case prominent disclosure would be made that the portfolio company fee table does not reflect separate account expenses. On the other hand, the inclusion of a fee table in the prospectus of a portfolio company offering shares to both variable life insurance and variable annuity separate accounts may confuse variable annuity contractowners because the portfolio company's fees are set out twice, once in each prospectus. Comment is invited as to whether underlying fund prospectuses of variable life insurance separate accounts should contain a fee table, and whether appropriate disclosure could reduce any confusion.

*4. Narrative Prospectus Disclosure*

The Commission is also proposing to amend Item 7 of Form N–3 and Item 6 of Form N–4, which describe the required disclosure of separate accounts expenses, to eliminate disclosure that would be repetitive of information contained in the fee table. In addition, the Commission is proposing amendments to the General Instructions to Forms N–3 and N–4 to omit the requirement that all of the information required by Items 7 and 6 be located in one place in the prospectus.[18]

*5. Cost/Benefit Analysis*

The Commission believes that the changes proposed today would significantly improve the quality of prospectus disclosure without adding appreciably to the cost or burden of the disclosure. Investors would be able to determine quickly and easily the costs associated with an investment and thus would be able to make more informed investment decisions. Separate accounts would only be required to disclose information that is already available to them and, in some cases, already in the prospectus. To minimize burdens, the Commission proposes to permit separate accounts to delay amending their registration statements until they file their next post-effective amendments. The Commission invites comments on its assessment of the costs and benefits associated with the proposed amendments.

**Regulatory Flexibility Act Certification**

Pursuant to section 604(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the amendments proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

**List of Subjects in 17 CFR Parts 239 and 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Form Changes**

The Commission is amending Chapter II, Title 17 of the Code of Federal Regulations as set forth below:

**PART 239—[AMENDED]**

**PART 274—[AMENDED]**

1. The authority citation for Part 239 continues to read, in part, as follows:

**Authority:** The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. By amending Item 2 of Form N–1A by revising paragraph (a)(ii) to read as follows:

**§ 274.11A Form N–1A, registration statement of open-end management investment companies.**

* * * * *

Item 2.

(a) * * *

(ii) A Registrant that offers its shares exclusively to one or more insurance company separate accounts may omit the table.

* * * * *

4. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a) of General Instruction I to Form N–3, described in §§ 239.17A and 274.11b, to read as follows:

**§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.**

* * * * *

**I. Preparation of the Registration Statement or Amendment**

* * * * *

*General Instructions for Parts A and B*

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception

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indemnification in its participation agreement (or other agreement) with the portfolio company with respect to information provided by the portfolio company. The Commission does not believe that under these circumstances indemnification for liabilities under the 1933 Act would be inconsistent with the purpose of the 1933 Act, nor would the undertaking required by rule 484 of Regulation C (17 CFR 230.484) be applicable if such indemnification were limited to instances where the trust account is not deemed to be a "controlling person." *See* section 15 of the 1933 Act (15 U.S.C. 77o). In circumstances where the separate account is a controlling person, there should be no question about the account's ability to satisfy itself as to the accuracy of the portfolio company expense data.

[17] Release 16244 at note 22 and accompanying text.

[18] A similar requirement was proposed for Form N–1A, *see* Release 14230, *supra* note 1, but withdrawn because the fee table would effect an adequate consolidation of this expense information. *See* Release 15932 at note 6, *supra* note 1.

of the fee table and the table of contents (required by Rule 481(c) (17 CFR 230.481(c)) under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

* * * * *

5. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–3 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. *Synopsis*

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

| | Percent |
|---|---|
| Contractowner transaction expenses: | |
| Sales Load Imposed on Purchases (as a percentage of purchase payments) | ____ |
| Deferred Sales Load (as a percentage of purchase payments or amount surrendered, as applicable) | ____ |
| Surrender Fees (as a percentage of amount surrendered, if applicable | ____ |
| Exchange Fee | ____ |
| [Annual] contract fee | ____ |
| Annual Expenses (as a percentage of average net assets) | |
| Management Fees | ____ |
| Mortality and Expense Risk Fees | ____ |
| Other expenses | ____ |
| _____ | ____ |
| _____ | ____ |
| _____ | ____ |
| Total annual expenses | ____ |

*Example*

If you redeem your shares at the end of the applicable time period:

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| 1. You would pay the following expenses on a 1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| If you do *not* redeem your shares: | | | | |
| 1. You would pay the following expenses on a 1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

Instructions:

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the date for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees.

*Contractowner Transaction Expenses*

7. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

8. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of purchase payments or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

9. "Surrender fee" includes any fee charged for any surrender or partial surrender but does not include any sales load charged upon surrender or partial surrender.

10. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

11. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

*[Annual] Contract Fee*

12. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Annual Expenses*

13. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

14. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

15. "Other Expenses" include all expenses (except brokerage commissions and other capital items, sales loads, or mortality and expense risk fees) that are deducted from separate account assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but most also include a total of all "Other Expenses."

16. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year.

(a) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 17(b) and 18(e) is a Registrant (or series of the Registrant) the prospectus of

which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual expenses.

17. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a separate account whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

18. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, *i.e.*, net of the amount reimbursed or waived; and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

*Example*

19. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Annual Expenses" remain the same in each year of the one, three, five, and ten year periods, except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made.

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted.

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by multiplying the amount of the [annual] contract fee by the total number of contractowners who allocated amounts to the series at any time during the year, and then dividing by the average net asset value of the sub-account during the year. Add the resulting percentage amount to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten year periods.

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the second section of the Example only if a sales load or other fee is charged upon complete surrender; and

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

5. By amending Item 7 of Form N–3 by removing instruction 3 to paragraph (a), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 7. * * *

* * * * *

(f) Describe the types of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

6. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a), of General Instruction I of Form N–4, described in §§ 239.17b and 274.11c, to read as follows:

**§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.**

* * * * *

**I. Preparation of the Registration Statement or Amendment**

* * * * *

*General Instructions for Parts A and B*

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4(a). A Registration Statement of this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4(a).

* * * * *

7. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–4 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. *Synopsis.*

* * * * *

(a) Include a table furnishing the following information, using the caption provided, in the format illustrated below:

| | |
|---|---|
| Contractowner transaction expenses: | |
| Sales load imposed on purchases (as a percentage of purchase payments) | ____ |
| Deferred sales load (as a percentage of purchase payment or amount surrendered, as applicable) | ____ |
| Surrender fees (as a percentage of amount surrendered, if applicable) | ____ |
| Exchange fee | ____ |
| [Annual] contract fee | ____ |
| Separate account annual expenses (as a percentage of average account value): | |
| Mortality and Expense Risk Fees | ____ |
| Account Fees and Expenses | ____ |
| Total Separate Account Annual Expenses | ____ |
| [Portfolio Co.] annual expenses (as a percentage of [portfolio company] assets): | |
| Management fees | ____ |
| Other expenses | ____ |
| _____ | ____ |
| _____ | ____ |
| _____ | ____ |
| Total [Portfolio Co.] annual expenses | ____ |

*Example*

If you redeem your shares at the end of the applicable time period:

| | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| 1. You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| 2. The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |
| If you do *not* redeem your shares: | | | | |
| 1. You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets (dollars) | | | | |
| The average annual return on assets necessary to preserve your initial investment is (percent) | | | | |

*Instructions:*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly, and that the table reflects expenses of the separate account as well as the portfolio company. Include, where appropriate, cross-references to the relevant sections of the prospectus and a cross-reference to the portfolio company prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicabe.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the propsectus that has different fees.

*[Annual] Contract Fee*

7. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Contractowner Transaction Expenses*

8. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and many include a tabular presentation, within the larger table, of the range of such sales loads.

9. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

10. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

11. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of interest from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portio of the prospectus discussing the exchange fee.

12. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

*Separate Account Annual Expenses*

13. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

14. Registrant may substitute the term used in the prospectus to refer to the portfolio companies for the bracketed portion of the caption provided.

15. "Account Fees and Expenses" include all fees and expenses (except sales loads and mortality and expense risk fees) that are deducted from separate account assets or charged to all contractowner accounts. The Registrant may subdivide the caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Account Fees."

*Portfolio Company Annual Expenses*

16. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the portfolio company), any other management fees payable by the portfolio company to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

17. "Other Expenses" include all expenses (except brokerage commissions and other capital items, and management fees) that are deducted from portfolio company assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the portfolio company's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

18. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year. If the portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company.

(a) A New Registrant (or a Registrant on behalf of a new portfolio company) should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction, and Instructions 19(b) and 20(e), is a Registrant (or sub-account of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant or the portfolio company has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual fund operating expenses.

19. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or

that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account or portfolio company so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a portfolio company whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

20. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, *i.e.*, net of the amount reimbursed or waived; and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

*Example*

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual Expenses" and "Portfolio Company Annual Expenses" remain the same in each year of the one, three, five, and ten year periods, except that appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made.

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted.

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's (and the portfolio company's) assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by multiplying the amount of the [annual] contract fee by the total number of contractowners who allocated amounts to the series at any time during the year, and then dividing by the average net asset value of the sub-account during the year. Add the resulting percentage amount to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten year periods.

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the second section of the Example only if a sales load or other fee is charged upon a complete surrender; and

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

8. By amending Item 6 of Form N–4 by removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f) and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 6. * * *

* * * * *

(f) Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

*Guidelines to Forms N–3 and N–4*

The Division of Investment Management proposes to add a guideline to Forms N–3 and N–4 providing guidance to funds preparing the fee table and, in particular, the Example. The Division invites comment on these guidelines. The guide for each form is proposed to read as follows:

Guide ——. Fee Table

Item —— requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%–X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year the beginning account value is the previous year's ending account value.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

July 15, 1988.

**Regulatory Flexibility Act Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Forms N–3 and N–4 under the Securities Act of 1933 and Investment Company Act of 1940 requiring a fee table in variable annuity prospectuses, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that there are few, if any, separate accounts that qualify as "small entities" as that term has been defined in the Commission's rules. Moreover, the information called for by these amendments is readily available to separate accounts and therefore the preparation of the fee table will not have a significant economic impact on any separate accounts.

Dated: June 1, 1988.

David S. Ruder,

*Chairman.*

[FR Doc. 88–16683 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 868

**[Docket No. 87N–0113]**

## Cutaneous Carbon Dioxide ($PcCO_2$) Monitor; Panel Recommendation for Reclassification

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed reclassification.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel (the Panel) that FDA reclassify the marketed cutaneous carbon dioxide ($PcCO_2$) monitor from

class III (premarket approval) into class II (performance standards). The Panel made this recommendation based on valid scientific evidence that demonstrates that class II controls and the general controls are adequate to assure the safe and effective use of the device. FDA is also issuing for public comment its tentative findings on the recommendation. After reviewing any public comments on the recommendation and FDA's tentative findings, FDA will issue an order reclassifying the device or will withdraw its proposed reclassification. FDA's decision on the proposed reclassification will be announced in the **Federal Register.**

**DATE:** Comments by September 23, 1988.

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

**FOR FURTHER INFORMATION CONTACT:** George C. Murray, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7226.

**SUPPLEMENTARY INFORMATION:** The cutaneous carbon dioxide ($PcCO_2$) monitor is automatically classified into class III under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) because it is neither substantially equivalent to any preamendments device (i.e., a device that was in commercial distribution before May 28, 1976, the enactment date of the Medical Device Amendments of 1976), nor is it substantially equivalent to any postamendments device that has been reclassified (i.e., a device that was not in commercial distribution before that date but that has been reclassified into class I or II).

Section 513(f)(2) of the act permits the reclassification of devices that were classified into class III under section 513(f)(1). The act provides for initiation of the reclassification process by manufacturers or importers who petition the agency to alter the automatic classification into class III of "new" devices under section 513(f)(1). This means of initiating the reclassification of "new," or not substantially equivalent devices, is not the exclusive method of undertaking the reclassification of "new" devices.

FDA believes that when publicly available valid scientific evidence demonstrates that a generic type of device is incorrectly classified, the agency or any interested person may attempt to reclassify the generic type of device under the authority of section 513(f)(2). To conclude otherwise, would permit marketers of class III devices to hold a competitive advantage not intended by Congress.

Congress, in promulgating the 1976 Medical Device Amendments, sought to protect competitor's property rights in research data and trade secret information by prohibiting their use in reclassification proceedings (see section 520(c) of the act (21 U.S.C. 360j(c))), and premarket approval applications (PMAs) (see section 520(h)), without the consent of the persons who own the data. Congress made no other provision to limit the reclassification of medical devices.

Since limiting the persons who may initiate a reclassification proceeding under section 513(f)(2) would unduly interfere with a major purpose of the 1976 Medical Device Amendments, i.e., regulating devices at the least burdensome level of control, FDA has initiated, in this instance, a reclassification proceeding to determine the appropriateness of the combination of class II and class I controls to reasonably assure the safe and effective use of the cutaneous carbon dioxide ($PcCO_2$) monitor.

For the purposes of reclassification, the valid scientific evidence upon which the agency relies is required to be publicly available, i.e., may not be based on trade secret or confidential commercial information in PMAs, or on the detailed summaries of information respecting the safety and effectiveness of devices for which there are approved PMA's. For purposes of reclassification from class III to class II, it is necessary to show that the proposed reclassification will provide reasonable assurance of the safety and effectiveness of the device.

## I. Identification of Device

This proposed reclassification applies to a generic device identified as the cutaneous carbon dioxide ($PcCO_2$) monitor. The device, through use of a noninvasive heated sensor and a pH-sensitive glass electrode placed on a patient's skin, is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunct to determine arterial carbon dioxide tension.

## II. Panel Review and Recommendation

FDA conducted an extensive literature review on cutaneous carbon dioxide ($PcCO_2$) monitors and sent this information to the Panel, on January 17, 1986, requesting their comments on FDA's initiated reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor from class III to class II. The Panel members supported FDA's reclassificatioin proposal. FDA, therefore, announced in the May 16, 1986 **Federal Register** (51 FR 18042) the Panel meeting to be held on June 6, 1986 to discuss and obtain a Panel recommendation on the proposed reclassification. During the open public hearing on June 6, 1986, the Panel considered FDA's reclassification proposal and its analysis of the data supporting the reclassification. The Panel recommended that the cutaenous carbon dioxide ($PcCO_2$) monitor be reclassified from class III (premarket approval) to class II (performance standards). A copy of the supporting documentation and the transcript of the meeting is on file in the Dockets Management Branch (address above) and is available for review by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

## III. Summary of Reasons for the Panel Recommendatioin

The Panel recommended reclassification of the cutaneous carbon dioxide ($PcCO_2$) monitor, intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension, from class III to class II for the following reasons:

1. General controls by themselves are insufficient to provide reasonable assurance of the device's safety and effectiveness.

2. Premarket approval is unnecessary because performance standards are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel's recommendation is based on review of the information and data contained in the administrative record. A summary of that data is presented below under the heading "V. Summary of Data on Which the Proposed Reclassification is Based." The administrative record demonstrates that the risks to health have been characterized for the cutaneous carbon dioxide ($PcCO_2$) monitor and that valid scientific evidence identifies the relationships between the device's risks and its performance characteristics. Furthermore, there is sufficient publicly available information to establish a standard to control the device's performance characteristics.

## IV. Risks to Health

The immediate risk associated with use of the device, when it is used according to its labeling, is possible blister formation that may occur at

elevated electrode temperatures. This risk was associated with earlier versions of the device. The currently marketed devices contain site timers and other safeguards incorporated into the device to avoid electrode overheating. Use of the currently marketed devices, with labeling that indicates when to change electrode location, has resulted in minimal risk to the patient (Refs. 7 through 12 and 25). A more remote device-related risk is possible misdiagnosis of the patient. Labeling minimizes this risk through disclosure that the device is intended to monitor relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension, and arterial blood gas sampling is required to confirm patient status (Refs. 3, 12, 13, 19, and 26 through 28).

**V. Summary of Data on Which the Proposed Reclassification Is Based**

Review of the preclinical and clinical data establishes the relationship between the cutaneous carbon dioxide ($PcCO_2$) monitor's risks and its performance characteristics, and demonstrates that a performance standard can be written to control the device's safety and effectiveness.

A. Preclinical Data—1. Introduction. The measurement of blood gas tensions is an integral part of monitoring the critically ill patient (Ref. 1). The most commonly used method to obtain blood gas tension measurements has been intermitten arterial blood sampling (Ref. 2). Indwelling catheters and intermittent arterial punctures introduce risks and complications (Refs. 1 and 2). Cutaneous gas monitors allows for noninvasive and continuous measurement of gas tensions. In 1793, John Abernethy first demonstrated that carbon dioxide passes through the skin surface (Ref. 3). The measurement of carbon dioxide gas tension on human skin surface ($PcCO_2$) was first described by Severinghaus in 1960 (Ref. 4).

The ($PcCO_2$) electrode is based on the Stow-Severinghaus principle and is composed of a pH-sensitive glass electrode and a reference electrode surrounded by a solution of sodium bicarbonate and covered by a membrane permeable to $CO_2$ (Refs. 5 and 6). According to the Stow-Severinghaus principle, changes in pH result from the reaction of $CO_2$ diffusing through the skin and across the membrane (Refs. 5 and 6). As $CO_2$ diffuses across the membrane and reaches the electrolyte, it reacts with $H_2O$ to form $H_2CO_3$, which dissociates to $H_2^+$ and $HCO_3^-$ (Refs. 5 and 6). As the pH changes in response to $CO_2$, the electrical potential of the pH-sensitive glass electrode measured against the reference electrode changes in accordance with the Nernst and Henderson-Hasselbalch equations, so that the net result is an electrical output that is linearly related to the logarithm of $PCO_2$ (Refs. 5 and 6). The $PcCO_2$ sensor, in most cases, is heated to 42 to 44 °C for skin surface $CO_2$ monitoring. The heated sensor allows for a faster response time; the response time of the sensor varies inversely with sensor temperature (Ref. 7).

The preclinical data extracted from studies in the literature, as discussed below, inidcate that each of the investigators utilized pH-sensitive glass electrodes based on the same principle of operation, i.e., the Stow-Severinghaus principle, although the electrodes differed somewhat in mechanical construction. The performance characteristics of pH-sensitive glass electrodes, i.e., accuracy, electrode drift and interference due to anesthetic gases, are not adversely affected by construction differences. Specifically, the preclinical data show that: the pH-sensitive glass electrode responds lineraly to the logarithm of the $CO_2$ concentration; the electrode displays minimal drift over time, i.e., the degree of variation from the expected value; and the electrode is not influenced by anesthetic gases, i.e., nitrous oxide, halothane or enflurane.

2. *Accuracy.* The following data demonstrate that the pH-sensitive glass electrode of the devices subject to reclassification responds lineraly to the logarithm of the $CO_2$ concentration. Hebrank and Mentelos conducted an in vitro linearity test for the Novametrix Medical Systems sensor using six different $CO_2$ concentration gases ranging from 3 to 12 percent $CO_2$ (Ref. 13). The 3 to 12 percent $CO_2$ concentrations correspond to a range of $PcCO_2$ levels from 22.8 to 91.2 millimeters of mercury (mm Hg). The range of 22.8 to 91.2 mm Hg overlaps the range of $PcCO_2$ values normally expected in the clinical setting. The results of the in vitro testing showed a maximum nonlinearity of a mm Hg for the $PcCO_2$ sensor. Rafferty, et al., also using a Novametrix Medical System sensor demonstrated a linear relationship using six different concentrations of preanalyzed $CO_2$ (Ref. 15). Huch, et al., using an electrode of their own design, analyzed six different concentrations of preanalyzed $CO_2$ and found a linear relationship of the electrode output in millivolts as a function of log $PCO_2$ (Ref. 14). Mindt, et al., using a Hoffmann-La Roche electrode, reported a linear relationship between the output voltage signal and the logarithm of the $CO_2$ concentration between 1 and 100 percent $CO_2$ (Ref. 16). Parker, et al., using an electrode of their own design, demonstrated a linear relationship for nine different concentrations of $CO_2$ (Ref. 17).

3. *Electrode drift.* The following data demonstrate that the electrode of the devices to be reclassified displayed minimal drift over time. Beran, et al., using an electrode of their own design, reported an in vitro electrode drift of less than 2 mm Hg for 24 hours at 37 °C (Ref. 18). Brunstler, et al., using a Roche skin surface $PCO_2$ monitor, reported an in situ electrode drift of 0.06 mm Hg per hour at 41 °C and 0.09 mm Hg per hour at 44 °C (Ref. 19). Cohen, et al., using a Radiometer sensor, reported an in situ drift of less than 1 mm Hg overf an average monitoring period of 4 hours (44 °C) (Ref. 9). Hebrank and Mentelos, using a Novametrix Medical Systems sensor, reported a drift for an unheate i electrode of less than 0.6 mm Hg per hour over a 5-hour period and a drift of less than 0.5 mm Hg per hour over a 24-hour period (Ref. 13). Severinghaus, using an electrode of his own design, reported a drift of less than 1 mm Hg for 4 days in 5 percent $CO_2$ to 95 percent $CO_2$ for an electrode temperature of 43 °C (Ref. 20). Hansen and Tooley, using a sensor of their own design, reported a drift of less than 1 mm Hg per hour when the electrode was in a carbonated water bath at 37 °C (Ref. 21).

4. *Interference due to anesthetic gases.* The following data demonstrate that the electrode of the devices subject to reclassification is not influenced by anesthetic gases. Hebrank (Novametrix Medical Systems sensor), Rafferty (Novametrix Medical Systems sensor), and Eberhard (Hoffmann-La Roche sensor) have shown that there is not any measurable interference by nitrous oxide, halothane, or enflurane on $PcCO_2$ readings (Ref. 13, 15, and 22).

*B. Clinical Data*

The clinical studies renewed by the panel demonstrate that the device is safe and effective for use in monitoring relative changes in the cutaneous carbon dioxide tension of hemodynamically stable patients. A total of 1,767 paired measurements from 257 neonates, 99 paired measurements from 18 children, 740 paired measurements from 85 adults, and 48 paired measurements from a mixed population of 22 patients ranging in age from 1 day to 84 years at 7 different sensor temperatures has been reported and demonstrates the utility of the

$PcCO_2$ sensor as a useful trend indicator of $PaCO_2$. The in vitro and clinical studies demonstrate that the pH-ser sitive glass electrode, whether supplied by various manufacturers or constructed by various investigators, can accurately quantitate the concentration of $PcCO_2$. Although $PcCO_2$ values are consistently higher than $PaCO_2$ values, as a trend monitor, the pH-sensitive glass electrode accurately reflects changes in $PaCO_2$ thus indicating when arterial blood gases need to be drawn.

Paired measurements indicates that a cutaneous $CO_2$ ($PcCO_2$) measurement was taken at the time as an arterial blood sample was collected. The reference to correlation, indicated by the correlation coefficient (r), refers to a straight line regression between changes in $PcCO_2$ and $PaCO_2$. The value $r=1.0$ indicates perfect correlation, whereas the value $r=0.0$ indicates no correlation (Ref. 30).

Monaco and McQuitty obtained 106 paired measurements on 15 sick newborns (Ref. 25). They reported a correlation coefficient of 0.91 at a sensor temperature of 44 °C. The $PcCO_2$ was higher than the $PaCO_2$ in all paired measurements. Despite this difference between the $PaCO_2$ and the $PcCO_2$, the authors found the monitoring of $PcCO_2$ very useful in the care of sick newborns as it consistently followed changes in the neonates' $PaCO_2$. The authors reported that no cutaneous burns were observed but areas of erythema (reddening of the skin) persisted for several hours in most infants.

In an additional study, Monaco, et al., reported on 18 hemodynamically stable pediatric intensive care unit patients (Ref. 26). A correlation coefficient of 0.84 was obtained for 99 paired measurements at a sensor temperature of 44 °C. The $PcCO_2$ was always greater than the $PaCO_2$. The authors noted that this was due to a number of cumulative effects: (1) the heating of capillary blood increases the $PCO_2$ (anaerobic temperature coefficient); (2) the sensor measures $CO_2$ from epidermal cells which have a higher $PCO_2$ than arterial blood; (3) the heated $CO_2$ sensor increases cellular metabolism and $CO_2$ production; (4) the rising limb of the dermal capillary parallels the descending venous limb which sets up a counter current exchange mechanism, i.e., a diffusion gradient of the higher $CO_2$ in the venous limb to the arterial limb, resulting in the highest $CO_2$ being at the tip of the capillary loop beneath the sensor; and (5) the skin acts to cool the tip of the pH-sensitive glass within the sensor which causes an apparent decrease of pH and an increase of $PCO_2$. The authors concluded that $PcCO_2$ provides an accurate and noninvasive method to trend arterial $CO_2$ in hemodynamically stable pediatric patients.

Other authors have conducted studies utilizing $PcCO_2$ monitors (Refs. 2, 7, 9 through 11, 16, 19, through 21, 23 and 24, 27 through 29, 31 and 33). These studies confirm the use of the device and showed that the device can be safe and effective when used as a trend monitor as an adjunct to arterial blood gas sampling.

A number of these studies make reference to hemodynamically stable patients (Refs 2, 19, 25 and 26, 28, 31, and 33). As tissue perfusion decreases in conditions of hemodynamic compromise, tissue $CO_2$ accumulates. The increased tissue $CO_2$ diffuses to the skin resulting in a rise in $PcCO_2$ readings. Arterial blood gases will not reflect this decrease in peripheral circulation, resulting in $PcCO_2$ reading that do not trend $PaCO_2$ readings (Ref 2). FDA makes note of this fact and has incorporated it into the identificaiton of the device. This limitation of the use of the device may be controlled by disclosures in labeling.

## VI. FDA's Tenatitive Findings

FDA tentatively agrees with the Panel and believes that the cutaneous carbon dioxide ($PcCO_2$) monitor and substantially equivalent ($PcCO_2$) monitors should be reclassified from class III into class II when indicated for use in monitoring relative changes in a hemodynamically stable patient's cutaneous carbon dioxide tension as an adjunctive method to determine arterial carbon dioxide tension. Publicly available valid scientific evidence shows that currently marketed devices are safe and effective for their intended use.

Premarket approval of the cutaneous carbon dioxide ($PcCO_2$) monitor is not necessary because the valid scientific evidence in the administrative record shows that a performance standard is sufficient to provide reasonable assurance of the safety and effectiveness of the device. Also, FDA recognizes that the general controls provisions of the act apply to the device.

Of particular importance to assuring the safe and effective use of the device is the premarket notification (21 CFR Part 807), which enables FDA to determine substantial equivalence and the comparable safety and effectiveness between marketed devices and devices proposed for commerical distribution. To establish that a new $PcCO_2$ monitor is substantially equivalent to a marketed and reclassified $PcCO_2$ monitor, manufacturers will be required to demonstrate substantial equivalence by demonstrating, among other things, the principle on which the device measures the concentration of $CO_2$; the accuracy, sensitivity, specificity, and lack of hysteresis of the device; the device's electrode response time; the device's electrode temperature range; and the safeguards incorporated into the device for sensor overheating protection.

FDA believes that newly marketed devices of the same generic type will be safe and effective through application of general controls, particularly the Good Manufacturing Practices (GMP) and premarket notification provisions, pending the development of a performance standard, consistent with FDA's standards development priorities.

FDA notes that, while there is sufficient information to write a performance standard for the $PcCO_2$ monitor, the development of such a standard should be a low priority at this time because the publicly available valid scientific evidence upon which the proposal is based demonstrates that the proposed reclassified devices are safe and effective and all marketed devices have undergone premarket approval. In addition, this device is intended for use as a trend monitor, and arterial blood gas sampling and measurement by other means is required to confirm patient status.

## VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Eberhard, P., W. Mindt, and R. Schafer, "Cutaneous Blood Gas Monitoring in the Adult," *Critical Care Medicine*, 9:702–705, 1981.

2. Cabal, L., et al., "Factors Affecting Heated Transcutaneous $PO_2$ and Unheated Transcutaneous $PO_2$ in Preterm Infants," *Critical Care Medicine*, 9:298–304, 1981.

3. Hazinski, T.A., and J.W. Severinghaus, "Transcutaneous Analysis of Arterial $PCO_2$," *Medical Instrumentation*, 16:150–153, 1982.

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5. Severinghaus, J.W., and A.F. Bradley, "Electrodes for Blood $PO_2$ and $PCO_2$ Determination," *Journal of Applied Physiology*, 13:515–520, 1958.

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9. Cohen, A., et al., "A Calibrated Procedure for the Radiometer Heated Transcutaneous $CO_2$ Electrode: Measurements in the Sick Newborn," *Respiratory Care*, 26:553–556, 1981.

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16. Mindt, W., P. Eberhard, and R. Schafer, "Monitoring of $PCO_2$ by Skin Surface Sensors," *Biotelemetry Patient Monitor*, 9:28–35, 1982.

17. Parker D., D.T. Delpy, and E.O.R. Reynolds, "Single Electrochemical Sensor for Transcutaneous Measurement of $PO_2$ and $PCO_2$, Birth Defects: Original Article Series," XV, No. 4, "Continuous Transcutaneous Blood Gas Monitoring," edited by A. Huch, R. Huch, and J. Lucey, New York, Alan R. Liss, 1979:109–116.

18. Beran, A.V., et al., "Investigation of Transcutaneous $O_2$-$CO_2$ Sensors and Their Application of Human Adults and Newborns, Birth Defects: Original Article Series," XV, No. 4, "Continuous Transcutaneous Blood Gas Monitoring," edited by A. Huch, R. Huch, and J. Lucey, New York, Alan R. Liss, 1979:421–430.

19. Brunstler, I., A. Enders, and H. T. Versmold, "Skin Surface $PCO_2$ Monitoring in Newborn Infants in Shock: Effect of Hypotension and Electrode Temperature," *Journal of Pediatrics*, 100:454–457, 1982.

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### VIII. Environmetnal Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IX. Economic Impact

After considering the economic consequences of approving this reclassification, FDA certifies that this notice requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Reclassification of this generic type of device would not have a significant economic impact on a substantial number of small entities. All manufacturers of cutaneous carbon dioxide ($PcCO_2$) monitors would be relieved of the cost of complying with the premarket approval requirements in section 515 of the act. The costs of complying with any performance standard developed as a result of reclassification into class II would have to be determined at the time the standard is developed. The magnitude of the economic savings as a result of being relieved of the premarket approval requirement depends on the extent of premarket approval studies applicants would have conducted and the number of future manufacturers satisfying the same requirements. Neither of these parameters can be reliably calculated to permit quantification of the economic savings.

### X. Comments

Interested persons may, on or before September 23, 1988, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 1, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–16666 Filed 7–22–88; 2:26 pm]

BILLING CODE 4160–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[FRL–OW–3389–5]

### Water Quality Standards for the Surface Waters of the State of Idaho

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** EPA is withdrawing the remaining portions of a proposed rule which would have established certain water quality standards for the State of Idaho. The Agency is withdrawing its proposal for a statewide ammonia criterion and a site-specific ammonia criterion applicable to lower Indian Creek. In both cases, the State adopted

provisions that meet the requirements of the Clean Water Act, thus making the EPA proposal unnecessary.

**DATE:** This withdrawal is effective July 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Fletcher Shives, United States Environmental Protection Agency, Water Management Division, 1200 Sixth Avenue, Seattle, Washington 98101, (206–442–8293).

**SUPPLEMENTARY INFORMATION:** On August 20, 1985 (50 FR 33672) EPA proposed water quality standards for the State of Idaho relating to: (1) A criterion for dissolved oxygen for water discharged from dams, (2) a statewide ammonia criterion, (3) an ammonia criterion for Indian Creek, and (4) elimination of the exemption for dams contained in the State's antidegradation policy.

On May 27, 1986, EPA approved changes to the State's standards that enabled the Agency to withdraw its proposals with regard to dissolved oxygen and antidegradation with respect to dams. Those two proposals were then withdrawn on July 14, 1986 (51 FR 25372).

On June 3, 1987, the State submitted additional revisions to its standards which eliminated the site-specific criterion for lower Indian Creek and revised the statewise ammonia criterion to meet EPA's concerns. These revisions satisfy the requirements of the Clean Water Act and were approved by EPA on March 9, 1988.

This action by the State in adopting approvable standards makes it unnecessary for EPA to continue with these portions of the proposed rule. All of the proposals made by EPA in the August 20, 1985 notice are withdrawn.

Date: July 18, 1988.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 88–16640 Filed 7–22–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

**[CC Docket No. 88–35; RM–5555; FCC 88–118]**

### Public Land Mobile Radio Service (PLMRS); Height and Power Increases

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rule; Extension of reply comment period.

**SUMMARY:** In response to motions for extension of time filed by the National Association of Business and Educational Radio, Inc. (NABER) and by CUE Paging Corporation (CUE), the Commission, by its Mobile Services Division, is extending the reply comment period for the proposed rule in this proceeding concerning height and power increases in the public land mobile radio service.

**DATE:** Replies are due July 25, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John O'Connor, Mobile Services Division, Common Carrier Bureau, (202) 653–5560.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the **Federal Register** on May 24, 1988, 53 FR 18586.

### Order

Adopted July 7, 1988.
Released July 11, 1988.

By the Chief, Mobile Services Division

1. On July 6, 1988, the National Association of Business and Educational Radio, Inc. (NABER) filed a "Motion for Extension of Time" in the captioned proceeding. NABER requests a sixty-day extension up to and including September 5, 1988, in which to file reply comments. On July 7, 1988, CUE Paging Corporation (CUE), in support of NABER's motion, also filed a request for a sixty-day extension until September 5, 1988. Telocator Network of America (Telocator), on July 7, 1988, filed an opposition to NABER's motion. The deadline for replies in this proceeding is July 8, 1988.

2. In support of its request, NABER argues that an extension of the reply comment deadline will enable it to prepare a full and complete response to the comments filed by Telocator. Specifically, NABER states that Telocator's comments include detailed technical information that requires extensive consideration and analysis. Similarly, CUE argues that Telocator's comments include a detailed technical proposal requiring careful analysis, and an extension will enable it to submit a thorough technical analysis in its reply comments.

3. In its opposition, Telocator argues that NABER's motion should be denied because it is both untimely and unjustified. First, Telocator states that NABER's request was filed only two days prior to the July 8 reply comment deadline, and thus does not comply with the Commission Rules, which require motions for extensions of time to be filed at least seven days before the filing deadline. According to Telocator, NABER does not give an excuse for its failure to conform with the seven-day requirement. Moreover, Telocator argues that NABER has not provided a credible showing to justify a sixty-day extension, and that the long extension requested indicates NABER's desire to delay the resolution of this proceeding.

4. NABER and CUE have failed to demonstrate good cause to warrant a grant of a sixty-day extension of time in which to file replies. Furthermore, we agree with Telocator that NABER's motion was untimely filed, and that no reason for this non-compliance was given. *See* § 1.46(b) of the Commission's Rules. However, in the interest of encouraging a complete record in this proceeding, we will grant an extension until July 25, 1988.

5. Accordingly, NABER's and CUE's requests for an extension to file replies in the captioned proceeding are granted to the extent indicated herein, and Telocator's opposition is denied to the extent indicated herein. Effective on the release of this *Order*, the reply comment date in CC Docket No. 88–135 is extended from July 8, 1988 to and including July 25, 1988.

Federal Communications Commission.

**Kevin J. Kelley,**

*Chief, Mobile Services Division, Common Carrier Bureau.*

[FR Doc. 88–16656 Filed 7–22–88; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 80

**[PR Docket No. 88–350, FCC 88–214]**

### Amendment of the Maritime Services Rules To Permit Noncommercial Communications on VHF Channels 79 and 80

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rules would relieve congestion on VHF maritime frequencies now assigned for noncommercial use by permitting noncommercial vessels to share the use of channels 79 and 80 with commercial vessels.

**DATES:** Comments must be received on or before September 1, 1988, and reply comments must be received on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. For information contact: Robert P. DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making* (*NPRM*) adopted June 27, 1988 and released July 11, 1988.

1. The full text of this Commission document and the amended rules are available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of the *NPRM* and the proposed amendments may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Notice of Proposed Rule Making**

2. These proposed rule amendments are in response to a request from the Michigan Steelhead and Salmon Fisherman's Association to provide additional VHF frequencies for use by noncommercial or recreational vessels on the Great Lakes. It appears, however, that the congestion on VHF noncommercial channels is nationwide.

3. The *Notice* proposes to relieve congestion of VHF frequencies currently assigned for use by noncommercial or recreational vessels. Congestion on those frequencies would be alleviated by permitting noncommercial vessels to share use of VHF channels 79 and 80 with commercial vessels. The time of week, seasonal or other factors should permit this sharing to work well but the *Notice* invites comments on methods to lessen any adverse effects.

4. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 605(b)), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule allows noncommercial vessels to use these frequencies voluntarily. The effect on existing users would not be substantial because the frequencies are already assigned on a shared basis for commercial communications and the peak usage times do not appear to overlap.

5. The rule amendments proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase burden hours imposed on the public.

6. The authority for this action is contained in 47 U.S.C. 154(i) and 303 (l) and (r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before September 1, 1988, and reply comments on or before September 16, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

7. A copy of this *Notice* will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 80**

Maritime radio services.

**Rule Changes**

Part 80 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

**Authority:** Secs. 4, 308 48 Stat. 1066, as amended, 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; UST 3450, 3 UST 4626, 12 UST 2377, unless otherwise noted.

2. In § 80.373, entries 79 and 80 are added to the end of the entries under Noncommercial in the table in paragraph (f) the preceding entries are republished.

**§ 80.373 Private communications frequencies.**

* * * * *

(f) * * *

* * * * *

NONCOMMERCIAL

| | | | |
|---|---|---|---|
| 68 | 156.425 | 156.425 | |
| 09 | 156.450 | 156.450 | |
| 69 | 156.475 | 156.475 | |
| 71 | 156.575 | 156.575 | |
| 72 | 156.625 | | Intership only. |
| 78 | 156.925 | 156.925 | |
| 79 | 156.975 | 156.975 | |
| 80 | 157.025 | 157.025 | |

* * * * *

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88–16183 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Speckled Pocketbook Mussel (Lampsilis Streckeri)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the speckled pocketbook (*Lampsilis streckeri*) to be an endangered species under the Endangered Species Act of 1973, as amended. This freshwater mussel is restricted to the Middle Fork Little Red River with a range of not more than 6 river miles in Van Buren and Stone Counties, Arkansas. The speckled pocketbook has been impacted by reservoir construction, water pollution, and channel modification. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this freshwater mollusk. The Service seeks relevant data and comments from the public.

**DATES:** Comments from all interested parties must be received by September 23, 1988. Public hearing requests must be received by September 8, 1988.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Jackson, Mississippi Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James H. Stewart at the above address (601/965–4900 or FTS 490–4900).

**SUPPLEMENTARY INFORMATION:**

**Background**

The speckled pocketbook (*Lampsilis streckeri*) was described by Frierson in 1927 with the type locality given as an unspecified site on the Little Red River, Arkansas. The mussel has been reported from Onion Creek, Travis County, and

Salado Creek, Bell County, Texas; from the Arkansas River drainage, and from Archey Fork of the Little Red River, Van Buren County, Arkansas (Clarke 1987). The speckled pocketbook was collected from the South Fork of the Little Red River near Clinton, Arkansas in 1984 and 1985 (John Harris, per. comm.). Dr. Arthur Clarke collected the speckled pocketbook from the Middle Fork of the Little Red River in 1986.

The record of *L. streckeri* from the Arkansas River drainage, reported as *Actinonaias streckeri*, was determined by Johnson (1980) to be the result of misidentification with the specimens actually being *A. rafinesqueana*. The Texas record of *L. streckeri* either cannot be confirmed or are misidentification of *L. bracteata* (Clark 1987). The Texas streams are low-gradient and do not provide the required habitat. Numerous recent collections in these streams have contained *L. bracteata* but not *L. streckeri*. The only confirmed sites are in the watershed of the Little Red River.

The speckled pocketbook is a thin mussel about 80 mm long. The shells are ellipitical, dark yellow or brown with chevron-like spots, and rays that are chain-like (Frierson 1927). The shells exhibit sexual dimorphism with the females becoming broader and more evenly rounded posteriorly. It can be confused with species of similar shell morphology unless an individual is knowledgeable of mussels and is very observant.

*Villosa vibex* occurs in streams to the south and east of the State of Arkansas, and is very similar to *L. streckeri* based upon only shell morphology. However, characters of the mantle flap differ. Members of the genus *Lampsilis* have a very distinctive mantle flap in the soft parts. In *Lampsilis streckeri*, the mantle flap resembles a small minnow with a small pigment spot and about 5 triangular processes providing a flaring appearance. This unique mantle is apparently used to entice fish close enough for the mussel's larvae or glochidia to attach.

Other similar species are *L. reeveiana*, *L. radiata siliquoidea*, and *L. bracteata*. In all three of these similar species, the shell lacks the chevron-like spots and the rays are continuous rather than ribbon-like. *Lampsilis bracteata* is only reported from Texas. In *L. r. siliquoidea*, the rays are limited to the posterior slope of the shell or become faded before reaching the ventral margin (Burch 1975). *Lampsilis reeveiana* further differs by having a large pigment spot and up to twice the triangular processes on the mantle flap (Clarke 1987).

The current known range of *L. streckeri* is limited to about 6 miles of the Middle Fork of the Little Red River in Stone and Van Buren Counties, Arkansas. Adjacent land in this area is privately owned. The species is found in course to muddy sand in depths up to 0.4 meters (1.3 feet) with a constant flow of water. This constant flow of water suggests a requirement for well oxygenated conditions and supports Clarke's (1987) conclusion that it cannot survive in pool conditions. Within the Middle Fork, the known range is between the confluences of Meadow Creek upstream and Tick Creek downstream. Above Meadow Creek, the Middle Fork is reduced to intermittent flows during dry periods. From the confluence of Tick Creek downstream to the influence of Greers Ferry Reservoir, the habitat appears suitable for *L. streckeri* but is devoid of live mussels. The species has apparently been extirpated from the remainder of the Little Red River system. The impoundment of Greers Ferry Reservoir and the resulting cold (hypolimnetic) discharges altered virtually all of the mainstem. Channel modifications in Archey and South Forks have modified much of the habitat and likely caused increased water velocities that altered the remaining habitat in these streams.

The species is listed as a candidate (Category 2) in the Notice of Review published on May 22, 1984, in the **Federal Register** (49 FR 21664). Category-2 species are those taxa for which the Service needs additional information before proposing to list the species.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the speckled pocketbook (*Lampsilis streckeri*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The speckled pocketbook once occurred in the Little Red River and three tributaries, Archey, South and Middle Forks. The scarcity of collecting records prevents the delineation of the historic range within or beyond this system. From what we know of the mussel's preferred habitat and of the Little Red River, the speckled pocketbook very likely occurred in the stretch of the river now impounded by Greers Ferry Reservoir, and in the downstream area now altered by the reservoir's cold (hypolimnetic) discharges. The lentic conditions imposed by the reservoir and the hypolimnetic discharges undoubtedly eliminated any speckled pocketbook population in this stretch of river. Archey and South Forks have been modified for flood control. The modification of these channels are the likely cause of the species' apparent disappearance from these tributaries. The small population of speckled pocketbooks in the South Fork, below the confluence with Archey Fork, apparently has been extirpated by floods scouring the mussel's habitat (Clarke 1987). This scouring likely results from increased water velocity due to channel modification upstream. The only remaining population of the speckled pocketbook is in the Middle Fork Little Red River, Van Buren and Stone Counties, Arkansas (Clarke 1987). Threats to the Middle Fork population appear to be some unidentified and intermittent water pollution from the vicinity of Tick Creek's confluence. The presence of mussel shells in the Middle Fork downstream of Tick Creek and the lack of live mussels of any species indicates a pollution event that eliminated all mussel fauna in this stretch. This river reach down to the influence of Greers Ferry Reservoir still provides suitable habitat for the speckled pocketbook, and the species could probably be reestablished if high water quality is maintained.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* The only known population is restricted to a short reach of one river and consists of only a few hundred individuals (Clarke 1987). Any collection of live individuals from this area would further reduce a population that is already limited and possibly declining. This species has not been known to have been subjected to any previous commercial purpose.

C. *Disease and predation.* Disease is not an apparent threat. The preferred habitat is in shallow water and this makes the species more vulnerable to predation by raccoons and muskrats.

D. *The inadequacy of existing regulatory mechanisms.* The species is not protected by any existing Federal or State regulation. Arkansas requires a scientific collecting permit for anyone to collect any species of mollusc. This permit requirement is very difficult to enforce and generally receives a low

priority from law enforcement personnel.

E. *Other natural or manmade factors affecting its continued existence.* The fish host for the juvenile stage of the speckled pocketbook is unknown; therefore, impacts on this aspect of the mussel's life cycle cannot be evaluated. The Middle Fork population range is limited upstream by low or non-existent water flows during the dry months of the year. Much of Archey and South Forks have intermittent water flows during dry seasons, which may be partially due to flood control work discussed under Factor A. The population is so limited that isolated gene pools that are vulnerable to loss of genetic variability are a distinct possibility. This mussel depends upon water currents to transport gametes from one individual to another. The reduced density of the population decreases the likelihood of successful reproduction.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the speckled pocketbook as endangered. Endangered status is proposed because of the very limited range in one stream, small population size and vulnerability to a single catastrophic event. Threatened status is not appropriate because the species is restricted to a short stretch of a single river. Critical habitat is not proposed for this species for reasons given in the next section.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time owing to lack of benefit from such designation. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the **ADDRESSES** section. All involved parties and land owners will be notified of the location and importance of protecting this species' habitat.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include U.S. Army Corps of Engineers channel maintenance activities and Environmental Protection Agency pollution control and pesticide use programs. The Corps of Engineers conducts channel maintenance for flood control on Archey and South Forks, both of which could be important to the survival and recovery of this species. The Environmental Protection Agency would be involved with efforts to prevent water quality degradation and to approve the use of pesticides within the known range of this species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, delivery, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since this mussel is not known to be involved in any commercial activity, no requests for relief under such a permit are expected.

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect to this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any addition information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see **ADDRESSES** section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Burch, J.B. 1975. Freshwater Unionacean Clams (Mollusca: Pelecypoda) of North America. Malacological Publ. 204 pp.

Clarke, A.E. 1987. Status Survey of *Lampsilis streckeri* Frierson (1927) and *Arcidens wheeleri* (Ortman and Walker 1912). A report to the U.S. Fish and Wildlife Service. 24 pp. + field notes.

Frierson, L.S. 1927. A Classified and Annotated Check List of the North American Naiades. Baylor University Press, Waco, Texas. 111 pp.

Johnson, R.I. 1980. Zoogeography of North American Unionacea (Mollusca: Bivalvia) North of the Maximum Pleistocene Glaciation. Bull. Mus. Comp. Zool. 149(2):77–189.


### Author

The primary author of this proposed rule is James Stewart (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, 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.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population with endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| CLAMS | | | | | | | |
| Pocketbook, speckled | *Lampsilis streckeri* | U.S.A.(AR) | NA | E | | NA | NA |

Dated: June 27, 1988.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88–16604 Filed 7–22–88; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 611

**[Docket No. 71143–7243]**

### Foreign Fishing; Minimum Health and Safety Standards

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.


**SUMMARY:** This proposed rule would establish minimum health and safety standards aboard foreign fishing vessels to which United States observers are deployed. The Secretary of Commerce is required by the Magnuson Fishery Conservation and Management Act (Magnuson Act), to prescribe, by regulation, minimum health and safety standards that must be maintained aboard each foreign fishing vessel to which a United States observer is deployed. These health and safety standards apply to the facilities for the quartering of observers and the carrying out of observer functions.


**DATE:** Comments on the proposed rule must be submitted on or before September 8, 1988.

**ADDRESS:** Send comments to Special Agent Gary A. Wood, National Marine Fisheries Service, F/EN13, Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Wood, 202–673–5299.

**SUPPLEMENTARY INFORMATION:** Section 201(i) of the Magnuson Act requires that a United States observer be stationed aboard each foreign fishing vessel while it is engaged in fishing in the exclusive economic zone. Section 201(i)(1)(B) requires that the Secretary of Commerce (Secretary) establish, by regulation, minimum health and safety standards with respect to the facilities provided aboard the vessel for the quartering of observers and carrying out of observer functions.

Prior to the amendment that requires publication of health and safety standards, section 201(i)(2)(B)(ii) of the Magnuson Act (now superseded) provided that foreign fishing vessels could be exempted from observer coverage if the facilities aboard were such that the health or safety of the observer would be jeopardized. However, a vessel exempted from observer coverage because of substandard health or safety conditions could continue to fish. The alternatives than were to deploy observers to vessels where their health or safety might be jeopardized, or allow a vessel to fish without observers coverage. Neither alternative was considered tenable, since one subjected observers to undue risks, while the other eliminated any reliable means available to NOAA to collect necessary management, compliance and scientific data from the exempted vessels. By amending section 201(i) of the Magnuson Act to delete the exemption provision, observer coverage can be withheld from vessels which fail to meet minimum health or safety standards, and fishing activity can be prohibited by such vessels because no observer is aboard.

The proposed rule requires that foreign fishing vessels to which observers are deployed maintain working radar and required navigation lights, station qualified personnel on the bridge while the vessel is underway, have readily available and in good repair sufficient lifeboats and lifejackets

to accommodate all persons aboard in the event of an emergency, have aboard and in good repair ring life buoys with water lights, have aboard appropriate distress and other signaling devices, and maintain aboard the vessel clean and sanitary conditions in living, food service and work spaces. The cost incurred by the owners and operators of foreign fishing vessels to meet the health and safety standards established by these regulations is deemed to be minimal, and should not prohibit access to U.S.-managed fisheries by otherwise eligible vessels.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result in (1) a major increase in costs or prices to consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small business entities because it applies only to the owners or operators of foreign fishing vessels. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 611**

Fish, Fisheries, Foreign relations.

Dated: July 18, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR 611 is proposed to be amended as follows:

## PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.8 is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k), and by adding a new paragraph (d) to read as follows:

**§ 611.8 Observers.**

* * * * *

(d) *Health and safety standards.* All foreign fishing vessels to which an observer is deployed must maintain, at all times that the vessel is in the EEZ of the United States, the following:

(1) At least one working radar;

(2) Functioning navigation lights as required by international law;

(3) A watch on the bridge by appropriately trained and experienced personnel while the vessel is underway;

(4) Lifeboats and/or inflatable life rafts with a total carrying capacity equal to or greater than the number of people aboard the vessel. Lifeboats and inflatable life rafts must be maintained in good working order and be readily available;

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair;

(6) Ring life buoys, equipped with automatic water lights, positioned at intervals of 25 feet along the length of the vessel. Ring life buoys must be 30 inches in diameter, maintained in a state of good repair and secured in such a way that they can be easily cast loose in the event of an emergency;

(7) At least one VHF-FM radio with a functioning channel 16 (156.8 $MH_z$), International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 $KH_z$. Radios will be maintained in a radio room, chartroom or other suitable location;

(8) At least one Emergency Position Indicating Radio beacon (EPIRB), stowed in a location so as to make it readily available in the event of an emergency;

(9) At least 6 hand-held rocket-propelled, parachute, red-flare distress signals, and 3 orange-smoke distress signals stowed in the pilothouse or navigation bridge in portable watertight containers.

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with the International Regulations for Preventing Collisions at Sea.

(11) Clean and sanitary conditions in all living spaces, food service and preparation areas and work spaces aboard the vessel.

* * * * *

3. In § 611.8, newly redesignated paragraph (f) is amended by changing the reference "(h)" to read "(i)"; newly redesignated paragraph (h)(1) is amended by changing the reference "(g)(4)" to read "(h)(4)"; newly redesignated paragraph (h)(2)(ii) is amended by changing the reference "(i)(2)" to read "(j)(2)" and newly redesignated paragraph (k)(1)(i) is amended by changing the reference "(g)(2)" to read "(h)(2)".

[FR Doc. 88–16462 Filed 7–22–88; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

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

### Animal and Plant Health Inspection Service

[Docket No. 88-087]

### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Disease-Resistant Tobacco Plants, Agrigenetics Advanced Science Co.

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Agrigenetics Advanced Science Company to allow the field testing in the State of Wisconsin of genetically engineered tobacco plants, designed to be resistant to alfalfa mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environemental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattesville, MD 20782, (301) 436-8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436-7750, or write her at this same address. The environmental assessment should be requested under accession number 88-028-01.

**SUPPLEMENTARY INFORMATION:**

Background:

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892-22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Agrigenetics Advanced Science Company of Madison, Wisconsin, (Agrigenetics) has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are designed to be resistant to alfalfa mosaic virus (AMV). In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Agrigenetics application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which are based on data submitted by Agrigenetics, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the AMV coat (capsid) protein has been inserted into a tobacco chromosome. In nature, the genetic material contained in a plant chromosome can only be transferred to another sexually compatible plant via cross-pollination. In this field test, the inserted gene would not spread to any other plant by cross-pollination, because the flowering parts of each plant will be cut off.

2. AMV is a plant pathogen; however, neither the AMV coat (capsid) protein gene itself, nor the derived gene product confer on tobacco any plant pathogenic characteristic.

3 The plasmid vector used to transfer the AMV coat (capsid) protein gene into a tobacco chromosome has been evaluated for its use in this experiment. The plasmid vector, although derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the plasmid vector. The plasmid vector has been tested and shown to be not pathogenic to any susceptible plant.

4. The vector agent, the phytopathogenic bacterium that was used to deliver the plasmid vector encoding the AMV coat (capsid) protein gene into a tobacco plant cell, has been demonstrated by *in virtro* and *in vivo* assays to be eliminated and no longer associated with any transformed tobacco plant or seed.

5. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences to another organism is not known to be

possible. The plasmid vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The plasmid vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

6. The size of the field test plot will be approximately 0.1 acre and will be located on a private farm away from any major road or town.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508; (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 fR 51272–51274).

Done at Washington, DC, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16678 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

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[Docket No. 88–106]

## Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the E. I. Du Pont de Nemours & Company, Inc. to allow the field testing in the State of Delaware of genetically engineered tomato plants, designed to be tolerant to sulfonylurea herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7750, or write her at this same address. The environmental assessment should be requested under accession number 88–092–01.

**SUPPLEMENTARY INFORMATION:**

### Background:

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

E. I. Du Pont de Nemours & Company, Inc. of Wilmington, Delaware, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be tolerant to sulfonylurea herbicides. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the Du Pont application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by the E. I. Du Pont de Nemours & Company, Inc., as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene which has the effect of making a tomato plant tolerant to the effect of sulfonylurea herbicides has been inserted into a tomato chromosome. In nature, the genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination. In this field test trial, the introduced gene cannot spread to any other sexually compatible plant by cross-pollination because the test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tomato plants could successfully cross-pollinate.

2. Neither the acetolactate synthase (ALS) gene itself, nor its derived gene product confers on tomato any plant characteristic. Traits such as weediness are polygenic and cannot be conferred by adding a single herbicide tolerance gene. The experimental tomato plants will remain sensitive to a wide range of other herbicides which could be used to kill these plants.

3. The tobacco variety from which the ALS gene was obtained is not a plant pest.

4. The ALS gene does not provide the genetically engineered tomato plants with any measurable selective advantage over nongenetically engineered tomato plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the ALS gene into a tomato chromosome has been evaluated for its use in this experiment. The vector, although

derived from an original wild-type Ti plasmid with known plant pathogenic potential, has been disarmed; that is, phytohormone genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the phytopathogenic bacterium which was used to deliver the vector encoding the ALS gene into a tomato plant cell, has been demonstrated by *in vitro* and *in vivo* assays to be eliminated and no longer associated with any genetically engineered tomato plant, plant part, or seed.

7. Horizontal movement by infectious transfer or transposition of any introduced gene or DNA sequence is not known to be possible. The vector acts by delivering the gene to the tomato genome where it is stably inserted into the tomato chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. Sulfonylurea herbicides are a new class of herbicide noted for their high herbicidal activity at very low use rates, excellent crop selectivity, and low mamalian toxicity.

9. The size of the enclosed field test trial plot is amll (35 feet by 110 feet). Physical isolation of the test site will be provided by a 12-foot-high, chain-link fence surrounding the entire research farm.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16679 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 88–103]

## Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants; Iowa State University

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Iowa State University to allow the field testing in the State of Iowa of genetically engineered tobacco plants, modified to express a chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants does not present a risk of plant pest introduction or dissemination and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESS:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8281. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7472, or write her at this same address. The environmental assessment should be requested under accession number 88–027–03.

**SUPPLEMENTARY INFORMATION:**

**Background:**

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22892–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests" (hereinafter "the rule"). The rule regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movement of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Iowa State University (Iowa State) has submitted an application for a permit for release into the environment of genetically engineered tobacco plants that are modified to express a chimeric proteinase inhibitor II promoter-chloramphenical acetyl transferase gene. Expression of the gene will enable researchers to evaluate changes in the physiology of the plant brought about by insect damage. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tobacco plants under the conditions described in the Iowa State application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by Iowa State, as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A chimeric gene which has the effect of making tobacco plants express a bacterial chloramphenicol acetyl transferase gene has been inserted into a tobacco chromosome. In nature, the genetic material contained in a chromosome can only be transferred to

another sexually compatible plant by cross-pollination. In this field test trial, the inserted chimeric gene cannot spread to any other sexually compatible plant by cross-pollination because the field test plot is located at a sufficient distance from any sexually compatible plant with which these experimental tobacco plants could successfully cross-pollinate.

2. Neither the proteinase inhibitor II promoter or terminator signal sequences, the chloramphenicol acetyl transferase gene itself, nor the chlorampenicol acetyl transferase gene derived product confers on tobacco any plant pest characteristic.

3. The potato variety, from which the proteinase inhibitor II promoter and terminator signal sequences were obtained, is not a plant pest.

4. The chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene does not provide the genetically engineered tobacco plants with any measurable selective advantage over nongenetically engineered tobacco plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the chimeric proteinase inhibitor II promoter-chloramphenicol acetyl transferase gene into a tobacco chromosome has been evaluated for its use in this experiment. The vector, although derived from DNA with known plant pathogenic potential, has been disarmed; that is, genes which are necessary to confer plant pathogenic traits have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the bacterium which was used to deliver the vector encoding the chimeric gene into a tobacco plant cell, has been demonstrated to be eliminated and no longer associated with any genetically engineered tobacco plant or seed.

7. Horizontal movement by infectious transfer or transposition of any of the introduced genes or DNA sequences is not known to be possible. The vector acts by delivering the gene to the tobacco genome where it is stably inserted into the tobacco chromosomal DNA. The vector cannot replicate independently of its vector agent and does not survive alone in any plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a genetically engineered plant to any other organism.

8. The size of the field test trial plot is small (50 feet by 120 feet). Site monitoring and management practices that create an unfavorable environment for the dissemination of any genetically engineered tobacco plant or plant genetic material are expected to provide the necessary degree of both biological and physical containment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA Regulations Implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 20th day of July 1988.

**Larry B. Slagle,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88–16680 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–34–M

## Office of International Cooperation and Development

### Cooperative Agreement; University of Maryland

**AGENCY:** Office of International Cooperation and Development (OICD), USDA.

**ACTION:** Notice of intent.

**ACTIVITY:** OICD intends to enter into a Cooperative Agreement with the University of Maryland to provide funding for collaborative international integrated pest management.

**Authority:** Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, a amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with the University of Maryland to collaborate in the area of international integrated pest management, with specific emphasis on Northern Africa and the Middle East. The University will be strengthened in the integration of its personnel in A.I.D. and OICD efforts to support bilateral projects, design and implementation of a possible regional project, if needed, participation in international integrated pest management programs, institution building, and research and training. For OICD and A.I.D., access to University personnel with a broad depth and breadth of experience and management of regional locust control efforts can be expected to improve appropriateness of suggested methodologies in this area.

Assistance will be provided only to the University of Maryland, which is contributing resources and experience. Funds provided by OICD will be used to supplement costs of supplies, communications, and a pest management specialist.

Based on the above, this is not a formal request for application. Funds estimated at $52,274 will be available in FY1988 to support this work. No extension of this project is currently envisioned.

Information on proposed Agreement #58–319R–8–038 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: July 20, 1988.

**Nancy J. Croft,**

*Contracting Officer.*

[FR Doc. 88–16648 Filed 7–22–88; 8:45 am]

BILLING CODE 3410–DP–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### Western Pacific Fishery Management Council; Amended Meeting Notice

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The agenda as originally published (53 FR 26630, July 14, 1988) for the public meeting on August 10–11, 1988, of the Western Pacific Fishery Management Council has been amended. An additional Council agenda item will be approval of a revised Statement of Organization, Practices and Procedures. All other information previously published remains unchanged.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

July 20, 1988.

**Ann D. Terbush,**

*Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.*

[FR Doc. 88–16685 Filed 7–22–88; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 20, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** July 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:** The current limits for certain cotton and man-made fiber textile products in Group I are being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 20, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 27, 1988, the directive of December 24, 1987 is hereby amended to increase the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Singapore.

| Category | Adjusted twelve-month limit |
|---|---|
| 239 | 804,750 pounds. |
| 331 | 354,040 dozen pairs. |
| 334 | 58,490 dozen. |
| 335 | 171,420 dozen. |
| 337 | 69,634 dozen. |
| 341 | 156,142 dozen. |
| 604 | 1,672,191 pounds. |
| 631 | 367,133 dozen pairs. |
| 634 | 229,231 dozen. |
| 635 | 235,320 dozen. |
| 640 | 134,884 dozen. |
| 641 | 220,011 dozen. |
| 645/646 | 124,372 dozen. |
| 647 | 445,139 dozen. |
| 648 | 1,410,555 dozen. |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–16654 Filed 7–22–88; 8:45 am]

BILLING CODE 3510–DR–M

## CONSUMER PRODUCT SAFETY COMMISSION

### Development of Voluntary Standard for All-Terrain Vehicles; Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The major members of the all-terrain vehicle ("ATV") industry have scheduled a meeting on July 28, 1988, for further development of a voluntary safety standard for ATVs. Interested members of the public are invited to attend the meeting and observe or participate in the development of the standard. Persons wishing to attend the meeting or to be notified of future meetings of the committee should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256.

**DATE:** The meeting is scheduled for 9:30 a.m. on July 28, 1988.

**ADDRESS:** The meeting will be held at The DC Dulles Marriott Hotel, 333 West Service Road, Chantilly, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Carl Blechschmidt, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207, phone (301) 492–6554.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Commission for some time has been concerned with safety issues associated with the operation of all-terrain vehicles, which are three- and four-wheeled motorized vehicles, generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering and which are intended for off-road use by an individual rider on various types of unpaved terrain.

On May 31, 1985, the Commission published an advance notice of proposed rulemaking (ANPR) in the **Federal Register**. 50 FR 23139. In the ANPR, the Commission announced that it was considering a wide range of possible regulatory alternatives to address the safety concerns about ATVs and solicited comments on a number of issues.

On December 30, 1987, the Commission and the major members of the ATV industry filed preliminary consent decrees in *United States v. American Honda Motor Co., Inc. et al.*, Civil Action No. 87–3525, in the United States District Court for the District of Columbia. The preliminary consent decrees contained provisions intended to satisfy the Commission's concerns about ATVs and provided that the parties would file proposed final consent decrees, which were filed on March 14, 1988. Both the preliminary consent decrees and the final consent decrees, which were approved by the Court on April 28, 1988, provide that the industry members will attempt in good faith to reach agreement on voluntary standards satisfactory to the Commission, within four months of the Court's approval of the final consent decrees.

Plenary standard development meetings pursuant to the consent decree were held on May 4, June 2, and June 30, 1988, and technical working group meetings were held on May 19–20 and June 15–16, and are scheduled for July 20–21. The results of the July 20–21 working group meetings will be reported to the July 28 plenary meeting of the industry representatives, who will make

the decisions on the content of proposals for inclusion in the standard.

Commission policy requires that all voluntary standards meetings attended by CPSC staff be open to the public and that interested members of the public have an opportunity to contribute to the development of the standard. Thus, the meeting is open to all members of the public who wish to attend or participate. In order to ensure that the meeting facilities are adequate to accommodate all attendees, persons wishing to attend the meeting should notify Paul Golde at the Specialty Vehicle Institute of America, 3151 Airway Avenue, Building K–107, Costa Mesa, California 92626, phone (714) 241–9256. In addition, persons who wish to participate in the development of the standard should notify Mr. Golde of the fact, so they can receive notice of additional meetings, etc., as they are scheduled.

The goal of the four-month period provided in the consent decrees for the development of a standard by the industry is to develop at least a general consensus on a standard within that time. Work on some aspects of a standard may continue after that period. Because of the need for the industry to develop the standard within four months, it may not be practical to announce all subsequent meetings of the voluntary standard development committee in the **Federal Register**. However, all persons who indicate a desire to participate in the development of the standard will be notified of such meetings, and other parties may contact the Commission's Office of the Secretary, at (301) 492–6800, to determine when standards development meetings are placed on the Commission's Public Calendar.

The Commission expects that most of the subsequent plenary meetings will be in the Washington, DC metropolitan area. However, some meetings may be in California for the convenience of participants who are located on the west coast or in Japan.

In order to ensure that the meeting proceeds on schedule, it may be necessary for the Chairperson to limit the time and manner allowed for the presentation of comments by each participant and to restrict duplicative comments.

Dated: July 19, 1988.

**Sadye E. Dunn,**

*Secretary of the Commission.*

[FR Doc. 88–16644 Filed 7–22–88; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 9:00 a.m., Wednesday, 3 August and 8:00 a.m., Thursday, 4 August 1988.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

*L.M. Bynum,*

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 19, 1988.

[FR Doc. 88–16632 Filed 7–22–88; 8:45 am]

BILLING CODE 3810–01–M

### Privacy Act of 1974; Amendment of Record System Notice

**AGENCY:** Office of the Secretary of Defense (OSD).

**ACTION:** Notice of an amendment of a record system.

**SUMMARY:** The Office of the Secretary of Defense is amending a system of records subject to the Privacy Act of 1974. The specific changes to the amended system are set forth below followed by the amended notice published in its entirety as changed.

**DATE:** This proposed action shall be effective without further notice (August 24, 1988), unless comments are received which would result in a contrary determination.

**ADDRESS:** Any comments may be submitted to the System Manager identified in the record system notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, D.C. 20301–1155. Telephone: (202) 695–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, 29 May 1985 (Compilation published)
50 FR 47087, 14 Nov 1985
51 FR 11807, 7 Apr 1986
51 FR 11803, 7 Apr 1986
51 FR 17508, 13 May 1986
51 FR 23573, 30 Jun 1986
51 FR 44668, 11 Dec 1986
51 FR 44672, 11 Dec 1986
51 FR 44670, 11 Dec 1986
51 FR 44665, 11 Dec 1986
52 FR 4645, 13 Feb 1987
52 FR 11849, 13 Apr 1987
52 FR 23334, 19 Jun 1987
52 FR 16431, 5 May 1987
52 FR 22837, 16 Jun 1987
53 FR 15868, 4 May 1988.

This proposed amendment is not within the purview of subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 19, 1988.

**Amendments**

**DMRA&L 09.0**

*System name:*

Defense Equal Opportunity Management Institute (DEOMI) Student File (50 FR 22295, May 29, 1985).

Changes:

*System location:*

(first paragraph)
After "backup", insert: "Mainframe".
Delete "systems" after "computer"
(second paragraph)

Delete "microfiche", insert: "microform".
After "files", insert: "for former students".
Delete "are located in the Chief, Evaluation Division", insert: "location: Information Systems Division".
Delete "Building 561", insert: "Building 559".
At end of paragraph, insert: "Temporary files and backups for current students are maintained on hard copy and microcomputers located in the Training Directorate, Defense Equal Opportunity Management Institute, Building 560, Patrick AFB, FL 32925–6685."
Add an additional paragraph: "Temporary microcomputer files and backups are also located in the Information Systems Division, Building 559, Patrick AFB, FL 32925–6685."

*Categories of Individuals Covered By the System:*

Delete "or", insert: "and".
Delete "at", insert: "of".

*Categories of Records in the System:*

After "name," insert: "social security number,"
After "age," insert: "religious preference,"
After "ratings," insert: "and".

*Authority for Maintenance of the System:*

After "10 U.S.C. 136", insert: "; E.O. 9397."

*Purpose(s):*

Delete "The data is and", insert: "Files are used by".
Delete "in evaluating the progress of student", insert: "to evaluate student progress".
Delete "Also used by advisors in counseling students to verify attendance and grades to colleges and universities; to select instructors; to make decision to release students from the program."
Delete the following paragraph: "Students use the data to evaluate their program, any individual records in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business."
After "academic accomplishment", insert: "Advisors use the files for counseling of students. Academic Boards and the Commandant use files to make decisions on releasing students from the program. The Registrar uses the files to verify attendance and grades. The Commandant, faculty and other staff use the student records to select instructors. Students use the data in evaluating their progress."
Insert the following paragraph: "The use of personal identifiers in this record system is solely for positive identification purposes."

*Routine uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Delete "To law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order."
Insert the following two paragraphs: "Colleges and universities use transcript records to verify attendance and grades.
See Office of the Secretary of Defense (OSD) blanket routine uses at the head of OSD's published system notices which are also applicable to this record system."

*Policies and Practices For Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

*Storage:*

Delete "file is by" and insert: "files are".
Delete "microfiche", insert: "microform,".
Insert: "Temporary files are on microcomputer disks backed up by magnetic tapes, diskettes, and paper records."

*Retrievability:*

Delete "are sequenced alphabetically by last name and by class.", insert: "may be accessed by any of the following: name, social security number, student number or class."

*Safeguards:*

Delete "location is a controlled access area."
Insert: "locations for both permanent and temporary files are controlled access areas."
Delete "Backup files –" Insert: "Backup files".

*Retention and Disposal:*

Insert "Mainframe" as first word in paragaph ahead of "computer".
Delete "microfiche" and insert "microform".
Delete "four year," and insert "four years and then destroyed."
Insert additional sentence: "Microcomputer records are transferred to the mainframe at the end of the current class."

*System Manager(s) and Address:*

After "32925", insert: "–6685".

*Notification Procedure:*

Delete "Commandant", insert: "Director of Support".
After "32925", insert: "–6685".
Delete "305–494–6976" and insert: "407–494–6017".

*Record Access Procedures:*

Delete "Request from individuals should be addressed".
Insert: "Address requests".
Delete "Commandant", insert: "Director of Support".
After "32925", insert: "–6685".
Delete "Written requests for information should contain the full name, ", Insert: "Requests must be in writing and contain the full name, social security number,". After "class of the individual", add: ", and signature."
Delete "such as military ID cards or driver's license,",
Insert: "such as a military ID card or a driver's license."

*Record Source Categories:*

Delete "examination,", insert: "examinations."

*Systems Exempted From Certain Provisions of the Act:*

Delete this heading. Substitute the following:
Exemptions Claimed For This System:

**DMRA&L 09.0**

**SYSTEM NAME:**

Defense Equal Opportunity Management Institute Student File.

**SYSTEM LOCATION:**

Primary and backup mainframe computer location: Building 989, Patrick AFB, FL 32925–6685.
Hard copy and microform backup files for former students location: Information Systems Division, Defense Equal Opportunity Management Institute, Building 559, Patrick AFB, FL 32925–6685.
Temporary files and backups for current students are maintained on hard copy and microcomputers located in the Training Directorate, Defense Equal Opportunity Management Institute, Building 560, Patrick AFB, FL 32925–6685.
Temporary microcomputer files and backups are also located in the Information Systems Division, Building 559, Patrick AFB, FL 32925–6685.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All current and former students of the Defense Equal Opportunity Management Institute.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Life history summary, name, social security number, race, age, religious preference, military organization, test and examination scores and forms, peer group and instructor ratings and advisor progress reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 136; E.O. 9397.

**PURPOSE(S):**

Files are used by the Defense Equal Opportunity Management Institute to evaluate student progress and to create a permanent record of academic accomplishment. Advisors use the files for counseling of students. Academic Boards and the Commandant use files to make decisions on releasing students from the program. The Registrar uses the files to verify attendance and grades. The Commandant, faculty and other staff use the student records to select instructors. Students use the data in evaluating their progress.

The use of personal identifiers in this record system is solely for positive identification purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Colleges and universities use transcript records to verify attendance and grades.

See Office of the Secretary of Defense (OSD) blanket routine uses at the head of OSD's published system notices which are also applicable to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Primary files are computer disk files. Backup files are magnetic computer tapes, microform, and paper records. Temporary files are on microcomputer disks backed up by magnetic tapes, diskettes, and paper records.

**RETRIEVABILITY:**

Files may be accessed by any of the following: name, social security number, student number or class.

**SAFEGUARDS:**

Primary locations for both permanent and temporary files are controlled access areas. Backup files storage is in locked file cabinets. Only authorized personnel have access to files.

**RETENTION AND DISPOSAL:**

Mainframe computer and microform records are kept permanently; paper backup records are kept for four years and then destroyed. Microcomputer records are transferred to the mainframe at the end of the current class.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commandant, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685. Telephone: 407–494–6017.

**RECORD ACCESS PROCEDURES:**

Address requests to the Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685. Requests must be in writing and contain the full name, social security number, current address and telephone number, class of the individual, and signature.

For personal visits, the individual should be able to provide some acceptable identification, such as a military ID card or a driver's license.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual, student peers, instructors, counselors, and examinations.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

None.

[FR Doc. 88–16631 Filed 7–22–88; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Navy

### Postponement of Public Hearing for Proposed Conveyance of U.S. Navy Land to Philadelphia Municipal Authority for Establishment of Steam Generating Facility That Produces Steam for Purchase by U.S. Navy, Philadelphia Naval Shipyard, Philadelphia, PA

The U.S. Navy hereby gives notice that the Public Hearing that had been scheduled for 27 July 1988 to receive comments on the Draft Environmental Impact Statement (DEIS) prepared for the subject action has been POSTPONED. The project has been placed "on hold" pending further review by the City of Philadelphia and the Department of the Navy.

Should the project be reactivated, the public hearing will be rescheduled and the hearing date, place, and time will be announced by separate notice. As a result of this delay, the public review and comment period for the DEIS has been extended indefinitely.

Questions concerning this notice may be directed to Ken Petrone at (215) 897–6432 or Bob Ostermueller at (215) 897–6262.

Date: July 21, 1988.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.*

[FR Doc. 88–16732 Filed 7–21–88; 12:13 pm]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Intent To Renew Grant with Florida Solar Energy Center

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of restricted eligibility for grant renewal.

**SUMMARY:** The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a renewal award under Grant Number DE–FG01–84CE22122 to Florida Solar Energy Center (FSEC) under DOE's Building and Community System's Windows and Daylighting Program for daylight availability research.

Scope: This grant will provide additional research on daylighting, particularly for daylight availability in the areas of characterizing sky luminance distributions, developing a standard practice for fenestration photometry measurements, developing and using analysis procedures for evaluating measured daylight availability data and for using these evaluations to develop improved design tools for saving energy while providing for human comfort and quality lighting. FSEC will assist Lawrence Berkeley Laboratory in their development with industry of residential fenestration design tools. Significant energy savings can result from the development and appropriate use of advanced fenestration systems. Building fenestration (windows, skylights, etc.) greatly influences energy use since such systems provide both a barrier to heat loss and a collector of energy in the form of heat and daylight.

Eligibility: Eligibility for this renewal award is being limited to FSEC, an institute of higher education, because of their high qualifications in the fields of optical physics and fenestration system design and evaluation. The term of this renewal shall be from June 1, 1988 through December 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B" Office of Procurement Operations.*

[FR Doc. 88–16672 Filed 7–22–88; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

**[ERA Docket No. 88–25–NG]**

### Czar Gas Corp.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Granting Blanket Authorization to Import Natural Gas from and Export Natural Gas to Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Czar Gas Corporation Inc. (Czar) blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88–25–NG authorizes Czar to import up to 146 Bcf of Canadian natural gas and to export to Canada up to 146 Bcf of domestic natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–16671 Filed 7–22–88; 8:45 am]

BILLING CODE 6450–01–M

**[ERA Docket No. 88–35–NG]**

### Northern Natural Gas Co.; Application To Amend Authorization To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of application to amend authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on June 8, 1988, of the application of Northern Natural Gas Company (Northern) to amend its existing authority to import Canadian gas from its Canadian supplier, Consolidated Natural Gas Limited (Consolidated), at Emerson, Manitoba, to increase its currently authorized import volume from 135 MMcf up to 200 MMcf per day from September 18, 1988 through October 31, 1989.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are due to be filed no later than August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585 (202) 586–8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, Washington, DC 20585 (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Northern is currently authorized under DOE/ERA Opinion and Order No. 76 (Order 76), issued March 29, 1985, to import up to 135,000 Mcf per day of Canadian natural gas at Emerson through October 31, 1989, minus the volumes it elects to import up to a daily maximum of 67,500 Mcf, at Monchy, Saskatchewan, through the Alaska Natural Gas Transportation System (ANGTS) in accordance with the terms, conditions and prices of its gas sales agreement with Consolidated dated February 24, 1979, as amended. Order 76 granted Northern authorization to import Canadian natural gas pursuant to its amended gas purchase contract with Consolidated that provided a 1984–85 contract year gas price of $3.50 (U.S.) per MMBtu for imported volumes up to 27.375 Bcf and $2.70 (U.S.) per MMBtu for all volumes above that level provided Northern takes its minimum annual take-or-pay obligation of 40.15 Bcf. For subsequent years the price of the gas and the take-and-pay volumes were to be subjected to annual renegotiation. Between February 1985 and November 1986, Northern and Consolidated amended their contract five times. Northern furnished copies of these amendments with its application. These amendments include such items as recognition of changes in Canadian regulatory requirements for exports, new conditions for shifts in the authorized daily takes, price adjustments, a take-or-pay settlement for the 1981–82 contract year, two-part rate schedule change, additional procedures to expedite annual negotiations and provisions for arbitration in the event of disputes. On June 1, 1988, Northern and Consolidated entered into a precedent agreement to amend their contract. Northern's new contract amendment would provide for an increase in the daily contract quantity Consolidated would sell and deliver to Northern from up to 135 MMcf per day to up to 200 MMcf per day for the period from September 18, 1988, through October 31, 1989. In accordance with the June 1 agreement, Northern requests the ERA to increase its existing import authorization at Emerson to up to 200 MMcf per day and up to 73,000 MMcf per year minus whatever volumes up to 100 MMcf per day Northern elects to import through the ANGTS at Monchy.

Northern states that the contract amendments and related authorization necessary for the transportation of the additional volumes are proceeding between Consolidated and TransCanada and the Canadian National Energy Board while other transportation contracts with Foothills Pipe Lines (Yukon) Ltd. and with Northern Border Pipeline Company are in place to accept the proposed volume increase at their respective facilities during the above stated period.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the proposed additional volumes are needed for system supply

and that its import arrangement is competitive. Parties opposing the amended arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of interventions, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 24, 1988.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Northern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-16669 Filed 7-22-88; 8:45 am]

BILLING CODE 6450-01-M

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**[ERA Docket No. 87-28-NG]**

## Tennessee Gas Pipeline Co.; Order Amending a Conditional Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Amending A Conditional Authorization to Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order amending a conditional authorization to Tennessee Gas Pipeline Company (Tennessee) to import natural gas. The order, DOE/ERA Opinion and Order No. 195-A, issued in ERA Docket No. 87-28-NG increases the amount of gas Tennessee may import through existing facilities from 5,000 Mcf per day up to 29,900 Mcf per day beginning November 1, 1988. Importation of the remaining 95,100 Mcf per day of gas authorized in DOE/ERA Opinion and Order No. 195 is still conditioned upon DOE's completion of its environmental review in compliance with the National Environmental Policy Act.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Adminsitration.*

[FR Doc. 88-16670 Filed 7-22-88; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

**[Docket No. ST85-354-002]**

## SNG Intrastate Pipeline, Inc.; Extension Reports

July 20, 1988.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to Part 284; the party receiving the gas; the date the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

**Lois D. Cashell,**

*Acting Secretary.*

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST, JULY 1988

| Docket No. | Seller | Recipient | Date filed | Part 284 subpart | Effective date | Expiration date [1] |
|---|---|---|---|---|---|---|
| ST85-354-002 | SNG Interstate Pipeline, Inc., P.O. Box 2563, Birmingham, AL 35202 2563. | Southern Natural Gas Co. | 07-06-88 | D | 10-04-88 | |

[1] The pipeline has sought Commission approval of trhe extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 88-16575 Filed 7-22-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00268; FRL 3419-5]

### FIFRA Scientific Advisory Panel; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 1-day meeting of the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the Special Review of aldicarb and a set of scientific issues being considered by the Agency in connection with the peer review classification of atrazine as a Class C oncogen, isoxaben as a Class C oncogen, prochloraz as a Class C oncogen, and rotenone as a Class D oncogen.

**DATES:** The meeting will be held on Wednesday, September 7, 1988 from 8:30 a.m. to 4 p.m.

**ADDRESS:** The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's preliminary determination to cancel registrations of pesticide products containing aldicarb. The Agency has made a preliminary determination that, on a national basis, the risks posed by aldicarb contaimination of ground water exceed the benefits derived from aldicarb's continued use. The Agency believes that vulnerable areas are likely to have leaching of aldicarb into ground water at levels greater than the Health Advisory. However, the Agency believes it is possible to reduce the risks significantly by imposing certain regulatory restrictions short of cancellation of all uses. Accordingly, the Agency evaluated three options to prevent the contamination of the nation's ground water by aldicarb above an unacceptable level. These options are: (1) Risk reduction measures/user determines applicability, (2) labeling/monitoring/state management plans determined by Health Regions, and (3) labeling/monitoring/state management plans determined by county. This proposed approach for aldicarb implements the Agency's recently proposed long-term strategy addressing concern for pesticides in ground water.

2. Review of a set of scientific issues in connection with the Agency's classification of the peer review of atrazine as a Class C oncogen (possible human carcinogen). The classification of atrazine was based on an increased incidence of mammary tumors in females in Sprague-Dawley rats, a possible mutagenicity concern and a structure activity relationship with agents demonstrated to produce mammary tumors.

3. Review of a set of scientific issues in connection with the Agency's classification of the peer review of isoxaben as a Class C oncogen (possible human carcinogen). The classification of isoxaben as a Class C oncogen was based on significant increases in liver adenomas in both sexes of B6C3F1 mice.

4. Review of a set of scientific issues in connection with the Agency's classification of the peer review of prochloraz as a Class C oncogen (possible human carcinogen). The classification of prochloraz as a Class C oncogen was based on significant increases in benign and malignant liver tumors in male and female mice.

5. Review of scientific issues in connection with the Agency's peer review of rotenone as a Class D Oncogen based on increased incidence of parathyroid adenoma in male rats at 75 ppm, in the National Toxicology Program study, which was not statistically significantly increased; occurred in only one sex and one species; at only one dose; and were benign only. Since the Hazleton study did not reproduce these results, the data could not be interpreted as showing either the presence or absence of a carcinogenic effect; thus, the weight of evidence is "inadequate".

6. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1-5 may be obtained by contacting: By mail:

Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-2805).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit ten copies of a summary no later than August 17, 1988, in order to ensure appropriate consideration by the Panel.

Dated: July 19, 1988

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 88-16620 Filed 7-22-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearings; Archon Broadcasting Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and | File No. | MM Docket No. |
|---|---|---|
| A. Archon Broadcasting Limited Partnership; Waterloo, NY. | BPH-870429MC... | 88-336 |
| B. Robert William Martin et. al., d/b/a Lake Country Broadcasting; Waterloo, NY. | BPH-870430OH... | |

2. Pursusnt to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 957-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-16659 Filed 7-22-88; 8:45 am]

**BILLING CODE 6712-01-M**

### Applications for Consolidated Hearing; Culpepper, Richard L. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. Richard L. Culpepper; Muskegon, MI. | BPH-870612MB... | 88-339 |
| B. Golbar Broadcasting Co. Limited Partnership; Muskegon, MI. | BPH-870615MN... | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues have been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Air Hazard, A, B
2. Comparative, A,B,
3. Ultimate, A,B

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-16660 Filed 7-22-88; 8:45 am]

**BILLING CODE 6710-01-M**

### Applications for Consolidated Hearing; Rem Malloy Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. Henry R. Malloy d/ b/a Rem Malloy Broadcasting; Raleigh, NC. | BPH-860627MH... | 88-306 |
| B. Peebles Broadcasting Company; Raleigh, NC. | BPH-860703ME... | |
| C. James S. Lee and Donald L. Baker d/b/a Interactive Media; Raleigh, NC. | BPH-860707MS... | |
| D. Raleigh FM Limited Partnership; Raleigh, NC. | BPH-860707MV... | |
| E. FM Carolina, Inc.; Raleigh, NC. | BPH-860707MX... | |
| F. Free Air Corporation; Raleigh, NC. | BPH-860707NH... | |
| G. Brian C. Blount, Evelyn V. Garner, Clyde Austin & Charles Harrison d/b/a BCB Enterprises; Raleigh, NC. | BPH-860707NJ... | |
| H. Clear Channel Communications, Inc.; Raleigh, NC. | BPH-860707NV... | |
| I. Bernard Dawson; Raleigh, NC. | BPH-860707NW... | |
| J. Holy Spirit FM Limited Partnership; Raleigh, NC. | BPH-860707NX... | |
| K. LPNC, Inc.; Raleigh, NC. | BPH-860702MC (Previously dismissed). | |
| L. Special Markets, Inc.; Raleigh, NC. | BPH-860703MH (Previously dismissed). | |
| M. Cofield Broadcasting Company, Inc.; Raleigh, NC. | BPH-860703MM (Previously dismissed). | |
| N. FM Raleigh Limited Partnership; Raleigh, NC. | BPH-860707MY (Previously dismissed). | |
| O. Willowbrook Broadcasting Limited Partnership; Raleigh, NC. | BPH-860707NM (Previously dismissed). | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading, and Applicants*

1. Financial qualifications, G,I
2. Comparative, A-J
3. Ultimate, A-J

3. If there is any non-standardized issue in this proceeding, the full text of

the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16661 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; WCND, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. WCND, Inc.; Shelbyville, KY. | BPH–870514MJ.... | 88–337 |
| B. CSW, Ltd.; Shelbyville, KY. | BPH–870515MS... | |
| C. Wayne Louis Wilson; Shelbyville, KY. | BPH–870515NO... | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

*Issue Heading, and applicants*

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 957–3800).

W. Jay Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16662 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; WYAL Radio, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, and city/ State | File No. | MM Docket No. |
|---|---|---|
| A. WYAL Radio, Inc.; Scotland Neck, NC. | BPH–870331MP | 88–338 |
| B. Michael Ronald Bland; Scotland Neck, NC. | BPH–870331NX | ..... |
| C. Ervin L. Hester et al. d/b/a Holly Spirit FM Partnership; Scotland Neck, NC. | BPH–87042MF | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, C
2. Comparative, A,B,C,
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. This complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88–16663 Filed 7–22–88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

*License Number:* 1925
*Name:* Ebrin International, Inc.
*Address:* 162 Village Path, Lakewood, NJ 08701
*Date Revoked:* June 9, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2565
*Name:* Air Marine International Cargo Services, Inc. dba M.A.C. Cargo Services
*Address:* 6856 N.W., 77 Court, Miami, FL 33166
*Date Revoked:* June 25, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 1629R
*Name:* Transnational Shipping Corporation
*Address:* 17 Battery Place, New York, NY 10004
*Date Revoked:* June 26, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2774
*Name:* JBM & Sons International Freight Forwarders, Inc.
*Address:* 2151 NW. 72nd Ave. Miami, FL 33122
*Date Revoked:* June 30, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 2404
*Name:* Transworld Freight Systems, Corp.
*Address:* 2400 N.W. 93rd Ave., Miami, FL 33172
*Date Revoked:* July 1, 1988
*Reason:* Failed to maintain a valid surety bond

*License Number:* 3073
*Name:* Edward O. Himley, Jr., dba Cap Air/Ocean

*Address:* 3115 Will Clayton Parkway, Houston, TX 77032
*Date Revoked:* July 12, 1988
*Reason:* Failed to maintain a valid surety bond

**Robert G. Drew,**
*Director, Bureau of Domestic Regulation.*
[FR Doc. 88-16616 Filed 7-22-88; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Commerce Bancorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1988.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commerce Bancorp, Inc.,* Cherry Hill, New Jersey; to acquire 100 percent of the voting shares of Citizens State Bank of New Jersey, Forked River, New Jersey. Comments on this application must be received by August 17, 1988.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company,* Charleston, West Virginia; to acquire 100 percent of the voting shares of Bank of Ripley, Ripley, West Virginia.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Athens Bancorp, Inc.,* Athens, Wisconsin; to acquire 100 percent of the voting shares of Junction State Bank, Junction City, Wisconsin.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Investment Corporation,* Cuba, Missouri; to acquire 100 percent of the voting shares of Peoples Bank of Steelville, Steelville, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, July 19, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88-16618 Filed 7-22-88; 8:45 am]
BILLING CODE 6210-01-M

### First NH Banks, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 5, 1988.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.,* Manchester, New Hampshire; to acquire EG & G Financial Services, Inc., Wellesley, Massachusetts, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by August 9, 1988.

**C. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PennBancorp,* Titusville, Pennsylvania; to alter the current exempt activities of United Data Services, Inc., by providing data processing services to an unaffiliated third party pursuant to § 225.25(b)(7) of the Board's Regulation Y.

**D. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *MNC Financial, Inc.,* Baltimore, Maryland; to acquire Landmark Financial Services, Inc., Silver Spring, and thereby engage in making, acquiring and servicing loans pursuant to section 225.25(b)(1); acting as agent for credit life and disability insurance; and acting as agent for credit and collateral insurance directly related to extensions of credit by the company or its subsidiaries pursuant to section 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by August 17, 1988.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to acquire Underwriting Specialists, Norfolk, Nebraska, and thereby indirectly acquire engage in general insurance agency activities pursuant to § 225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by August 9, 1988.

Board of Governors of the Federal Reserve System, July 19, 1988.

**James McAfee,**
*Associate Secretary of the Board.*
[FR Doc. 88-16619 Filed 7-22-88; 8:45 am]
BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Federal Telecommunications Privacy Advisory Committee; Meeting

Notice is hereby given that the General Services Administration's Federal Telecommunications Privacy Advisory Committee will meet on August 1, 1988, from 9:00 a.m. to Noon in room 119 of the Veterans Administration Building, 810 Vermont Avenue, NW., Washington, DC 20420. The agenda will include (1) Background on the issues, (2) discussion of the issues and the materials furnished before the meeting, and (3) information needed for resolving the issues.

The meeting will be open to the public.

Less than fifteen days notice of this meeting is being provided due to scheduling difficulties.

Questions regarding this meeting should be directed to John J. Landers (202) 523-5308.

Dated: July 14, 1988.

John J. Landers,

*Director, Office of Administration, Information Resources Management Service.*

[FR Doc. 88-16617 Filed 7-22-88; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Chronic Disease Burden and Prevention Models; Program Announcement and Availability of Funds for Fiscal Year 1988

#### Introduction

The Centers for Disease Control (CDC), announces the availability of funds for Fiscal Year 1988 for a cooperative agreement to participate in a project known as Chronic Disease Burden and Prevention Models.

#### Authority

This program is authorized under section 317 (247 b) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

#### Purpose

*A. Purpose*

To assist State Health Departments to plan chronic disease prevention and intervention control programs for the greatest measurable health improvement per resources expended by enhancing their capacity to direct resources toward effective prevention and control efforts.

*B. Objectives*

1. To develop a "Disease Burden Model" for at least twelve specific chronic diseases.

2. To develop a "Disease Prevention Model," adaptable to accommodate multiple chronic disease categories, for at least twelve specific chronic diseases.

3. To test developed models in different populations and for different chronic diseases.

#### Eligible Applicants

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

#### Cooperative Activities

*A. Recipient Activities*

1. Assume the leadership role in the preparation of Software Packages for Disease Burden and Disease Prevention Models:

a. Using State data, prepare a menu-driven software package (Disease Burden Model (DBM)) for use with IBM-compatible personal computers which can be used to quantify the burden of specific chronic diseases. Examples of indices which might be used to develop the DBM include: Mortality rates, Morbidity/Hospitalization Rates, Years of Potential Life Lost. Examples of data sources that might be used to develop the model include: Vital Records, Hospital Discharge abstracts, Specific Disease Registries, Outpatient Visit Records, Nursing Home Records, Worker's Compensation Claims, Insurance Claims.

The DBM should be developed during the first year of this project using at least 12 major chronic diseases which have significant impact on health care cost.

b. Using State data, prepare a second menu-driven software package (Disease Prevention Model (DPM))—for IBM compatible personal computers—which can be used to quantify the effectiveness of various prevention, intervention or control programs to reduce morbidity and mortality developed in the DBM. The DPM should be developed utilizing at least 12 major chronic diseases for which there exists significant potential to reduce overall morbidity and mortality.

Some of the indices in the DPM should be quite similar to those in the DBM, as the ultimate goal is to reduce the quantified burden. The DPM should quantify the extent to which the burden can be lessened with the application of various prevention and intervention/control strategies. Therefore, the "units" will be quite similar. This model will be developed in year 2 of the project.

2. Utilizing State data, test both the DBM and DPM developed above on two completely different chronic diseases in specific populations of at least 500,000 people. This will be done in years 2 and 3 respectively.

*B. Centers for Disease Control (CDC) Activities*

1. Provide technical assistance in the development of all phases of both models, including model components, methodology, diseases of interest, and techniques for testing both models.

2. Identify specific diseases and populations for testing both Disease Burden and Prevention Models.

3. Apply both Disease Burden and Disease Prevention Models to specific populations using ten priority chronic diseases.

4. Disseminate the Disease Burden and Prevention Models to all State and selected local health departments for further use, testing, and evaluation.

5. Determine the usefulness of the Disease Burden and Prevention Models in various other prevention/intervention programs.

#### Availability of Funds

It is expected that the approximately $80,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded with a 12-month budget period and 3-year project period. It is planned that at least $80,000 will be available each year. The project period is expected to be 3 years with Year 1 devoted to developing the Disease Burden Model and Year 2 devoted to developing the Disease Prevention Model. Testing both models in a state health department will take place during the third year. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and availability of funds. The funding estimate outlined above is subject to change.

#### Reporting Requirements

The recipient of this assistance award will submit quarterly and annual summary progress reports providing details of accomplishments toward the development of Disease Burden and Disease Prevention Models. Financial status reports must be filed no later than 90 days after the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of each project period.

**Review Criteria**

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

A. The adequacy and completeness of the project plan and methodology, including a proposed specific time schedule for accomplishing the objectives and activities.

B. Qualifications and time allocation of the applicant's technical and administrative staff and the type and quality of facilities and equipment for the project.

C. The extent to which the objectives of the applications fit the objective for which applications were invited. More specifically, the selection of award sites will be based in the potential for developing viable, flexible, and efficient software packages that directly address Disease Burden and Disease Prevention. The elements which should be incorporated in the models include, but should not be limited to, mortality rates, morbidity or hospitalization rates (including length of stay, cost of procedure), years of potential life lost, outpatient visits ( number of visits, cost of procedures) worker's compensation or disability costs and lost-productivity.

D. The adequacy of the DBM and DPM software packages in quantifying chronic disease burden and the effect of its prevention.

E. The adequacy of these models in enhancing the capacity of State and local health department to direct resources toward effective prevention and control efforts, i.e. ability to test the models in populations of at least 500,000 people and the ability to interpret the parameters of the models.

F. Knowledge of quantitative techniques commonly used in descriptive epidemiology, cost-benefit analysis, cost-effectiveness analysis, decision analysis, and cost-analysis.

G. Familiarity with Statistical Analysis System (SAS) or comparable software including: Basic commands, statistical analysis, creation of SAS datasets, and use of SAS datasets.

**Application Submission**

The original and two unbound copies of the application (PHS 5161–1, revised 3/86) should be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, GA 30305 on or before July 30, 1988.

*A. Deadlines*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*B. Late Application*

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

**Other Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from: Terry C. Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, (404) 842–6575 or FTS 236–6575. Technical assistance may be obtained from the Division of Chronic Disease Control: John Howard Hill, Deputy Chief, ESB, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488–4363 or FTS 236–4363 or FTS 236–4363 or Gary F. Stein, M.D., M.O.H., Medical Epidemiologist, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 488–4370 or FTS 236–4370.

Dated: July 20, 1988.

**Glenda S. Cowart,**

*Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88–16708 Filed 7–22–88; 8:45 am]

BILLING CODE 4160–18–M

## Family Support Administration

## Office of Community Services

### Availability of Funds and Requests for Applications; Correction

**AGENCY:** Office of Energy Assistance, Office of Community Services, Family Support Administration, Department of Health and Human Services.

**ACTION:** The purpose of this notice is to correct the address given in Program Announcement No. OCS–OEA–88–1, Availability of Funds and Requests for Applications Under the Office of Community Services, Office of Energy Assistance, Technical Assistance and Training Discretionary Authority, published in the **Federal Register**, Vol. 53, No. 136, Friday, July 15, 1988.

**SUMMARY:** Applications for Program Announcement No. OCS–OEA–88–1, should be mailed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand delivered applications should be brought to: Family Support Administration, Office of Grants Management, 901 D Street, SW., 6th Floor, Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** Susan Peters, Telephone: (202) 245–1303 or 252–5319, Office of Community Services, 370 L'Enfant Promenade, SW., 5th Floor, Washington, DC 20447.

**Mary M. Evert,**

*Director, Office of Community Services.*

[FR Doc. 88–16673 Filed 7–22–88; 8:45 am]

BILLING CODE 4150–04–M

## Indian Health Service

### Health Promotion and Disease Prevention Demonstration Projects: Grants Application Announcement

**AGENCY:** Indian Health Service.

**ACTION:** Notice of Competitive Grant Applications for Health Promotion and Disease Prevention Demonstration Projects.

**SUMMARY:** The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for Health Promotion and Disease Prevention (HP/DP) Demonstration Projects established by the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, Pub. L. 99–570, section 4228(c)(1). The Catalog of Federal Domestic Assistance number is 13.166. Projects will be administered in accordance with OMB Circular A–110, Uniform Requirements

for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Federal Regulations at 45 CFR Part 74, Administration of Grants. There will be only one funding cycle during Fiscal Year 1988.

**DATE:** An original and two (2) copies of the completed grant application must be submitted by close of business on August 31, 1988, to the Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857. Close of business means 4:00 P.M. Eastern Daylight Time.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Applications received after the announced closing date will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** For grants information, contact M. Kay Carpentier, Grants Management Officer, Grants Management Branch, Division of Grants and Contracts, Indian Health Service, Room 6A–33, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–5204. For program information, contact Dr. Craig Vanderwagen, Director, Division of Clinical and Preventive Services, Indian Health Service, Room 6A–55, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4644. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This announcement provides information on the general program purpose, programmatic priorities, eligibility requirements, funding availability, and application procedures for the Health Promotion and Disease Prevention (HP/DP) Demonstration Projects for Fiscal Year 1988.

### A. General Program Purpose

To establish health promotion and disease prevention demonstration projects that will implement the intent of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, Pub. L. 99–570, section 4228(c)(1).

### B. Programmatic Priority

Only one programmatic priority has been established for funding during this fiscal year. In accordance with the intent of section 4228(c)(1), Pub. L. 99–570, Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, the priority will be demonstration projects which relate to determining the most effective and cost-efficient means of:

"(A) Providing health promotion and disease prevention services,

(B) Encouraging Indians to adopt good health habits,

(C) Reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, depression, and lifestyle related accidents,

(D) Reducing medical expenses of Indians through health promotion and disease prevention activities,

(E) Establishing a program—

(i) Which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

(ii) Under which such Indians are available on a contract basis to provide such services to other tribes, and

(F) Providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services."

An applicant under this program must address all of the above objectives A–F. Failure of an applicant to include all of these objectives will make the application unresponsive and, thus, ineligible for consideration. As part of the work plan, the demonstration project must include an analysis of the cost effectiveness of the organizational structures and of the social and educational programs useful in achieving objectives A–F.

Projects will be funded for a one-year project period.

### C. Eligibility Requirements

Under section 4228(c)(3) (B) and (C), the Secretary is authorized to award grants under this program to any "school of medicine" or "school of osteopathy" as those terms are defined by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)). Section 701(4) provides, in pertinent part, as follows:

"The terms 'school of medicine', * * * 'school of osteopathy', * * * mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, * * * a degree of doctor of osteopathy * * *."

The statute at section 4228(c)(3)(A) requires that a demonstration project under this program shall be conducted in association with at least one of the following:

(i) Health profession school,

(ii) Allied health profession or nurse training institution, or

(iii) Public or private entity that provides health care.

The IHS interprets (i) above, health professions school, as meaning a health profession school other than the applying entity. In addition to this statutory association provision, the IHS has determined that because of the nature of the demonstration program, which is geared toward demonstrating health promotion and disease prevention with regard to Indians and Indian tribes, the grantee will additionally be required to conduct the project in association with an Indian tribe, a tribal organization, or a group of tribes or tribal organizations. Therefore, the applicant organization must show that it has met the above two associational requirements by submitting letters of agreement or support or other such evidence (i.e., resolution) showing that the required linkages are in place.

### D. Fund Availability

Approximately $500,000 is available for award of HP/DP demonstration project grants during this competitive funding cycle. It is anticipated that one to two projects will be funded.

### E. Application Process

1. A *Grant Application Kit for Health Promotion and Disease Prevention Demonstration Projects*, including Standard Form 424 Page 1 (Rev. 4–84) and General Information and Instructions for Grant Application Form PHS 5161–1 (Rev. 3–86), may be obtained from the Grants Management Officer at the address and telephone number previously cited in this announcement.

2. The application must be signed and submitted by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award.

3. Each application will be reviewed for completeness, eligibility and conformance with the established programmatic priorities. All acceptable applications will be subject to a competitive review and evaluated in accordance with established objective review procedures. This program is not subject to E.O. 12372.

4. All applicants will be notified regarding the status of their applications (approved, approved unfunded, disapproved or deferred) by September

15, 1988. Projects will start no later than September 29, 1988.

*Criteria for Review and Evaluation:* All applications will be evaluated in accordance with the following weighted criteria:

*Criterion and Weight*

#1. *Statement of Problems:* Does the project address the established priority? Does the applicant provide data and supporting documentation that identify the extent of the problems and the need for effective and cost-efficient means of resolving these problems within the tribes/tribal organizations?—*15*

#2: *Identification of Prescribed Associations:* Does the applicant clearly identify the groups with which it will be associated for carrying out the project and the role of the groups in the project? Do the groups fall within those specified by program requirements? Has the applicant included adequate documentation (tribal resolution, letters of support, etc.) of the involvement of the groups in the project?—*15*

#3: *Scope of Work and Work Plan:* Are the goals and objectives of the project clearly stated in measurable terms with realistic timeframes? Does the work plan specifically address each objective A–F? Does the scope of work and work plan reflect realistic methods for addressing the objectives? Will the proposed methodology lead to determination of an effective and cost-efficient means of dealing with the stated problems? Does the methodology provide for an analysis of the cost effectivenes of the organizational structures and of the social and educationjal programs useful in achieving the projelct objectives? Can the project be accomplished within a 1-year period?—*30*

#4: *Qualification of Personnel/Adequacy of Management Controls and Budget:* Does the proposal contain a staffing plan? Is proposed staffing adquate to carry out the work plan? Do the resumes of the staff indicate that their qualifications are appropriate to the proposed scope of work? Is there adequate administrative staff for proper project management? Are the organizational structure and resources adequate for conduct of the project? Does the proposal reflect adequate supervision of both the technical and business aspects of the project? Does the budget clearly identify and justify costs? Is the budget adequate and realistic in relation to the proposed scope of work? Are the proposed facilities and equipment adequate? Are proposed equipment purchases necessary for conduct of the project?—*20*

#5: *Internal Project Evaluation:* Does the applicant include an evaluation process and does this process clearly identify who will perform the evaluation, when evaluations will be performed, and what documentation will be provided? Are the evaluation criteria clear and measurable? Do the criteria use baseline data against which to evaluate whether objectives were met? Will the evaluation process determine whether the project outcome was successful?–*20*

Total Value—*100*

Date: June 24, 1988.

**Everett R. Rhoades,**

*Assistant Surgeon General, Director.*

[FR Doc. 88–16647 Filed 7–22–88; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–010–08–4212–13; IDI–23782]**

### Realty Actions; Sales, Leases, etc.; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—IDI–23782, exchange of public and private lands in Owyhee and Twin Falls Counties, Idaho.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716):

**Boise Meridian, Idaho**

T. 10 S., R. 12 E.,
Sec. 7, lots 3, 4, E½SE¼, W½E½SW¼;
Sec. 8, S½;
Sec. 9, S½;
Sec. 17, All;
Sec. 18, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, E½SE¼SW¼, SE¼;
Sec. 19, lot 2, NE¼, E½NE¼NW¼, SE¼NW¼;
Sec. 20, N½.

Comprising 2,624.34 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from General Tews:

**Boise Meridian, Idaho**

T. 14 S., R. 13 E.,
Sec. 13, SW¼SW¼ (above high water line);
Sec. 14, NE¼SE¼, S½SE¼ (all above high water line);
Sec. 23, NE¼NE¼, NE¼SW¼; S½NW¼, N½NW¼SW¼, N½S½NW¼SW¼ (all south and east above high water line);
Sec. 24, NW¼NW¼.

Comprising 272.16 acres of private land.

The purpose of this exchange is to acquire the non-Federal lands, which have high public values for recreation use. These lands are used heavily by the public for fishing and boating access. The acquisition of these lands has received significant support by the public, and some of the state and local government agencies. The public interest will be well served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Gerald Tews of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. Ditches and Canals.

**DATES AND ADDRESSES:** On or before September 8, 1988, interested parties may submit comments to the District Manager, Bureau of land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the exchange, contact Delores Hilde at (208) 334–1582. The Environmental Assessment/Land Report is also available for review at the Boise District Office, 3948 Development Avenue, Boise, Idaho.

**SUPPLEMENTARY INFORMATION:** Publication of this notice segregates the previously described public lands from appropriation under the public land laws including the mining and mineral leasing laws for a period of 2 years from the date of publication or until patent is issued, whichever comes first.

Dated: July 15, 1988.

**J. David Brunner,**

*District Manager.*

[FR Doc. 88–16443 Filed 7–22–88; 8:45 am]

BILLING CODE 4310–66–M

### Minerals Management Service

### Arctic Oil Spill Response Technology; Request for Information

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Request for Information on Arctic Oil Spill Response Technology for the Alaskan Outer Continental Shelf (OCS).

**SUMMARY:** This Notice requests comments and recommendations on questions and issues relating to research and development to improve or advance arctic oil spill response capabilities. The Minerals Management Service (MMS) plans to conduct a workshop on arctic oil spill response technology in late November or early December 1988. The MMS is soliciting information on arctic

oil spill response technology research needs to facilitate planning for the workshop. The workshop will be a public forum to identify future research and development needs to improve and advance arctic oil spill response capability and to present discussions of the state of the art and existing research activities. The workshop will focus on existing and developing technology and will not be directed at fate and effect issues.

**DATES:** Written comments and recommendations should be submitted no later than August 22, 1988.

**ADDRESS:** Comments and recommendations should be submitted to Chief, Technology Assessment and Research Branch, Minerals management Service, 12203 Sunrise Valley Drive, Mail Stop 647, Reston, Virginia 22091, with a copy to Regional Supervisor, Field Operations, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, AK 99508–4302.

**FOR FURTHER INFORMATION CONTACT:** John Gregory, Chief, Technology Assessment and Research Branch, FTS 959–7752 or (703) 648–7752, or Rodney Smith, Regional Supervisor, Field Operations, Alaska OCS Region, (907) 261–4188.

**SUPPLEMENTARY INFORMATION:** Oil spill response technology for arctic conditions, as found in the Alaskan Beaufort and Chukchi Seas, has been the subject of research and development for over a decade. Much of the research conducted at the Oil and Hazardous Materials Simulated Environmental Test Tank and offshore, through a joint MMS-Environment Canada Research Program and through the State of Alaska's Tier II Broken Ice Oil Spill Research and Development Program, has been directed at unstable ice conditions in the Alaskan Beaufort. Additional research conducted by foreign governments (most notably, Canada), universities, private organizations, and the oil and gas industry, also had direct relevance and applicability to the Alaskan Beaufort.

Since exploratory drilling started in the Alaskan Beaufort OCS and State submerged lands, there have been several advances in arctic spill response technology and an improved understanding of oil behavior in arctic conditions. The MMS has been encouraged by the rate at which previous and ongoing efforts have improved and advanced arctic oil spill response technology through its own and other research efforts. The MMS wants to maintain this momentum and continuity in advancing and improving arctic oil spill response technology. Continued research and development could further advance oil spill response technology for more active-ice and deeper-water areas.

**Questions and Issues**

Respondents are requested to address the specific questions and issues listed below and are encouraged to provide any information which would be useful in identifying future research and development activities to improve and advance arctic oil spill response capabilities.

(a) Are there existing or new response techniques, equipment, or products, including chemical additives, which have the potential for arctic application but have not been tested or evaluated and which should be considered for future testing and evaluation?

(b) Are there new techniques or processes available which can be used to better test and evaluate equipment efficiency and effectiveness and which have not been used previously?

(c) Are there areas where continued research is unnecessary?

(d) What should the research priorities be in each category of detection, containment, recovery, and disposal for open water, solid-ice, and unstable ice conditions?

Dated: July 19, 1988.

**Richard B. Krah,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 88–16642 Filed 7–22–88; 8:45 am]

BILLING CODE 4310–MR–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31296]**

### Exemption; Centralia and Webster Springs Railroad Co. et al., and SCS Transportation, Inc.—Merger Exemption

The Centralia and Webster Springs Railroad Company; Cheat Haven and Bruceton Railroad Company; Fairmont Morgantown and Pittsburg Railroad Company; and Western Maryland Railway Company (the subsidiaries), CSX Transportation, Inc. (CSXT), and CSX Corportation, Inc. (CSX) have filed a notice of exemption for the merger of the subsidiaries into CSXT, with CSXT as the surviving corporation. The merger was expected to be consummated on June 30, 1988.

Each of the subsidiaries is a nonoperating company whose properties are being operated by, in the name of, and for the account of CSXT, a Class I rail common carrier; all of the carriers are subject to Commission jurisdiction. The subsidiaries and CSXT are controlled by CSX pursuant to authority granted by the Commission.

This is a transaction within a corporation family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201, and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, P.O. Box C–3222, Richmond, VA 23219.

Decided: July 6, 1988.

By Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–16277 Filed 7–22–88; 8:45 am]

BILLING CODE 7035–01–M

**[Finance Docket No. 31298]**

### Exemption; Chicago West Pullman Transportation Corp. Continuance in Control Exemption—Georgia Woodlands Railroad Co.

Chicago West Pullman Transportation Corporation (CWPT), a non-carrier, has filed a notice of exemption under 49 CFR 1180.2(d)(2) and 1180.4(g) regarding its continuance in control of the Georgia Woodlands Railroad Company (GWR) while controlling the Chicago West Pullman & Southern Railway Company (CWPS), Manfacturer's Junction Railway Company (MJ), Newburgh & South Shore Railroad Company (NSR), and The Wisconsin & Calumet Railroad Company (WICT).

CWPT presently controls CWPS, MJ, NSR and WICT, all class III carriers. The transaction by which GWR commenced operations between Barnett and Washington, GA was the subject of a notice of exemption in Finance Docket No. 31258. CWPT inadvertently failed to file a notice of exemption to control

GWR's commencement of operations on June 7, 1988.

CWPT indicates that: (1) GWR will not connect with any other railroads within the CWPT corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect GWR with any railroad in the corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employee affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 6, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-16278 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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[Ex Parte No. 476]

## Railroad Revenue Adequacy; 1987 Determination

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of 1987 determination of rail revenue adequacy.

**SUMMARY:** In Ex Parte No. 393, *Standards for Railroad* Revenue Adequacy, 364 I.C.C. 803 (1981), as modified in Ex Parte No. 393 (Sub. No. 1), *Standards for Railroad Revenue Adequacy*, 3 I.C.C. 2d 261 (1986), the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if it achieved a rate of return at least equal to the current cost of capital. This decision applies the rate of return standard to data for the year 1987. Using these data, the Commission has now determined that none of the 18 Class I freight carriers are revenue adequate.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275-7489 (TDD for hearing impaired: (202) 275-1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423; or call (202) 289-4357/4359 (D.C. Metropolitan area). (Assistance for the hearing impaired is available through TDD services (202) 275-1721, or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: July 19, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons and Lamboley.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-16634 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31290]

## Burlington Northern Railroad Co.; Trackage Rights; Union Pacific Railroad Co.

Union Pacific Railroad Company has agreed to grant overhead trackage rights to Burlington Northern Railroad Company between Sand Creek, (milepost 4.93) in Adams County, CO and Speer, (milepost 97.63) in Laramie County, WY, a distance of 92.70 miles. The trackage rights will be effective upon the operation of BN's first train over the joint trackage, subject to the grant of an exemption in Finance Docket No. 31290 (Sub-No. 1) [1] and the construction of the necessary connector tracks. The transaction is not likely to be consummated prior to September 1, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-16635 Filed 7-22-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] BN filed concurrent with this notice, under 49 U.S.C. 10505, to exempt from section 10901 the construction of connector tracks between BN and Up lines at Sand Creek and at Speer.

[2] The Great Western Railway Company (GWR) filed a petition requesting the Commission to require BN to grant GWR trackage rights from Greely to Windsor, including all stations except Greely proper. That request will be considered along with the exemption request in finance Docket No. 31290 (Sub-No. 1) in a subsequent decision. The communities of Greeley, Fort Lupton, Brighton, Pierce, Nunn, Eaton, Evans, LaSalle and Ault (Communities) express concern about the increase in traffic in their communites which may result from this trackage rights agreement. There is no indication that their pleading was served on the applicants. After we have received an appropriate certificate of service, the pleading will also be considered in the subsequent decision.

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[Docket No. AB-3 (Sub-76)]

## Missouri Pacific Railroad Co.; Abandonment—In Taylor and Runnels Counties, TX; Notice of Findings

The Commission has issued a Decision and Certificate authorizing Missouri Pacific Railroad Company to abandon its 31.2-mile rail line between (milepost 7.0) near Abilene and (milepost 38.2) near Winters, TX. The Decision and Certificate will become effective 30 days after publication in the **Federal Register** unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the railroad within 10 days after publication.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period. Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: July 21, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88-16834 Filed 7-22-88; 9:14 am]

BILLING CODE 7035-01-M

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# DEPARTMENT OF JUSTICE

## Lodging of Supplemental Consent Order Pursuant to Clean Water Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Supplemental

Consent Order in *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, Civil Action Nos. 78–0038(CC) and 83–0105(CC), was lodged with the United States District Court for the District of Puerto Rico on July 19, 1988. The Supplemental Consent Oder settles violations by the Puerto Rico Aqueduct and Sewer Authority ("PRASA") of a February 22, 1985 consent decree resolving litigation brought in 1978 under the Clean Water Act. In motions to enforce the consent decree, the United States alleged that PRASA violated capital improvements, operations and maintenance and other provisions of the 1985 decree.

The Order requires PRASA to pay $2 million to the U.S. Treasury and to set aside $7.9 million for corrective actions to improve the Commonwealth's wastewater treatment system. The Order also contains revisions to the 1985 consent decree, providing for major capital improvements, pretreatment programs for more than 50 plants, and a revised system of enforcement and noncompliance sums. The 1985 decree will remain in effect, except as specifically modified.

The Department of Justice will receive comments relating to the proposed Supplemental Consent Order for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Puerto Rico Aqueduct and Sewer Authority, et al.*, D.J. Reference No. 90–5–1–1–1793.

The proposed Supplemental Consent Order may be examined at the office of the United States Attorney, Federal Office Building, Room 101, Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Caribbean Field Office of the United States Environmental Protection Agency, Podiatry Center Building, Office 2A, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909; and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. A copy of the proposed Supplemental Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please provide a check in the amount of $8.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–16668 Filed 7–22–88; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background*: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

*List of Recordkeeping/Reporting Requirements Under Review:* As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

*Comments and Questions*: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**New Collection**

Bureau of Labor Statistics
Consumer Expenditure Surveys
Vacation Property Supplement
Quarterly Interview Period during October, 1988 through March, 1989
Individuals or households
500 respondents; 25 total hours; 3 minutes per response; 1 form

The Vacation Property Supplement is needed to test a more comprehensive set of questions about vacation property than currently appears on the Quarterly Interview Survey. The data will be analyzed to determine the suitability of a conceptual change in the treatment of vacation property in the Consumer Price Index.

**Revision**

Employment and Training Administration.
Petition for Adjustment Assistance/Solicitud De Asistencia Para Ajuste
1205–0192; ETA 8560 & ETA 8559.
On occasion:

| Form No. and affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| ETA 8560 Individuals or households | 1,400 | (1) | 15 |
| ETA 8559 Individuals or households | 1,400 | (1) | 15 |

[1] On occasion.

Petition used by American workers applying to U.S. Department of Labor for eligibility to receive worker trade adjustment assistance in accordance with provisions of the Trade Act of 1974 as amended. The petition iniates action on part of the Department to determine if workers are eligible.

**Revision**

Employment Standards Administration
FECA Medical Report Forms 1215–0103; CA–16B; CA–17B; CA–20; CA–20A; CA–1090; CA–1302; CA–1303; CA–

1305; CA–1306; CA–1314; CA–1316; CA–1331; CA–1332; OWCP–5
As needed
Businesses or other for-profit; Federal agencies or employees; small businesses or organizations 466,950 respondents; 182,397 total hours; 14 forms

| Form No. | Average time per response (min.) |
|---|---|
| CA–16B | 30 |
| CA–17B | 8 |
| CA–20 | 30 |
| CA–20A | 30 |
| CA–1090 | 30 |
| CA–1302 | 30 |
| CA–1303 | 45 |
| CA–1305 | 20 |
| CA–1306 | 10 |
| CA–1314 | 20 |
| CA–1316 | 10 |
| CA–1331 | 5 |
| CA–1332 | 30 |
| OWCP–5 | 30 |

Information obtained through the use of FECA medical forms is necessary to determine whether or not a Federal employee who has filed a claim under the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101 *et. seq.*, is entitled to compensation.

**Revision**

Employment and Training Administration
Job Corps Health Questionnaire
1205–0033, ETA 6–53
On occasion
Individuals or households
103,000 respondents; 20,600 total hours; 20 hrs. per response; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive or prolonged treatment.

**Revision**

Employment and Training Administration
Job Training Quarterly Survey
1205–0231; JTQS–1, 2, 20, 21, 21(T)
Quarterly
State or local governments; Non-profit institutions

| Form No. and affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| JTQS–1, 2, 20 State/Local govt. non-profit instit. | 142 | (1) | 20 |
| JTQS 21 State/local govt. non-profit instit. | 142 | (1) | 10 |
| JTQS 21T State/local govt. non-profit instit. | 30 | (1) | 10 |

[1] Quarterly.

172 burden hours

The Employment and Training Administration will use the data to evaluate programs and services funded under Titles IIA & III of the Job Training Partnership Act. Each quarter, the Census Bureau will collect data on 3,000 enrollees and 3,000 terminees from the files of Service Delivery Area offices and state offices.

**Revision**

Employment and Training Administration
Unemployment Compensation for Former Federal Employees Handbook No. 391 (UCFE)
1205–0179; ES–931, ES–931A, ES–935, ES–934, ES–936, ES–939, ETA 8–32, ES–933

| Form No. | Affected public | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|---|
| ES–931 | State/Local Govt. | 123,786 | On occasion | 3 |
| ES–931A | State/Local Govt. | 29,393 | On occasion | 3 |
| ES–935 | Individuals, State/Local Govt. | 123,786 | On occasion | 5 |
| ES–933 | Federal Agencies | 2,360 | On occasion | 3 |
| ES–934 | State/Local Govt. | 11,554 | On occasion | 3 |
| ES–936 | State/Local Govt. | 6,258 | On occasion | |
| ES–939 | State/Local Govt. | 55 | On occasion | 105 |
| ETA 8–32 | Federal agencies | 53 | Ev. other 6 months. | 5 |

18,676 total burden hours

Federal law (5 U.S.C. 8501–8509) provides unemployment insurance protection to former (or partially unemployed) Federal civilian employees. It is referred to in abbreviated form as "UCFE." The forms contained throughout Handbook No. 391 are used in connection with the provision of this benefit assistance.

Signed at Washington, DC this 19th day of July, 1988.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 88–16613 Filed 7–22–88; 8:45 am]

BILLING CODE 4510–30–M

## Employment and Training Administration

### Job Training Partnership Act Advisory Committee; Appointment of Members

This is to announce the appointment of members to the Job Training Partnership Act Advisory Committee established by Notice dated June 16, 1988, and published June 28, 1988, 53 FR 24379.

Following is the membership of the Committee:

**Chair**

Mrs. Marion Pines, Senior Fellow, Institute for Policy Studies, The Johns Hopkins University, Baltimore, Maryland

**Members (By Group)**

*Private Industry Council Chairs*

Robert Bell, President, Robert Bell & Associates, St. Louis Missouri

Jack Klepinger, General Manager, Wells Cargo, Inc., Ogden, Utah

Frank W. Krauser, Regional General Manager, DISTRON—Division of Burger King Corporation, Miami, Florida

Carl W. Struever, President, Struever Brothers, Eccles and Rouse, Baltimore Maryland

*Service Delivery Area Directors*

Ms Anne Abel, Director, Danville Area Community College, Danville, Illinois
Ms Lillian Barrios-Paoli, Commissioner, City of New York Department of Employment, New York, New York
Charles G. Tetro, President, Training and Development Corporation, Bangor, Maine
Mrs. Linda Woloshansky, Executive Director, Kankakee Valley Jobs Training Program, Inc., La Porte, Indiana

*State JTPA Officials*

Jose Gabriel Loyola, State JTPA Program Administrator, Department of Economic Security, Phoenix, Arizona
Ms. June Suhling, Division Administrator, Employment & Training Policy Division, Department of Industry, Labor and Human Relations, Madison, Wisconsin
Ms. Barbara Weinberg, Executive Director, State Job Training Office, Carson City, Nevada
Hank Weisman, Assistant Commissioner, Georgia Department of Labor, Atlanta, Georgia

*State Job Training Coordinating Council Chairs*

Perry Gains, Director of Customer Support, Milliken and Company, Spartanburg, South Carolina
Philip Power, Chairman, Suburban Communications Corporation, Ann Arbor, Michigan

*Academia*

Dr. Judith M. Gueron, President, Manpower Development Research, Corporation, New York, New York
Gary Walker, Executive Vice President, Public/Private Ventures, Philadelphia, Pennsylvania

*Education*

Dr. Gordon M. Ambach, Executive Director, Council of Chief State School Officers, Washington, DC
Mrs. Jean Merritt Commissioner Indiana Department of Human Services Indianapolis, Indiana
Dr. Geneva Titsworth, Associate Superintendent, Wayne County Intermediate School District, Wayne, Michigan

*General Public*

Nathaniel Semple, Vice President and, Secretary of Research and Policy Committee, Committee for Economic Development, Washington, DC
William Spring, Vice President, Community Affairs, Federal Reserve Bank of Boston, Boston, Massachusetts

*Labor*

Mike McMillan, Executive Director, Human Resources Development Institute, AFL–CIO, Washington, DC
Arthur Shy, Director of Education Department, United Auto Workers, Detroit, Michigan
Ms. Twila Young, Independent Consultant, Ames, Iowa

*Public Interest Groups*

Mrs. Joan Crigger, Director of Employment and Training, U.S. Conference of Mayors, Washington, DC
Richard G. Freeman, President-Elect, Interstate Conference of Employment Security Agencies, Des Moines, Iowa
Mrs. Evelyn Ganzglass, Research Associate for Education and Labor, National Governors' Association, Washington, DC
Martin Jensen, Executive Director, National Job Training Partnership, Inc., Washington, DC
Robert Knight, President, National Association of Private Industry Councils, Washington, DC
William Kolberg, President, National Alliance of Business, Washington, DC
Jerry McNeil, Director, Training and Employment Programs, National Association of Counties, Washington, DC
Ms. Janet Quist, Legislative Counsel, National League of Cities, Washington, DC

*Community Organizations*

Vincent Austin, Director of Employment and Training, The National Urban League, New York, New York
Elton Jolly, President and CEO, OICs of America, Philadelphia, Pennsylvania
Ms. Cynthia Marano, Executive Director, Wider Opportunities for Women, Washington, DC
Pedro Viera, Acting Vice President, SER-Jobs For Progress, Inc., Dallas, Texas

*Veterans*

Ronald Drach, National Employment Director, Disabled American Veterans, Washington, DC

The members were selected on the basis of their expertise in the training and employment field and will serve until July 12, 1989. The Committee's first meeting, announced by Notice dated June 30, 1988, and published July 12, 1988, 53 FR 26329, will be held on July 27 and 28 in Washington, DC, at the Mayflower Hotel.

Signed at Washington, DC, this 19th day of July, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 88–16628 Filed 7–22–88; 8:45 am]

BILLING CODE 4510–30–M

## Federal-State Unemployment Compensation Program; Ending of Extended Benefit Period in the State of Alaska

This notice announces the ending of the Extended Benefit Period in the State of Alaska, effective on July 9, 1988.

### Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period which is triggered "on" when the rate of insured unemployment in the State reaches the State trigger rate set in the Act and the State law. During an Extended Benefit Period, individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Alaska on January 24, 1988, and has now triggered off.

**Determination of An "Off" Indicator**

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on June 18, 1988, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an "off" indicator in the State.

Therefore, the Extended Benefit Period in the State terminated with the week ending July 9, 1988.

**Information for Claimants**

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the ending of the Extended Benefit Period and its effect on the individual's right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office in their locality.

Signed at Washington, DC, on July 18, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 88-16612 Filed 7-22-88; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-369 and 50-370]**

### Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by the licensee for amendments to Facility Operating License Nos. NPF-9 and NPF-17 issued to Duke Power Company (the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, (the facility), located in Mecklenburg County, North Carolina.

The denied portion of the proposed amendments would have revised the schedule for submittal of a report on the results of inspection of F-star steam generator tubes. The requirement for submittal prior to the restart of the unit following inspection would have been changed to require submittal within 15 days following the completion of the inspection. Notice of consideration of issuance of the amendments was published in the **Federal Register** on June 15, 1988 (53 FR 22400). The licensee's application for the amendments was dated May 6, 1988.

The request was found unacceptable since the NRC staff wishes to be informed in a timely manner in the event that an unfavorable result or trend associated with F-star tubes should be observed.

The licensee was notified of the Commission's denial of this request by letter dated July 19, 1988.

By August 24, 1988, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated May 6, 1988, and (2) the Commission's letter to Duke Power Company dated July 19, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

**Darl Hood,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II.*

[FR Doc. 88-16653 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-219]**

### GPU Nuclear Corp. and Jersey Central Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 124 to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et al., which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification Sections 3.2.6, 4.2.E and 6.9.3 to reflect the use of an enriched sodium pentoborate solution in the standby Liquid Control System (SLCS).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 3, 1988 (53 FR 20396). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 10, 1988, (2) Amendment No. 124 to License No. DPR-16, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 14th day of July 1988.

For the Nuclear Regulatory Commission

**Alexander W. Dromerick,**

*Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88-16651 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344A]

## Pacific Power and Light Co.; Request for Public Comment on Antitrust Concerns Pursuant to the Proposed Merger Between Pacific Power and Light Co. and Utah Power and Light Co.

On May 9, 1988, the Nuclear Regulatory Commission (Commission) received an application from Pacific Power and Light Company (PP&L), co-owner of the Trojan Nuclear Plant, to transfer Facility Operating License No. NPF-1 from PP&L to a newly formed corporate entity, PC/UP&L Merging Corporation. The application was submitted as a result of the proposed merger of PP&L and the Utah Power and Light Company (UP&L) and pursuant to Part 50 of the Commission's Regulations. Upon consummation of the proposed merger, PC/UP&L Merging Corporation will change its name to PacificCorp but will continue to do business as an electric utility under the assumed business name of Pacific Power and Light Company.

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of Licensee's request to transfer the Trojan operating license in the **Federal Register** and requesting public comment. A copy of the application to transfer has been forwarded to the Attorney General for his review and comment. Moreover, copies of the application will be available for public inspection in the local Public Document Room, Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207 and at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555.

Any person who wishes to express views pursuant to the antitrust issues raised in this transfer request should submit said views within 30 days of the initial publication of this Notice in the **Federal Register** to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland, this 19th day of July 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

*Director, Project Directorate III-V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-16650 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

## Rochester Gas and Electric Corp.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-18, issued to the Rochester Gas and Electric Corporation (the licensee), for operation of the R.E. Ginna Nuclear Power plant, located in Wayne County, New York.

The proposed amendment would modify the Technical Specifications to reflect replacement of steam generator snubbers with rigid structural supports. The licensee's application is dated May 13, 1988.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 24, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a request for hearing and a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard H. Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harry Voigt LeBoeuf, Leiby and McRae, Suite 1100, 1133 New Hampshire

Avenue, NW., Washington, DC 20036 attorney for the licensee.

Nontimely fillings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 19th day of July, 1988.

**Richard Wessman,**

*Director, Project Directorate I-3, Division of Reactor Projects I/II.*

[FR Doc. 88-16652 Filed 7-22-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-271-OLA-2 (Testing Requirements for ECCS and SLC Systems); (ASLBP No. 87-567-04-OLA)]**

## Vermont Yankee Nuclear Power Corp.; Vermont Yankee Nuclear Power Station Hearing

Before Administrative Judges; Charles Bechhoefer, Chairman, Glenn O. Bright, James H. Carpenter.

July 18, 1988.

On January 26, 1988, the Nuclear Regulatory Commission published in the **Federal Register** a notice of opportunity for hearing with respect to a proposed operating-license amendment which would change the Technical Specifications applicable to the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont, approximately five miles south of Brattleboro, Vermont, to eliminate the present requirements to test the remaining train(s) of the ECCS and SLC Systems when one train has a component out of service (53 F.R. 2114). Two requests for a hearing and petitions for leave to intervene were received. On March 9, 1988, an Atomic Safety and Licensing Board was established to rule upon these requests/petitions and to preside over the proceeding in the event that a hearing were ordered.

After holding a prehearing conference on June 28, 1988, the Atomic Safety and Licensing Board granted the requests for a hearing and petitions for leave to intervene of the State of Vermont and of James M. Shannon, Attorney General of the Commonwealth of Massachusetts. This ruling was memorialized by a Prehearing Conference Order dated July 18, 1988 (unpublished).

Please take notice that a hearing will be conducted in this proceeding. The Atomic Safety and Licensing Board designated to preside over this proceeding consists of Glenn O. Bright, Dr. James H. Carpenter, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Licensing Board may hold one or more additional prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend all prehearing conferences and any evidentiary hearing which may be held. The Board will establish the schedules for any such sessions at a later date, through notices to be published in the Federal Register and/or made available to the public at the Public Document Rooms.

Supplementing the opportunity afforded at the initial prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. The number of persons making oral statements and the time allotted for each statement may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such statement or request should also be served on the Chairman of the Licensing Board, U.S. Nuclear Regulatory Commission (EMW-439), Washington, DC 20555.

Document relating to this application are on file at the Local Public Document Room, located at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301, as well as at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 18th day of July, 1988.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Administrative Judge.*

[FR Doc. 88-18649 Filed 7-22-88; 8:45 a.m.]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

**Revision**

SEC File No. 270-2, Regulation S-K
SEC File No. 270-48, Form 10-K
SEC File No. 270-56, Regulation 14A
SEC File No. 270-57, Regulation 14C
SEC File No. 270-21, Rule 30D-1
SEC File No. 270-292, Form -SAR.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for approval proposed amendments to require that registrants include a report by management in Forms 10-K and N-SAR and annual reports to shareholders.

Information collected and records prepared pursuant to the proposed rules would focus on management's responsibilities for the financial statements and internal control, discuss how these responsibilities were fulfilled and provide management's assessment of the effectiveness of the registrant's internal controls. This information will be used by the public and/or the Commission to review the status of the registrant's internal controls.

There will generally be a response to the information and record collection request once each year.

The potential respondents include all entities that file annual reports with the Commission on Form 10-K or N-SAR or furnish annual reports to shareholders pursuant to Regulation 14A or 14C pursuant to the Securities Exchange Act of 1934, or Rule 30d-1 under the Investment Company Act of 1940. It has been estimated that the average increase in burden hours will be 2 hours per report, or a total increase of approximately 24,600 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the

costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004 and to Robert Neal at the address listed below.

Submit general comments to OMB Desk Officer: Robert Neal (202) 395–7430, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

*Secretary.*

July 19, 1988.

[FR Doc. 88–16686 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 34–25922; File No. SR–NSCC–88–05]**

## Self-Regulatory Organizations; National Securities Clearing Corp.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change

On June 22, 1988, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–88–05) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change clarifies certain NSCC rules and the extent to which the clearing fund may be applied to a loss or liability of NSCC. On May 20, 1988, the Commission published a notice of filing and immediate effectiveness of an identical proposed rule change (File No. SR–NSCC–88–03).[1] One comment letter was received.[2] This order approves the proposal on an accelerated basis.

### I. Description

The purpose of the proposed rule change is to clarify, through an interpretation, the application of the clearing fund and to designate, in writing, the services for which NSCC guarantees the completion of member payment or delivery obligations arising from processed transactions. The interpretation specifies that certain transactions processed through NSCC's continuous-net-settlement ("CNS") and balance order systems are guaranteed by NSCC,[3] and that certain member payment obligations arising from envelope deliveries [4] also are guaranteed by NSCC. The interpretation also designates these services as "systems" for the purposes of NSCC Rule 4. By designating certain services as systems, the interpretation clarifies that NSCC assumes responsibility for the completion of transactions in those systems.

The interpretation clarifies NSCC's position with regard to a loss or liability resulting from a particular system. If there is a loss or liability associated with a particular system, only the amount of money allocated within the clearing fund to that particular system may be used to satisfy that obligation.[5] Once that pool of funds is exhausted, NSCC's Board may assess, on a pro rata basis, members participating in that system to cover such loss and to replenish the fund.

The interpretation clarifies that NSCC may assess member clearing fund contributions for losses or liabilities that arise outside particular systems. The interpretation provides that, pursuant to NSCC Rule 4, losses or liabilities arising outside a system may be satisfied from the entire clearing fund, including portions of the fund allocated for various system losses. The interpretation specifically provides that the entire clearing fund may be available to satisfy losses if NSCC's Board of Directors specifically determines to guarantee the losses of a wholly-owned subsidiary of NSCC.

The proposed rule change would effectuate a decision by NSCC's Board of Directors to guarantee to the International Stock Exchange of The United Kingdom And The Republic Of Ireland, Limited ("ISE") losses or liabilities arising from transactions processed by the International Securities Clearing Corporation ("ISCC"), a wholly-owned subsidiary of NSCC. NSCC formed ISCC to provide international clearance and settlement facilities and to limit exposure to losses by NSCC members that do not participate in ISCC. The proposed rule change contemplates that NSCC members who do not participate in ISCC are shielded from exposure to ISCC losses as long as ISCC continues to have active members. If ISCC incurs a liability to ISE in a service which is subject to the NSCC–ISE guarantee and ISCC does not have the funds to meet the liability, NSCC's entire clearing fund would be available to satisfy such a loss.[6]

Under the terms of the NSCC–ISE guarantee agreement, any liability to ISE arising from ISCC's obligations or activities are first to be satisfied out of ISCC's clearing fund. NSCC would be liable only for any remaining loss that ISCC was unable to satisfy and the loss was an obligation of NSCC. Such a loss (*i.e.*, arising from ISCC's clearance and settlement activity related to ISE trades) would be considered a loss arising outside of an NSCC system and may be satisfied from the entire clearing fund pursuant to section 2(b) of NSCC Rule 4 as a loss incidental to the clearance and settlement business of NSCC.

The Interpretation also clarifies that the entire clearing fund may be available to satisfy a loss arising out of a non-guaranteed system. A loss arising out of a non-guaranteed system, such as the Mutual Fund, Settlement Entry and Registration Verification Services ("Fund/SERV"), may be satisified out of the entire clearing fund once all funds allocated to Fund/SERV were exhausted. NSCC, non-Fund/SERV members are shielded from exposure to Fund/SERV losses as long as NSCC continues to have active Fund/SERV participants.[7]

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[1] Securities Exchange Act Release No. 25699 (May 16, 1988), 53 FR 18188.

[2] Letter from Marc L. Weinberg, Publisher and Editor, Back Office Publications, Inc., to Jonathan Katz, Secretary, Securities and Exchange Commission (March 31, 1988).

[3] Prior to April 1987, NSCC guaranteed trades generally on the fourth business day after the trade date. Under NSCC's revised policy, as in effect during and after October 1987, trades are guaranteed as of midnight of the day they are reported as compared (generally the day after the trade date ("T+1") or T+2) but a mark-to-the-market assessment is not made until settlement date, T+5. *See* Securities Exchange Act Release No. 24301 (April 3, 1987), 52 FR 11892; NSCC Notice to Members No. A–2753 (April 23, 1987. Because there is the risk that the market price of a trade will move away from the contract price before settlement date (T+5), NSCC is at risk for that market movement if the participant fails to settle the transaction. Therefore, NSCC's CNS clearing and fund formula consist of three components, including a component that is based on the difference between the contract price and current market price for all compared trades that have not reached settlement. This is the mark-to-the market component of the formula. The other two components of the clearing fund formula cover allocation risk and liquidation risk.

[4] *See* NSCC Rule 9.

[5] For purposes of administering the clearing fund, NSCC allocates a certain portion of each member's clearing fund deposit among the services in which the members participates and for which NSCC assumes responsibility for completion of those transactions. The remainder of each member's clearing fund deposit is allocated to various services that NSCC does not guarantee and to other losses arising outside of a specific system. Administrative allocations of member clearing fund contributions to particular services, however, do not limit a member's potential liability to NSCC in the event of a *pro rata* assessment. A member can limit its liability to its current required contribution only if the member gives NSCC timely notice of its intention to withdraw from NSCC. *See* NSCC Rule 4.

[6] NSCC would only be liable for ISCC losses that are specific obligations of NSCC. Only after all funds at ISCC (*i.e.*, ISCC's retained earnings and the ISCC's clearing fund) are exhausted would NSCC be liable for such obligations.

[7] Once the portion of the clearing fund for Fund/SERV, or any designated fund for a particular service, has been used to cover a loss, NSCC would

Continued

## II. NSCC's Rationale

NSCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act. NSCC states in its filing that the proposed rule change clarifies the use of the clearing fund, enabling NSCC to better protect itself against losses and ultimately provide better protection of investors and the public interest.

NSCC is requesting accelerated effectiveness pursuant to section 19(b)(2) of the Act because it is necessary that NSCC's guarantee to ISE regarding ISCC's clearing and settlement activities of ISE trades be effective in order for ISCC to be able to enter into its contract with ISE. NSCC also notes that the same proposed rule change previously was filed as SR-NSCC-88-3 and was published in the Federal Register on May 20, 1988.

## III. Discussion

The Commission believes that the proposal is consistent with the Act. Specifically, the Commission believes that the proposal is consistent with NSCC's obligation to assure safeguarding of funds and securities, maintain appropriate financial responsibility standards and protect investors and the public interest under section 17A of the Act.

The Commission believes that the rule change provides needed clarity regarding NSCC's guarantee of member obligations and losses that NSCC considers incidental to its clearance and settlement activities (*i.e.*, which losses may be satisfied from the clearing fund). For example, the proposed rule change specifically designates certain CNS and balance order transactions and certain envelope deliveries as "systems" in which NSCC guarantees member transaction obligation. Thus, the proposed rule change clarifies a long-standing understanding between NSCC and its members.[8]

The Commission agrees with NSCC that the Board of Directors may designate certain losses or liabilities of a wholly-owned subsidiary as losses of NSCC, provided those losses are incidental to the clearance and settlement of securities. A key factor in determining whether it is proper for NSCC to designate certain losses of its wholly-owned subsidiary as losses incidental to NSCC's clearance and settlement business is whether NSCC could perform those clearance and settlement functions itself.

Under the proposed rule change, NSCC would guarantee the losses of ISCC regarding certain clearance and settlement activities with ISE. If NSCC provided those services directly to a class of its members, NSCC's clearing fund would be available to satisfy any potential ISCC to conduct cross-border clearance and settlement activities, because NSCC serves as ISCC's facilities manager, a sufficient nexus appears to exists between NSCC and ISE to support NSCC's decision to guarantee ISCC's obligations of ISE.[9] In addition, ISCC's current obligations to ISE are limited to payment for securities ISE allocates to an ISCC member in ISE's Talisman system. Failure by an ISCC member to meet such a payment obligation would allow ISCC to invoke a variety of protective measures, including the sale of delivered securities and appropriation of the defaulting member's clearing fund. Moreover, the guarantee would result in an actual payout of NSCC's clearing fund only when ISCC has exhausted all of its assets, including its clearing fund.

As noted earlier, the Commission received one comment letter urging that NSCC should assess the clearing fund deposits of NSCC members who also are ISCC members, but should not subject non-ISCC members to any potential assessment for ISCC activities. The Commission, however, believes that the decision to guarantee ISCC's obligations and to make the NSCC clearing fund available is an appropriate business decision for NSCC's Board of Directors and is consistent with the Act, given NSCC's nexus with ISE and ISCC as ISCC's facilities manager. First, NSCC's Board of Directors represents a broad spectrum of NSCC users, including a majority of directors who are not ISCC members. Second, the guarantee would only be exercised when ISCC has exhausted every protection in its comprehensive scheme of financial protections and only if outstanding liabilities remained. Because that scheme includes assessing all ISCC members *pro rata* for any loss, ISCC members would bear initial and substantial responsibility for those losses. Moreover, non-ISCC, NSCC members would be subject to assessment only if all ISCC members would contribute again because of their membership in NSCC.

The commentator also noted that SR-NSCC-88-3 was filed under section 19(b)(3) of the Act and, therefore, because effective on filing. The commentator believes that the filing should be filed under section 19(b)(2) of the Act to allow for appropriate comments and review. Subsequently, NSCC refiled SR-NSCC-88-3 under section 19(b)(2)(SR-NSCC-88-5).

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register. As noted above, the terms of the proposed rule change were noticed in the Federal Register on May 20, 1988. Moreover, delaying the effectiveness of the filing for further comment might impede implementation of the international clearance and settlement link with ISE.[10]

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register.[11] Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-NSCC-88-5.

Copies of the submission, all subsequent amendments, all written

assess each member, *pro rata*, to bring the fund up to its appropriate level. At that point, each Fund/SERV participant would then decide if it wanted to continue in Fund/SERV by putting up its share in the fund or withdraw its participation. Only if all members withdrew from Fund/SERV and an outstanding liability remained would the entire clearing fund become available to cover that liability.

[8] *See* Division of Market Regulation, U.S. Securities and Exchange Commission, *The October 1987 Market Break* (February, 1988), Chapter 10 at 13-27.

[9] ISCC is negotiating an agreement with ISE, whereby ISE will obtain, through ISCC, access to NSCC's and Depository Trust Company's ("DTC") services. NSCC's guarantee would extend to this proposed arrangement and contemplates that NSCC generally would guarantee that in the event ISCC was unable to continue to provide access to NSCC or DTC services, NSCC would provide such access to ISE under the terms of the proposed ISCC-ISE agreement. Those services are similar in kind to the services currently provided to ISE by the Midwest Clearing Corporation ("MCC") and Midwest Securities Trust Company ("MTSC") in those clearing agencies. *See* no-action letter from Jonathan Kallman, Assistant Driector, Divison of Market Regulation, Securities and Exchange Commission, to Michael Wise, Associate Counsel, MCC/MSTC, regarding their link with ISE (June 25, 1986). Unlike ISCC, MCC and MSTC currently provide services to ISE directly.

[10] NSCC has requested that SR-NSCC-88-3 be withdrawn effective on approval of SR-NSCC-88-5. The Commission is granting that request.

[11] The Commission encourages interested persons to submit written views concerning the proposed rule change, notwithstanding the Commission's approval of the proposed rule change today. The Commission will consider any comments it receives in connection with its review of the proposed ISCC-ISE agreement and its ongoing oversight of ISCC and NSCC operations.

statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of NSCC.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–NSCC–88–5) be, and hereby, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: July 18, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88–16689 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–16484; 812–6953]**

## New England Mutual Life Insurance Co. et al.; Application for Exemption

July 18, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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*Applicants:* New England Mutual Life Insurance Company ("The New England"); The New England Variable Account (the "Account") and New England Securities Corporation (the "Distributor") (collectively, the "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

*Summary of Application:* Applicants seek an order to the extent necessary to permit The New England to deduct from the assets of the Account the mortality and expense risk charges imposed under certain variable annuity contracts (the "Contracts").

**FILING DATE:** The application was filed on January 6, 1988, and amended on June 2, 1988, June 9, 1988, and July 12, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 12, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC, 20549. Applicants, 501 Boylston Street, Boston, Massachusetts 02117.

**FOR FURTHER INFORMATION CONTACT:** Heidi Stam, Staff Attorney (202) 272–3017 or Clifford E. Kirsch, Special Counsel (202) 272–2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

### Applicants' Representations

1. The New England was organized in 1835 under the laws of the Commonwealth of Massachusetts. The Account was established, pursuant to the provisions of Massachusetts law, to fund the Contracts. The Account currently consists of five sub-accounts.

2. The assets of the Account will be invested in shares of New England Zenith Fund (the "Fund"), an open-end, series, management investment company registered under the Act and organized as a Massachusetts business trust. The Contracts are individual flexible and single purchase payment variable annuity contracts.

3. No sales charge will be deducted from Contract purchase payments at the time of purchase. A contingent deferred sales charge will be imposed, however, in the event of certain partial surrenders, full surrenders and maturity transactions. The contingent deferred sales charges may not cover sales expenses over the lives of the Contracts. To the extent such expenses are not covered by the contingent deferred sales charges, they will be recovered from The New England's general account, which may include income derived from charges such as the mortality and expense risk charge described below. In no event will the total contingent deferred sales charge exceed 8% of the first $50,000 of purchase payments made under the Contract and 6.5% of the amount of purchase payments in excess of $50,000. The contingent deferred sales charge may be waived under certain circumstances.

4. The New England is responsible for the administration of the Contracts and the Account. To cover the cost of its administrative services to the Account, The New England will receive administration charges equal, on an annual basis, to $30 per Contract plus .40% of the daily net assets of each sub-account of the Account. The administration charges have been established at a level designed to cover the costs of administering the Contracts (including overhead) and The New England does not expect to realize a profit from such administration charges.

5. The New England also proposes to deduct a mortality and expense risk charge from the Account on a daily basis as compensation for assuming the mortality and expense risks under the Contracts. On an annualized basis, the charge will equal .95% of the daily net assets of each sub-account, of which .60% represents a mortality risk charge and .35% represents an expense risk charge. The mortality and expense risk charge, as a percentage of net assets, will not increase over the life of a Contract.

6. The Applicants submit that The New England is entitled to reasonable compensation for its assumption of mortality and expense risks. The Applicants represent that the charge of .95% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. This amount compensates The New England for the risk that annuitants under the Contracts will live longer as a group than has been anticipated in setting annuity rates guaranteed in the Contracts; for the risk that an annuitant's death benefit could exceed the value of his or her account; and for the risk that The New England's expenses may be higher than the maximum deductions for such expenses permitted under the Contracts.

7. The Applicants represent that the charge of .95% for mortality and expense risks assumed by The New England is within the range of industry practice with respect to comparable annuity products. This representation is based upon The New England's analysis of publicly available information about similar products, taking into consideration such factors as the size and financial rating of the insurers and the types of annuity contracts they issue. The New England will maintain at its administrative offices, available for

review by the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. The New England has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and the owners of the Contracts. The basis for such conclusion is set forth in a memorandum which will be maintained by The New England at its administrative offices and will be available for review by the Commission. The New England represents that the Account will invest only in management investment companies that undertake, in the event a plan is adopted by the company pursuant to Rule 12b–1 under the Act to finance distribution expenses, to have a board of trustees or directors a majority of whom are not interested persons of the company approve any such distribution plan.

For the Commission, the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–16687 Filed 7–22–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 15, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion 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.

**Docket No. 45697**

*Date Filed:* July 12, 1988.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 9, 1988.

*Description:* Application of Lineas Aereas La-Tur, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests authority to provide charter foreign air transportation of persons and accompanying baggage between points in the United States and points in Mexico and, subject to the applicable Regulations of the Department.

**Docket No. 45704**

*Date Filed:* July 14, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 11, 1988.

*Description:* Application of Swissair, Swiss Air Transport Company, Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for an amendment of its foreign air carrier permit so as to authorize it to engage in: (1) Foreign air transporation of persons, property and mail between a point or points in Switzerland and Atlanta, Georgia and (2) foreign air transportation of persons between Anchorage, Alaska and Tokyo, Japan.

**Docket No. 45706**

*Date Filed:* July 15, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 12, 1988.

*Description:* Application of Minerve Canada, Compagnie de transport aeriens Inc., d/b/a Minerve Canada, pursuant to section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit authorizing foreign charter air transportation of persons and their accompanied baggage, and property and mail between points in the United States and points in Canada, and between points in the United States and any point not in Canada or the United States.

**Phyllis T. Kaylor,**

*Chief, Documentary Service Division.*

[FR Doc. 88–16645 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–62–M

## Federal Aviation Administration

### Flight Service Station at Jackson County-Reynolds Airport, Jackson, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Closing.

**SUMMARY:** Notice is hereby given that on or about July 19, 1988, the present Flight Service Station at Jackson County-Reynolds Airport, Jackson, Michigan has been closed. Services to the aviation public of Jackson, Michigan Flight Plan Area, formerly provided by this office, will be provided by the new automated Flight Service Station in Lansing, Michigan. This information wil be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Des Plains, Illinois on April 8, 1988.

**William H. Pollard,**

*Director, Great Lakes Region.*

[FR Doc. 88–16695 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

### Flight Service Station at Wausau Municipal Airport, Wausau, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Closing.

**SUMMARY:** Notice is hereby given that on or about July 19, 1988, the present Flight Service Station at Wausau Municipal Airport, Wausau, Wisconsin has been closed. Services to the general public, formerly provided by this office, will be provided by the New Automated Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois, on July 12, 1988.

**Monte R. Belger,**

*Acting Regional Administrator, AGL–1.*

[FR Doc. 88–16693 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

### National Driver Register Advisory Committee; Public 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 the National Driver Register Advisory Committee to be held on August 30 and 31, 1988, in Richmond, Virginia. The meeting will be he held at the Division of Motor Vehicles, 2300 West Broad Street, from 9:00 a.m. to 4:30 p.m. on August 30, and from 8:30 a.m. to noon on August 31 in room 702. Issues to be discussed are: NDR status, the Report to Congress, the Commercial Driver License Information System (CDLIS), and the AAMVA network (AAMVANET).

The meeting is open to the interested public, but may be limited in attendance to space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the

National Driver Register, Room 5119, 400 Seventh Street SW., Washington, DC 20590, telephone 202/366–4800.

Issued in Washington, DC, on July 18, 1988.

**Clayton E. Hatch,**

*Chief, National Driver Register.*

[FR Doc. 88–16646 Filed 7–22–88; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: July 18, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number*: 1545–1063
*Form Number*: 6789
*Type of Review*: Extension
*Title*: Performance Appraisal (For Non-IRS Candidates Only)
*Description*: A performance appraisal is required to consider status applicants and/or reinstatement eligibles employed by other Treasury bureaus, other agencies, or by private industry. Both FPM 335 (Federal Promotion Regulations), and IRM 0335 (IRS Promotion Regulations) require systematic ranking procedures with performance appraisals as a mandatory component.
*Respondents*: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees
*Estimated Number of Respondents*: 80
*Estimated Burden Hours Per Response*: 1 hour
*Frequency of Response*: On Occasion
*Estimated Total Reporting Burden*: 60,000 hours
*Clearance Officer*: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer*: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Department Reports, Management Officer.*

[FR Doc. 88–16621 Filed 7–22–88; 8:45 am]

BILLING CODE 4810–59–M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: July 19, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0238
*Form Number:* W–2G
*Type of Review:* Extension
*Title:* Statement for Recipients of Certain Gambling Winnings
*Description:* Internal Revenue Code section 6041 requires payers of certain gambling winnings to report them to the IRS. If applicable, section 3402(q) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 2,401
*Estimated Burden Hours Per Response:* 59 minutes
*Frequency of Response:* On Occasion
*Estimated Total Reporting Burden:* 285,632 hours
*Clearance Officer:* Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhuf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 88–16622 Filed 7–22–88; 8:45 am]

BILLING CODE 4810–25–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Holly Image, Holly Space: Byzantine Icons from Greece" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery in Baltimore, Maryland, beginning on or about August 21, 1988, to on or about October 16, 1988, at the Center for the Fine Arts in Miami, Florida, beginning on or about November 14, 1988, to on or about January 8, 1989, at the Kimbell Art Museum in Fort Worth, Texas, beginning on or about February 11, 1989, to on or about April 2, 1989, at the Fine Arts Museum in San Francisco, California, beginning on or about April 22, 1989, to on or about July 16, 1989, at the Cleveland, Ohio, beginning on or about September 6, 1989, to on or about October 22, 1989, and at the Detroit Institute of Art in Detroit, Michigan, beginning on or about November 19, 1989, to on or about January 28, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

**R. Wallace Stuart,**

*Acting General Counsel.*

Date: July 20, 1988.

[FR Doc. 88–16876 Filed 7–22–88; 10:45 am]

BILLING CODE 8230–01–M

## VETERANS' ADMINISTRATION

### Intent To Prepare Environmental Impact Statements; Establishment of New National Cemeteries

**AGENCY:** Veterans' Administration.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202–485–7988, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

**ACTION:** Notice of intent.

**SUMMARY:** The Veterans' Administration (VA) intends to prepare Environmental Impact Statements (EIS) on the proposed establishment of four potential new national cemeteries. These proposed cemeteries would serve the areas of Chicago, IL; Cleveland, OH; Seattle/Tacoma, WA; and Albany, NY.

**ADDRESS:** Individuals are invited to submit comments on this Notice to: Susan Livingstone, Director of Environmental Affairs (088B4), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** Jon E. Baer, Director, Landscape Architectural Service (088B4), Veterans' Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2922.

**SUPPLEMENTARY INFORMATION:** EISs are required because the scope of each proposed project could exceed the VA threshold for EISs established in 38 CFR Part 26. Therefore, in accordance with section 102(2)(C) of the National Environmental Policy Act, the VA is publishing this Notice of Intent pursuant to 40 CFR 1501.7.

Each proposed cemetery, if ultimately approved as a project by the VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

Possible alternatives for each proposed cemetery have not been firmly identified but will depend upon demographic requirements, available sites, and acquisition methods.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Participation in the scoping process is invited by individuals, private organizations and local, State and Federal Agencies. Comments received will be used by the VA in its efforts to further identify and clarify significant environmental issues. Scoping meetings will be announced in local area newspapers for each project.

Dated: July 13, 1988.

**Thomas K. Turnage,**

*Administrator.*

[FR Doc. 88–16630 Filed 7–22–88; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

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).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, July 27, 1988.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:**

**MATTERS TO BE CONSIDERED:**

Open to the Public

*1. Voluntary Standards Policy Regulation*

The Commission will consider the proposed amendments to the Commission's regulations 16 CFR 1031 and 1032 concerning staff participation in voluntary standards activities.

*2. Preliminary 1990 Budget*

The Commission will consider issues related to the Preliminary Budget for Fiscal Year 1990.

Closed to the Public

*3. Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 88–16750 Filed 7–21–88; 2:40 pm]

BILLING CODE 6355–01–M

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 27103, Monday, July 18, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

**CHANGE IN THE MEETING:**

*Open Session*

The items listed below have been added to the agenda:

- *Proposed Recordkeeping Modifications to 29 CFR Part 1602, "Reports and Records," and 29 CFR Part 1627, "Records to be Made or Kept Relating to Age"*
- *Report on Pre-Complaint Counseling and Complaint Processing by Federal Agencies for Fiscal Year 1987*

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 20, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice Issued July 20, 1988.

[FR Doc. 88–16729 Filed 7–21–88; 2:40 pm]

BILLING CODE 6750–01–M

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 26367, Tuesday, July 12, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

**CHANGE IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: July 19, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice Issued July 19, 1988.

[FR Doc. 88–16812 Filed 7–21–88; 3:59 pm]

BILLING CODE 6750–06–M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Notice forwarded to Federal Register on July 20, 1988.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, July 27, 1988.

**CHANGES IN THE MEETING:** The open meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: July 21, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–16734 Filed 7–21–88; 2:40 pm]

BILLING CODE 6210–01–M

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**POSTAL RATE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, August 11, 1988.

**PLACE:** Commission Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Postal Rate Commission Budget for Fiscal Year 1989
2. Election of Vice Chairman
3. Revision of the Commission's Personnel Awards Program

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20286–0001, Telephone (202) 789–6840.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 88–16719 Filed 7–21–88; 2:40 pm]

BILLING CODE 7715–01–M

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**POSTAL SERVICE BOARD OF GOVERNORS**

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 a.m. on Tuesday, August 2, 1988, at the Stouffer Madison Hotel, 515 Madison Street, Seattle, Washington. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 1, 1988, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

August 2, 1988—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, July 7–8, 1988.
2. Remarks of the Postmaster General.

3. Quarterly Report on Financial Performance. (Mr. Coppie)
4. Quarterly Report on Service Performance. (Mr. Coughlin)
5. Review of Technology Resource Management Department. (Mr. Hunter)
6. Capital Investments. (Mr. Smith)
   a. Worcester, Massachusetts, Mail Processing Center.
   b. Minneapolis, Minnesota, General Mail Facility.
   c. Oxnard, California, Mail Handling Annex.
7. Tentative Agenda for September 12–13, 1988, meeting in Washington, DC.

David F. Harris,

*Secretary.*

[FR Doc. 88–16730 Filed 7–21–88; 2:40 pm]

BILLING CODE 7710–12–M

# Corrections

Federal Register
Vol. 53, No. 142
Monday, July 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Occupational Exposure to Formaldehyde; Resubmission of Hazard Communication Provisions for Clearance Under the Paperwork Reduction Act

*Correction*

In notice document 88-15535 beginning on page 26329 in the issue of Tuesday, July 12, 1988, make the following corrections:

1. On page 26332, in the first column, in the first complete paragraph, the 13th through 20th lines should read "Moreover, in regard to areas in which employees are exposed to toxic substances or harmful physical agents, the OSH Act provides that the Secretary of Labor shall issue regulations requiring employers to keep records of employee exposures (29 U.S.C. 657(c))."

2. On the same page, in the second column, in the second complete paragraph, in the third line, "Formaldehyde" was misspelled.

3. On page 26334, in the first column, under "B. Method Used to Estimate Cost of Burden to Respondents", in the sixth line, "estimated" should read "estimates".

4. On page 26336, in the second column, in the last paragraph, in the fourth line, "no" should read "on".

5. On page 26337, in the second column, in the 14th line, "is" should read "in".

6. On the same page, in the same column, in the first complete paragraph, in the first line, "Standard" should read "Standard's".

7. On the same page, in the same column, in the last paragraph, in the last line, between "define" and "a" insert "when".

8. On the same page, in the same column, in footnote 4, in the eighth line, "relevant" was misspelled.

9. On the same page, in the third column, in the last paragraph, in the fourth line, "resolve" should read "resolved".

10. On page 26338, in the first column, in the 15th line, "and" should read "an".

11. On the same page, in the same column, in the second complete paragraph, the last sentence should read "Therefore it would not have been possible to submit the Paperwork Clearance package until this review was complete."

12. On the same page, in the second column, in the third line, between "pressure" and "to" insert "to promulgate the standard, should not be allowed in essence".

13. On the same page, in the same column, under "*Hazard Communication*", in the ninth line, "CF" should read "CFR".

BILLING CODE 1505-01-D

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Implementation of Amendments to Specialty Steel Import Relief

*Correction*

In notice document 88-26951 beginning on page 44666 in the issue of Friday, November 20, 1987, make the following corrections:

1. On page 44667, in the first column, in the second complete paragraph, in the fourth line from the bottom remove the text beginning with "and not less than 0.20 percent nor more than 0.030 percent sulphur;".

2. On the same page, in the third column, in the first complete paragraph, in the sixth line, "terms" should read "items".

BILLING CODE 1505-01-D

federal register

Monday
July 25, 1988

Part II

# Department of Labor

## Employment and Training Administration

20 CFR Part 615

**Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations; Final Rule**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**20 CFR Part 615**

## Federal-State Unemployment Compensation Program; Revision of Extended Benefit Program Regulations

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Extended Benefit Program is a part of the Federal-State Unemployment Compensation Program, and takes effect during periods of high unemployment to furnish up to 13 weeks of additional benefits to individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The final regulations add new text and revise the regulations for the Extended Benefit Program to reflect changes in the law regarding eligibility for Extended Benefits and reimbursement of the Federal share of Extended Benefits. The final regulations clarify some of those requirements and the timing of them, and correct obsolete language in several places. Last, the final regulations extend the present "freeze" on the indicator rates for insured unemployment to cover all determinations of insured unemployment rates, and specify a time period for correcting errors in the determination of "on," "off," or "no change" indicator rates of insured unemployment. The final regulations include changes and improvements set forth in the published proposal in addition to changes made in response to comments from the States. The proposal was published in the **Federal Register** on October 24, 1986. A notice of extending the closing date for comments to April 20, 1987, was published in the **Federal Register** on April 3, 1987.

**EFFECTIVE DATE:** August 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0600 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Part 615, Chapter V, Title 20 of the Code of Federal Regulations implements the Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91–373) (the "EUCA"), 26 U.S.C. 3304 note. That Act prescribes provisions required to be included in State unemployment compensation laws. It is made a requirement for State laws by section 3304(a)(11) of the Internal Revenue Code of 1986. The Act was amended in 1980, 1981, 1982, and 1983 to change the requirements for State laws in a number of ways.

### 1980 Amendments to EUCA

Section 416 of Pub. L. 96–364 added section 202(c) to the EUCA, and bars more than 2 weeks of Extended Benefit payments to individuals under the Interstate Benefit Payment Plan if they file claims in a State where an Extended Benefit Period is not in effect. This amendment was effective on June 1, 1981, in most States.

Section 1022 of Pub. L. 96–499 amended section 204(a)(2) of the EUCA to add a new subparagraph (B) which limits Federal reimbursement of benefits to a State which does not require a waiting period for regular benefits. Section 615.14(c)(3) establishes the effective dates under varying State circumstances. This amendment affects a State's entitlement to Federal sharing in the costs of regular compensation and Extended Benefits, but is not a requirement for State laws.

Section 1024 of Pub. L. 96–499 added sections 202(a) (3), (4) and (5) of the EUCA. Paragraph (3) requires amendment of State laws to include specific provisions defining suitable work as any work which is within an individual's capabilities, except that if the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period are determined to be good, then suitable work is determined under the provisions in State law applicable to claimants for regular benefits; and includes a specific disqualification for failure to accept suitable work, or to apply for suitable work when referred by a State employment office, or to actively search for work. Paragraph (4) requires that disqualifications for voluntarily leaving employment, discharge for misconduct and refusal of suitable work shall not be considered terminated for the purpose of qualifying for Extended Benefits except by employment subsequent to the disqualifications. Paragraph (5) (redesignated as (6) in the 1981 amendments, which added a new paragraph (5)) prohibits Federal sharing in regular benefit costs if the State does not apply the rules of paragraphs (3) and (4) in paying such benefits. Paragraphs (3) and (4) are requirements for State laws; paragraph (5), like section 204(a)(2), is not a requirement for State laws. The requirements of paragraph 4 took effect in all States for weeks of unemployment beginning after March 31, 1981. The requirements in paragraph 3 took effect in the States for weeks of unemployment beginning after October 31, 1981, except for any State in which the State legislature did not meet in 1981, section 202(a)(3) shall apply to weeks of unemployment beginning after October 1, 1982.

### 1981 Amendments to EUCA

Sections 2401 through 2404 and sections 2505 and 2506 of Pub. L. 97–35 made several changes in the conditions under which Extended Benefits trigger on or off by eliminating the National trigger, changing the standard State trigger from 4.0 percent to 5.0 percent, the optional State trigger from 5.0 percent to 6.0 percent, and changing the definition of the "rate of insured unemployment" by eliminating claims for Extended Benefits and additional compensation. Other amendments prohibit paying benefits to individuals with little qualifying employment, and make changes to tie into the amendments to the Trade Act of 1974. Changes in §§ 615.2, 615.4, 615.7, 615.8, 615.12, 615.13, and 615.14 reflect those amendments.

### 1982 Amendment to EUCA

Section 191 of Pub. L. 97–248 amended section 204(a)(2) to add a new subparagraph (D), which provides that States which do not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount shall not be entitled to be reimbursed for the Federal 50 percent share on the amount by which sharable regular and sharable extended compensation paid exceed the lower dollar amount. This amendment became effective for benefits paid for eligibility periods beginning on or after October 1, 1983, with a grace period for States that require legislation to provide for rounding down.

### 1983 Amendment to EUCA

Section 522 of Pub. L. 98–21 amended section 202(a)(3)(A)(ii) to provide exemptions to the requirement that claimants actively engage in seeking work: (1) if the individual is serving on jury duty under specified circumstances, and (2) if the individual is hospitalized for an emergency or life-threatening condition. A State may apply these exemptions to claimants for Extended Benefits only if the exemptions also apply to claimants for regular benefits. Sections 615.2(o) (11) and (12) define the terms "jury duty" and "hospitalized for treatment of an emergency or life-threatening condition." The amendment

to section 202(a)(3)(A)(ii) became effective on enactment, April 20, 1983.

**1987 Amendment to EUCA**

Section 9151 of Pub. L. 100–203 amended the date in section 202(a)(6) for purposes of determining the Federal share of weeks of unemployment beginnning after March 31, 1981. Section 9151 of Pub. L. 100–203 changed the original effective date of section 202(a)(3) to weeks of unemployment beginning after October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982.

*Invitation for Comments*

The proposal to revise the Extended Benefits (EB) regulations was published in the **Federal Register** on October 24, 1986 (51 FR 37741). Comments on the proposed revision of Part 615 were originally solicited through November 24, 1986. On April 3, 1987 (52 FR 10774) a notice was published in the **Federal Register** extending the closing date for comments to April 20, 1987.

The Department of Labor received timely written responses to the proposal from 15 State Employment Security Agencies (SESAs) and the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations. The SESAs that commented on the proposal were: The Arizona Department of Economic Security, the California Employment Development Department, the Illinois Department of Employment Security, the Michigan Employment Security Commission, the Nevada Employment Security Department, the New Jersey Department of Labor, the New York Department of Labor, the Ohio Bureau of Employment Services, the Oregon Employment Division of the Department of Human Resources, the Pennsylvania Department of Labor and Industry, Office of Employment Security, the Tennessee Department of Employment Security, the Texas Employment Commission, the Vermont Department for Employment and Training, the West Virginia Department of Employment Security, and the Wisconsin Department of Industry, Labor and Human Relations.

The Department gave careful consideration to all comments and suggested changes received before drafting the final regulations. This document contains the final revised regulations for Part 615. Following is a summary of the comments received and the Department's responses in order of section.

**Section-by-Section Analysis and Response to Comments Received**

*General*

A SESA commented that it believed the regulations were of sufficient importance to warrant a public hearing. The Secretary agrees on the importance of these regulations. However, the Assistant Secretary has determined that the process of publishing the proposed rule in the **Federal Register**, in accordance with 5 U.S.C. 553, was sufficient to satisfy the statutory requirement for public participation in this rulemaking. The notice in the **Federal Register** gave interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments, allowed more than 30 days for such comments, and was followed by the Department's careful consideration of the written comments received. A public hearing for these regulations is not required by statute. For these reasons, the Department will schedule no public hearing.

A SESA commented that some States are currently pursuing administrative relief from findings of the Inspector General, which, it believes, involve issues of interpretation of State and Federal law at the same time that State program decisions were made. It stated that to now deny payment of the Federal share of Extended Benefits, under the circumstances set forth in § 615.14(b) of these regulations, would be impermissably retroactive rulemaking.

These regulations are not retroactive in application but rather implement the provisions of the EUCA amendments as of their effective dates. Accordingly, each of the amendments addressed in these revised regulations, including the changes in § 615.14(b), is treated as having become effective on the effective dates specified in the amending acts. The Department has been carrying out the law as amended. The regulations affirm this and now furnish a regulatory basis for the positions that have been taken in implementing the statutory amendments.

The SESA further commented that five years is too lengthy a period between statutory enactment and rulemaking and after five years of "ever-changing directives," the proposed rules no longer provide timely clarification.

These comments on the timing of the publication of the proposed rules are understandable; however, the EUCA was amended in 1980, 1981, 1982 and 1983 and each amendment required revisions and additions to the proposed rules. Part of the delay in the publication of these regulations is inherent in the regulatory process. This process is governed by the Administrative Procedure Act, the Regulatory Flexibility Act, Executive Orders 12067 and 12291, and the Paperwork Reduction Act. These directives also require the Office of Management and Budget to review regulatory proposals. Although these processes concededly do not explain away all of the delays encountered, and there have been changes in guidance furnished to the States, the last substantive changes were reflected in the Notice of Proposed Rulemaking published on October 24, 1986. The States were, therefore, timely notified of each amendment and each change in guidance.

The SESA listed several examples of "ever-changing directives" from ETA which, it stated, placed SESAs in the position of constantly modifying administrative policies. It noted that Unemployment Insurance Program Letter (UIPL) 14–81, issued February 2, 1981, stated that if a claimant was unavailable for work in any week because of illness, disability, death in the family, or jury duty, the claimant would not be excused from meeting the actively seeking work requirement of EUCA section 202(a)(3). The SESA believed that this was inconsistent with the explanation for the definition of "weeks of unemployment" in § 615.2(n)(2) of the regulations, which stated Congress must not have intended EUCA section 202(a)(3) to disqualify a claimant who was not claiming benefits for a given week due to illness.

The statements in the UIPL and the regulations are not inconsistent. It is still true that, except as modified by the 1983 amendments, no excuse will suffice for failing to meet the actively seeking work requirement of section 202(a)(3)(A), EUCA. It also remains true that the requirement applies only to weeks for which a claim is filed for benefits. This interpretation avoids the extreme result of requiring the disqualification to apply to every week of unemployment regardless of whether a claim is filed. The 1983 amendment to EUCA section 202(a)(3)(A) softens the actively seeking work requirement, but does not change the basic approach the Department takes of applying the disqualification only with respect to weeks for which a claim is filed. The Department's guidance to the States on these points has remained unchanged, except as required by the 1983 amendments. No change is made in the regulations.

The SESA further commented that UIPL 14–81, Change 2, issued September 8, 1981, stated that a maximum of 4 weeks for a claimant to obtain work

within the individual's customary occupation would constitute "a reasonably short period" under EUCA section 202(a)(3)(C). The commenter noted that under the proposed regulations, § 615.8(d)(1), the determination of the length of this "reasonably shortperiod" is now left to the applicable State law.

This change represents a deferral to the States; the States were timely notified when this change was made. The Department prefers to leave matters to the States where it can do so under the law. In this instance the Department decided, after reconsidering the matter, that this was a matter better left to the States. No change is made in the regulation.

This SESA also commented that § 615.2(o)(7) of the proposed regulations, defining the phrase "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act, changes the UIPL instructions. The SESA states that this change "would substantively amend [the] statutory interpretation after years of denial of claims based on [the] more restrictive UIPL instructions."

The change made by the proposed regulations defining the phrase, "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii) of the Act defers to the States. The Department acknowledges that it has changed its interpretation of the phrase, "Provisions of applicable State law," because the Department, as explained above, prefers to leave matters to the States where it can do so under the law. Upon reconsideration, the Department has decided that it was proper to defer to the States here. No change is made in the regulation.

The SESA also commented that misleading legal conclusions are drawn in the "**SUMMARY**," "**SUPPLEMENTARY INFORMATION**," and "1980 Amendments to EUCA" sections. With respect to the "**SUMMARY**", it stated that there had been no regulations on the new paragraphs added to section 202(a), EUCA, enacted by Pub. L. 96–499; therefore, there are no regulations on these new paragraphs to be revised by the Proposed Rules.

The proposed rule added new text in addition to amending existing text; both kinds of changes come under the definition of a "revision" of the regulations. This omission of a reference to the added text was not an attempt to mislead, but is noted in the final regulations. The changes proposed were carefully noted in the preamble and fully set forth in the regulatory text of the Notice of Proposed Rulemaking.

The SESA also commented that the "Supplementary Information" and the "1980 Amendments to EUCA" section are misleading because the amendments in Pub. L. 96–499 that added new paragraphs (3), (4), and (5) to EUCA section 202(a) did not require States to change State law. The SESA commented that Congress clearly intended that State law be changed at section 1022(a) of Pub. L. 96–499, which concerns the waiting week and that no such language is found in the statute concerning suitable work.

The Department used the word "required" in the Supplementary Information with respect to the amendments in Pub. L. 96–499 that added new paragraphs to section 202(a) of EUCA, because it is bound by the use of the word "required" in section 3304(c) of the Internal Revenue Code of 1986 as follows:

> On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as provided under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.

Paragraphs (3) and (4) were correctly stated to be new requirements for Extended Benefits, as are other provisions of EUCA sections 202 and 203 relating to eligibility requirements for Extended Benefits. Paragraph (5) was correctly noted as not being a requirement for State laws, but solely a requirement for Federal sharing in the costs of regular benefits. The absence of identical language in the suitable work provisions is not determinative. Therefore, "required" is not deleted from the **SUPPLEMENTARY INFORMATION** in the final regulations, and no change is made in the final regulations.

The SESA also commented that the Proposed Rules should be classified as major rules and a regulatory impact analysis must be prepared.

The Secretary of Labor has determined, with the concurrence of the Office of Management and Budget, that the proposed rules are not major rules, for the reasons stated in the document.

*Section 615.2(o)(1) "Employed"*

The proposed rule at § 615.2(o)(1) defines "employed" for purposes of section 202(a)(3) of EUCA. A SESA, that did not suggest alternate language, commented that this definition does not meet the expressed goal of excluding "such neighborly exchanges as babysitting."

The Department's definition of "employed" was written to prevent the purging of a disqualification by activity that is not bona fide employment or by services not customarily performed under a contract of hire for wages. The definition at § 615.2(o)(1) thus provides that the definition of employment in State law applies. Therefore, a SESA should refer to State law for purposes of determining what "employed" means in applying the 4x4 disqualification and in determining what "employment" suffices under the EUCA section 202(a)(4) requirement. For these reasons, the definition of "employed" at § 615.2(o)(1) will remain unchanged in the final regulations.

*Section 615.2(o)(4) "Reasonably short period"*

The proposed rule at § 615.2(o)(4) defines a "reasonably short period", for purposes of section 202(a)(3)(C) of the Act, as the number of weeks specified by State law. A SESA commented that the regulation should explain whether a State's policy regarding a reasonably short period may be followed in the absence a State law provision which defines a reasonably short period.

This is a matter of interpretation of State law for State authorities to decide. This definition could be read, however, as requiring specificity in the State law, and this is not what is intended. In the final regulation, therefore, the word "specified" is deleted and the word "provided" is inserted in place thereof.

*Section 615.2(o)(6) "And" as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or"*

The proposed rule at 615.2(o)(6) defines "and" to mean "or" with respect to the provision that "Extended compensation shall not be denied * * * for failing to accept an offer of, or apply for, suitable work * * * if the position was not offered to such individual in writing and was not listed with the State employment service * * *." Three SESAs commented on the interpretation of "and" to mean "or" with one SESA asserting that this interpretation goes beyond the law and that a regulation cannot contradict the statute it implements. Another SESA suggested application of the more stringent suitable work definition in State laws for regular benefits to Extended Benefits claims and removal of the limitation on denials of Extended Benefits when an individual refuses to accept an offer of suitable work if the offer of work is not

made in writing and is not listed with the State employment service.

The Department originally construed "and" in section 202(a)(3)(D)(ii) of the Act in the conjunctive as requiring that both conditions be satisfied before imposing the disqualification. That is, an individual who refused an offer of otherwise suitable work could be denied extended benefits only if the offered work was both listed with the State employment service *and* offered in writing. However, early in 1981 the Department concluded that "and" must be construed as "or" in this instance, so that either an offer in writing or the listing with the employment service would suffice. This view is supported both by the explanation in Conference Report No. 96–1479: "(b)(1) Deny extended benefits to any individual who fails to accept any work that is offered in writing or is listed with the State employment service * * *." and the Senate Finance Committee Print 96–36.

It is apparent that the word "and" so construed provides for a more reasonable and rational requirement. In practice an offer of a job is rarely made in writing and it is unheard of to make an offer of a job prior to a referral. Therefore, it is unreasonable to expect or require an advance offer in writing, especially in the case of a referral. It is also obvious that requiring that the offer be in writing *and* listed with the employment service makes it more difficult to impose the disqualification under the EB "work test" than is the case under State law applicable to regular benefits. Congressional intent was to impose a more stringent requirement than provided under current State law disqualifications. Clearly that intent is not realized by construing the word "and" in the conjunctive and thereby requiring both of the conditions contained in subparagraph (D)(ii) be satisfied to justify imposition of the special disqualification.

In light of these considerations and to determine what action could legally be taken to achieve congressional intent, the Department examined the legislative history of this provision and pertinent court decisions to resolve the apparent conflict between the language in the report and the language of the statute. The Department determined that there is sufficient legal precedent in court decisions that the word "and" in a statute may indeed be construed as "or" (and vice versa) where that is necessary to carry out the legislative intent. Accordingly, based on the holdings in those court decisions, the thrust of the legislation, and the expressed legislative intent, the Department concluded that the word "and" must be construed as "or". Therefore a State law will be considered consistent with the requirements of subparagraph (D)(ii) only if it provides that a disqualification for failing to accept an offer of or apply for suitable work will be imposed if the job is either offered in writing or is listed with the State employment service, and, conversely, that the disqualification will not apply if the job is neither offered in writing nor listed with the State employment service.

The suggestion to apply the more stringent suitable work definitions in State laws for regular benefits to Extended Benefit claims and to "remove" the (D)(ii) provision from the regulations, is not acceptable because it would be contrary to sections 202(a) (2) and (3) of EUCA. Paragraph (2) of section 202(a) of EUCA provides:

> Except where inconsistent with the provisions of this title, the terms and conditions of State law which apply to claims for regular compensation * * * shall apply to claims for extended compensation * * *

Paragraph (3)(A) of section 202(a) of EUCA provides:

> Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—
>
> (i) during which he fails to accept any offer of suitable work (as defined in subparagraph (c)) * * *.

The applicability of the suitable work provisions of the EUCA is indicated by the phrase, "Notwithstanding the provisions of paragraph (2)", in paragraph (3)(A) of section 202(a) of the ACT. Thus paragraph (3)(A) specifically provides that, without prevention by or obstruction from paragraph (2), the suitable work and active search for work provisions in the EUCA shall apply to claims for extended compensation. For these reasons, no change is made in the final regulations.

*Section 615.2(o)(8) Systematic and Sustained Effort (to obtain work)*

The proposed rule at § 615.2(o)(8) defines the term "systematic and sustained effort" set forth in section 202(a)(3)(E) of the EUCA to describe when an individual shall be treated as actively engaged in seeking work during any week. Five SESAs commented on the active search for work requirements. Two SESAs' comments suggested that the required work search be consistent with economic conditions in the labor market, prospective job openings, seasonal nature of the work being sought and the normal practices for obtaining the type of work the individual is seeking. One of the SESAs commented that the active search for work requirement should be waived (as it is in State law for regular unemployment compensation) for individuals the State determines to have "good" job prospects; that is, individuals who have a promise of a job which will begin in a reasonably short period. One of the SESAs suggested that a State administrator be allowed to make an exception to the active search for work requirement for a community or area which has been so adversely affected by the economy that there is virtually no work available. Comments from two of the SESAs questioned if the phrase "throughout the given week" (which defines the term "sustained effort" to obtain work) included weekends and holidays and questioned the absence of specifics in the definition regarding job search contacts (number of employer contacts required throughout the week). This conflicts with the State's more quantifiable active search for work requirements. A SESA suggested that the definition of the work search requirements at § 615.2(o)(8) be used in conjunction with the criteria for the active search for work as defined in State law and policy. One of the SESA's commented that the requirement that a claimant's search for work include a plan which results in contact with persons who have "the authority to hire" is impractical and impossible to administer.

The Department has not adopted the changes proposed by the commenter for the reasons which follow. The Congress added the active search for work provisions to the EUCA with the knowledge that Extended Benefits are payable only during periods of high unemployment when new hires and job openings are at a low level in the States. Therefore, it would be contrary to congressional intent and the specific language in sections 202(a)(3) (A) and (E), EUCA, to authorize by regulation limiting the enforcement of the active search for work provisions to periods when an area is not adversely affected by economic conditions as suggested.

A State's policy for regular compensation, at the discretion of the State Administrator, may require an individual to seek any work that exists in the labor market for which he/she is suited by training and experience if his/her customary work does not exist in the labor market. Similarly, a State's policy for regular benefits may consider the seasonal nature of the individual's customary occupation in determining if the claimant is conducting an active

search for work or waive the active search for work requirement for individuals who are on temporary layoffs or who have early return to work dates.

On the other hand, based on examination of the Congressional Record S8917, June 30, 1980, and the language in section 202(a)(3) (C) and (E), EUCA, "suitable work" for an individual whose prospects of obtaining work in a customary occupation in a reasonably short period are determined by the SESA to be "not good" is any work which is within such individual's capabilities. The EUCA makes no exception to this definition of suitable work because the unemployed person's customary employment is seasonal. This means an individual whose job prospects have been determined to be "not good" may not limit the search for work solely because of the seasonal nature of his/her customary employment. An individual whose job prospects are "not good" because of the seasonal nature of the industry or occupation must seek any work that exists in the labor market which is within the claimant's capabilities, which also includes work for which the individual may have had no previous training or experience.

The proposed regulations, § 615.8, paragraphs (d), (f) and (g), relate the definition of suitable work, based on the SESA's determination of the individual's prospects of obtaining work in a customary occupation in a reasonably short period, to the requirement of a "systematic and sustained" search for work as provided in section 202(a)(3)(A)(ii) and (E) of EUCA. For these reasons, no change is made to § 615.2(o)(8) in the final regulations to authorize waiving or limiting the active search for work requirement because of the seasonal nature of the individual's customary employment, prospective job openings, adverse economic conditions or normal practices in obtaining work the claimant may be seeking.

The phrase "throughout the given week" defines "sustained effort to obtain work during such week". "Throughout the given week" means a search for work maintained throughout the work week prevailing or customary in the labor market area for the particular type of work being sought. This is based on the plain meaning of the words "systematic and sustained". Section 615.2(o)(8) derives from section 202(a)(3) (A) and (E) of the EUCA and provides for implementation of these provisions consistent with congressional intent as expressed in the Congressional Record (S8935–6, June 30, 1980); that is, "* * * to limit access to the extended benefit program * * * to individuals * * * who have made every effort to return to work * * *."

It is the Department of Labor's position that to administer the systematic and sustained effort to obtain work provision set forth in section 202(a)(3)(E) of EUCA means that each State employment security agency (SESA) must develop criteria for a systematic and sustained search for work for the various labor market areas within the State. These criteria must be based on labor market information (LMI), in particular, the number of employers in a labor market area, and whenever possible developed in consultation with LMI specialists. These criteria must be expressed in the number of days "throughout the given week" the individuals are required to search for "suitable work" as well as the number of contacts with prospective employers individuals shall be required to make during a week to maintain their eligibility for extended benefits. The development of guidelines and criteria for a systematic and sustained search are necessary to assure the even-handed application of the active search for work requirement to all similarly situated claimants (same labor market area and job prospects classifications) subject to this requirement. The guidelines are also necessary for each State's monitoring of claimants' active search for work for the purpose of detecting noncompliance as part of the processing of weeks claimed for payments.

It is the responsibility of the SESAs to administer the active search for work provisions in State law as required by the EUCA. Each State is best qualified to assess the characteristics of its local labor markets based on LMI specific to the local areas within the State and to establish guidelines for the required active search for work. Therefore, it would be inappropriate for the Department to take over the States' responsibility for administering the EB active search for work and impose by regulation specific, quantifiable, nationwide work search requirements based on the characteristics of local labor markets. The States' methods of administering the active search for work requirements are best expressed in the number of days during the given week an individual shall search for work and the number of employer contacts ("more quantifiable") an individual must make during such week. Such criteria are essential for monitoring claimants' active search for work and for enforcing the EB active search for work requirements in State law. The States' criteria for a systematic and sustained search for work are consistent with § 615.2(o)(8) of these regulations if the criteria provide for a high level of job search activity sustained throughout the given week based on the number of employers in the particular labor market area. The Department agrees, however, that it is not consistent with the section 202(a)(3) work test, regardless whether the claimants' job prospects are classified as "good" or "not good", to require claimants to search for types of work which they may not be required to accept. The final rule is clarified to reflect this.

Regarding "contacts with persons who have the authority to hire" in § 615.2(o)(8)(ii), the Department acknowledges that it is possible for a person to make a planned, systematic effort to obtain work and yet not make contact with the person who has the authority to hire. Accordingly, the phrase "contacts with persons who have the authority to hire" in the regulation is modified to also include applying for work by "whatever hiring procedure is required by a prospective employer."

The Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations commented on:

Section 615.2(o)(8)(iii) "systematic and sustained effort" (to obtain work), and

Sections 615.8(e) (5) and (6), suitable work related to the individual's prospects of obtaining work in his/her customary occupation in a reasonably short period.

Section 615.2(o)(8)(iii) of the proposed rule provides that a "systematic and sustained effort" (to obtain work) includes:

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, except the individual while classified by the State as provided in section 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable) in the same manner that such work is found by people in the community.

The Building and Construction Trades Department objected to this section of the proposed rules because some State unemployment compensation laws require a member of a building and construction trades union to seek or accept a job (to maintain his/her eligibility for unemployment compensation) which might jeopardize

the individual's union membership. It contends that such State laws violate the Supremacy Clause of the Federal Constitution by improperly interfering with national policy embodied in the National Labor Relations Act of the right of full freedom of association through union membership. In addition, the labor organization contends that the Department's deference to State law and policy with regard to this issue, as embodied in the proposed rules, is also inconsistent with the union members' freedom of association guaranteed by the National Labor Relations Act. Accordingly, the Building and Construction Trades Department recommended that proposed § 615.2(o)(8) be modified to provide expressly that a "systematic and sustained effort" to look for suitable work, as required by section 202(a)(3)(E) of EUCA, is satisfied if the individual falls within the category of workers who secure employment through the efforts of a union hiring hall established pursuant to a collective bargaining agreement. The Building and Construction Trades Department objected to § 615.8(e) of the proposed rule because it does not list nonunion work as work that is not suitable when an individual's job prospects have been determined to be "not good."

The Congress amended (Pub. L. 96-499) the Federal-State Extended Unemployment Compensation Act of 1970 to require that:

> * * * as a condition of eligibility for extended unemployment benefits, the unemployed individual must be willing at that point to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with Federal minimum wage and other existing Federal standards) * * *.
>
> Congressional Record S8917, June 30, 1980.

Under the amended Act, "suitable work" for any individual claiming extended benefits whose prospects of obtaining work in his/her customary occupation in a reasonably short period are not good, is any work that does not exceed the individual's physical and mental abilities.

The amendments to the Act also provide in subparagraph (A) that payment of extended compensation shall not be made to any individual for any week of unemployment—

"(ii) during which he fails to actively engage in seeking work."

As provided in subparagraph (E) the individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

The broadening of the definition of "suitable work" to include work in addition to that at the individual's higher skills or customary work is designed to increase the range of jobs individuals must seek and accept and to increase the prospects of reemployment of individuals who had been unemployed for extended periods of time. The intent of Congress in amending the Act was "to limit access to the extended benefit program * * * to individuals who have demonstrated a reasonable attachment to the work force, lost their jobs involuntarily, and made every effort to return to work." Congressional Record S8935, June 30, 1980.

The Department's position on a "systematic and sustained effort" to obtain work as expressed in § 615.2(o)(8) of the proposed rules is based on the language in section 202(a)(3)(E), EUCA, and examination of the Congressional Record S8917, S8935, June 30, 1980. The active search for work and the suitable work provisions added to EUCA by the Omnibus Reconciliation Act of 1980 were designed to reduce benefit costs by targeting the payment of Extended Benefits to those individuals who are willing to apply for and accept suitable work which does not fully match the individual's higher skills and earnings levels and who increase their efforts to find any work within their capabilities.

Therefore, based on the plain meaning of the words, a "systematic and sustained effort" to obtain work, the proposed rules define this requirement as a planned, methodical search conducted throughout each week claimed. It is a search for work not limited to a single method of finding work such as reporting to a union hiring hall or the State job service office. It is a search for work not limited to classes of work or rates of pay which represent the individual's higher skills or customary work except where the State classifies the individual as having good prospects of finding work in his/her customary occupation in a reasonably short period. Under the proposed rules registering for work at a union hiring hall is considered to be the same as any other single effort to obtain work, such as answering a help wanted advertisement in a newspaper, and of itself is not evidence of a systematic and sustained search for work.

Instructions to an individual to increase his/her efforts to find work and to engage in a "sustained" search for work solely through a union hiring hall serve no purpose when union members are dispatched to jobs according to seniority or length of unemployment. Under this referral system, those union members who have the earliest registration for work or the greater seniority will be the first dispatched to jobs regardless of daily reporting to the union hiring hall or requests from union members with less seniority for referrals to work outside the usual order.

The language in § 615.2(o)(8) of the proposed rule implements the plain meaning of the words in section 202(a)(3)(E); i.e., "the individual has engaged in a systematic and sustained effort to obtain work". This language defines the requirement that individuals actively engage in a search for work as is specifically required by section 202(a)(3)(A)(ii). This means that the individual must do more than be passively available for work or that the individual only stands ready to work if work is offered as would be the case if the individual limited the search for work to registering for work with the union or the State job service office.

Therefore, neither registration at a union hiring hall nor registration for work with the State job service office of itself fulfills the requirement of section 202(a)(3)(E); i.e., "engaged in a systematic and sustained effort to obtain work during such week * * *." The exception to this rule with respect to the union hiring hall is while the individual has been classified by the State as having "good" prospects of obtaining work in her/his customary occupation in a reasonably short period. This exception means the individual's registration at a union hiring hall may be considered to fulfill the requirement for a systematic and sustained effort to obtain work during such week provided such individual normally obtains customary work through the hiring hall and only if under the State's law applicable to regular compensation such individuals are permitted to limit their search for work to registering for work at the union hiring hall. Subclauses (I) and (II) of section 202(a)(3)(ii) of the EUCA convey the only other limitations to the requirement of a "systematic and sustained effort" to obtain work during each week for which sharable compensation is claimed.

The Department believes that the question of supremacy of Federal law is without relevance to the proposed rules for the Extended Benefits Program because Congress has made State laws

the vehicle for implementing Federal policies. This is the case with respect to the Federal-State Extended Unemployment Compensation Act of 1970 because the States are required to include the provisions of EUCA in State laws.

The proposed rules for Extended Benefits do not prevent or curtail union members' right of freedom of association. The labor standards in section 3304(a)(5), IRC, are applicable to the suitable work provisions in section 202(a)(3) of EUCA. The Department has never taken the position that requiring unemployed union workers to accept offers of nonunion work in their customary occupations would, in itself, violate the labor standards even where acceptance of the nonunion work in their customary occupations would violate the bylaws and constitution of the labor organization. This is an area that has been left to the States to determine under their laws. Thus, it is a matter of State law whether members of labor organizations are subject to denial of Extended Benefits for failing to apply for or accept nonunion work in their customary occupations. This is a continuation of the position taken by the Social Security Board early in the Federal-State unemployment compensation program and followed by its successors, including the Department of Labor. The labor standards are applicable to the work test in section 202(a)(3), EUCA by virtue of section 202 (a)(3)(D)(iii). Therefore, this position, regarding members of labor organizations and the labor standards in State law, applies without exception to section 202(a)(3) regardless of whether an individual's job prospects are classified or determined to be "good" or "not good."

The preamble of the proposed rule noted that the proposed rule contained some provisions on the EB work test that differed from guidance previously furnished to the States. The comments received reveal that there is a lack of understanding of the Department's position on some matters left to the States under the labor standards and section 202(a)(3), EUCA. Therefore, the regulations are changed in this final rule to make it clearer that whether union members must seek and accept nonunion work in their customary occupations is a matter left to each State to determine under its law. In addition, each State must determine under its law whether a union member, who (1) the State has determined to have "good" job prospects and (2) who normally obtains work in his/her customary occupation through a hiring hall, must seek and accept work other than through the union hiring hall. On these two matters regarding the work search the applicable State law applies, as is required by section 202(a)(2), and within the intendment of section 202(a)(3)(D)(iii), EUCA. Such State law provisions with respect to the labor standards that pertain to nonunion work and members of labor unions "are not inconsistent with the provisions of subparagraphs (C) and (E)". In this connection, as noted above, the final rule is also clarified to convey that section 202(a)(3), EUCA does not require or permit claimants for sharable compensation to be required to seek work which is an exception to section 202(a)(3)(A)(i) as specified in section 202(a)(3)(D). That is, section 202(a)(3) does not require claimants for sharable compensation (or permit to be required) to seek work which if refused could not justifiably result in the imposition of the 4×4 disqualification for failing to accept any offer of suitable work.

*Section 615.2(o)(9) "Tangible evidence" of an active search for work*

The proposed regulation at § 615.2(o)(9) defines "tangible evidence" of an active search for work for the purposes of section 202(a)(3)(E) of EUCA. Comments were received from two SESAs on this definition. One SESA questioned the necessity of including the type of work being sought and the listing of every contact with an employer in the documentation of "tangible evidence" of an active search for work. The other SESA suggested that the "tangible evidence" include the method used to seek work to enable a State to determine if an individual's search for work was "systematic".

The definition of "tangible evidence" does not require listing of every employer contact an individual makes during a given week. However, the State must require claimants to list, at a minimum, the number of employer contacts the State has determined to be evidence of a sustained search for work during such week. The number of contacts with prospective employers a SESA requires individuals to make during a week to demonstrate a "systematic and sustained" search for work will vary according to the characteristics of the labor market areas within the State. Therefore, States must design the form used to obtain "tangible evidence", as set forth in § 615.2(o)(9), of an active search for work during a week with space for a sufficient number of entries of work search (employer) contacts to accommodate the variations in the number of employers and characteristics of the various local labor market areas within the State. The States that use one form statewide for individuals to report "tangible evidence" of a systematic and sustained search for work should design this form, the report of work-seeking activities, with space sufficient for claimants to enter the number of employer contacts required to demonstrate a systematic and sustained search for work during a week(s) in the labor market area in the State with the largest number of employers.

The listing of the type of work sought as an element of information in the "tangible evidence" of the individual's efforts to obtain work is necessary for monitoring of claimants' continuing eligibility for Extended Benefits. "Suitable work" for individuals whose prospects of obtaining work in their customary occupations in a reasonably short period are determined to be "not good" is any work that the individual has the physical and mental capacity to perform. A SESA that does not require claimants to report the type of work being sought will be unable to determine if an individual's search for work is systematic. The SESA will be unable to determine if an individual whose job prospects are "not good" is limiting the search for work to a customary occupation or is conducting the required search for any work that the claimant has the physical or mental ability to perform and which meets the criteria of section 202(a)(3)(D), EUCA.

Similarly, the method used to seek work is a necessary element in the "tangible evidence" because it enables the States to determine if an individual's search for work was "systematic". That is, a method of applying for employment is "systematic" when it is the appropriate method for the particular job being sought because it is the method by which most individuals in the particular job were hired. For example, applying for work by telephone is not a systematic method of seeking work if an individual makes a telephone call to an employer who hires only through in-person job applications. Although "actions taken" could be construed to include the method of applying for employment, the Department has added "method of applying for work" to the information required for tangible evidence of an active search for work to make the definition in § 615.12(o)(9) clearer. The type of work being sought will be retained in the definition of "tangible evidence" because it is necessary for monitoring the active search to determine if an individual's search for work is systematic.

*Section 615.2(o)(12) "Hospitalized for treatment of an emergency or life-threatening condition"*

Pub. L. 98–21 amended EUCA section 202(a)(3) to provide exceptions to the disqualification for failing to actively search for work which could be purged only if the individual returned to work for at least 4 weeks and earned at least 4 times the weekly benefit amount. Section 202(a)(3)(A)(ii) of EUCA permits the States to determine weekly eligibility for claimants of extended benefits who are hospitalized for treatment of an emergency or a life-threatening condition based on the availability for work provisions if the same provisions in State law are applicable to claimants for regular benefits which are not sharable.

A SESA commented that the definition of the term "hospitalized for treatment of an emergency or life threatening condition" was an unduly complex definition and that this term could be left for the States to interpret.

The Department issued Unemployment Insurance Program Letter (UIPL) No. 41–83 to implement the amendment to the EUCA required by Pub. L. 98–21. In this program letter, the Department stated that it would incorporate the definition of this term as set forth in the UIPL in a future amendment to the Extended Benefit regulations. Therefore, § 615.2(o)(12) repeats the words in the definition of the term, "hospitalized for treatment of an emergency or life threatening condition" that were in UIPL 41–83. The Department defined the term because the EUCA specifically provides for the definition of the term "as such term may be defined by" the Secretary of Labor. The definition may be considered complex because it includes more than one part; however, it is not a definition that is difficult to understand. Significantly, the definition conveys precise meaning. Therefore, the definition at § 615.2(o)(12) is not changed or deleted because deleting the definition would ignore a duty imposed by law and create the possibility of inconsistencies in the application of this provision.

*Section 615.2(p)(1) (ii) and (iii) The "first two weeks" as used in section 202(c), EUCA*

The proposed rule at § 615.2(p)(1) (ii) and (iii) defines visiting and transient claims as claims not filed under the interstate benefit (IB) payment plan and therefore not subject to the two-week limitation which applies to IB claims filed in an agent State not in an EB period.

A SESA suggested that § 615.2(p)(1) clarify if the two-week limitation on Extended Benefit payments of section 202(c), EUCA, applies to an individual who resides in a State that is not in an Extended Benefit Period but who reports and files intrastate claims in a bordering State that is in an Extended Benefit Period. Another SESA questioned if excluding visiting and transient claims from the "two-week" IB provision would result in an uneven application of this restriction because practices of accepting transient and visiting claims vary from locality to locality.

This last comment is interpreted to mean that some visiting claimants are erroneously required to file IB initial claims; therefore, all transient and visiting claims should be processed as IB initial claims. Such claims processing would only increase the number of errors. The language of section 202(c)(1), EUCA, specifically limits the application of the denial after two weeks to claims filed under the IB plan. Transient claims and visiting claims which are not filed under the interstate plan are intrastate claims and therefore are not subject to the two-week IB denial provision. Similarly, intrastate claims filed by an individual who resides in a State that is not in an Extended Benefit Period is not a claim filed under the IB plan and therefore not subject to the two-week denial provision of section 202(c) of the Act. The final regulations include language to clarify that section 202(c) of the Act does not apply to intrastate Extended Benefit claims filed by individuals who reside in a State that is not in an Extended Benefit Period. Sections 615.2(p)(1) (ii) and (iii) will not be changed to apply the two-week denial to visiting or transient claims in the final regulations because such a change would be contrary to the law, EUCA, section 202(c).

*Section 615.7(c)(3) Changes in accounts*

The proposed rule at § 615.7(c)(3) provides for adjustments to extended benefit accounts made necessary by a redetermination or an appeal which awards an individual more or less regular unemployment compensation. A SESA identified an omission in § 615.7(c)(3); that is, "If such decision reduces the duration of regular compensation payable to the individual, the claim for extended benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits." The final sentence of the present regulation also was omitted.

This language omitted in § 615.7(c)(3) of the proposed rule is restored in the final regulation, and other unintended errors in paragraphs (c)(2) and (c)(3) are corrected. It is the Department's position that the "work test" may not be applied retroactively. Therefore, when there is a backdating of an individual's claim prior to the date of the individual's original claim for Extended Benefits, no retroactive disqualification may be imposed for failing to meet the eligibility requirements of section 202(a)(3)(A), EUCA, except a disqualification beginning as provided in § 615.8(h)(4) of the final regulation.

*Section 615.8(c) Terminating disqualifications*

The proposed rule at § 615.8(c) provides that for certain disqualifications an individual must have employment required by State law subsequent to the disqualification to terminate the disqualifications for purposes of eligibility for Extended Benefits. A SESA requested that the regulations explain if Extended Benefits would be denied under § 615.8(c) of the proposed rule when a State law ("Robert Fabric" decision) provides that an individual shall be disqualified from the receipt of subsequent regular or Extended Benefits to the extent that such benefits would have decreased by virtue of earnings from part-time employment that the individual quit, was discharged from or refused to accept.

Under section 202(a)(4) of the EUCA, no provision of State law or interpretation of State law which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct or refusing an offer of suitable employment shall apply for purposes of payment of Extended Benefits, unless such termination is based upon employment, as required by State law, subsequent to the date of such disqualification. Thus, in the example given, an individual whose eligibility for (reduced) regular benefit payments continues after a disqualification and where the State law does not require subsequent employment to purge the disqualification would not be eligible to receive or continue to receive extended compensation. The language in § 615.8(c)(2) of the proposed rule,

> * * * shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds * * *,

is adequate to prohibit payment of Extended Benefits in the example given and similar situations when a disqualification is served or purged by penalties other than subsequent employment. Section 202(a)(4) is an eligibility requirement, and it is a requirement for State laws. For this reason no change will be made in the final regulations at § 615.8(c).

*Section 615.8(d) Determinations of job prospects*

The proposed rule at § 615.8(d) provides that the SESAs shall classify each individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good". The SESA's classification of the individual's prospects of obtaining employment in his/her customary occupation in a reasonably short period as "good" or "not good" is made at the filing of an initial claim. A SESA recommended that this section be eliminated. The SESA contends that this procedure is administratively cumbersome and costly and because the individual's job prospects only affect whether the suitable work provisions in State law (for regular benefit claimants) or the suitable work provisions in State law corresponding to sections 202(a)(3) (C) and (D), EUCA, shall apply. Another SESA objected to § 615.8(d)(3) because of the problem of funding (cost of administering) the job prospects classification because classifying an individual's job prospects was not a separately reportable workload item for funding purposes.

The classification of an individual's job prospects as "good" or "not good", as provided under § 615.8(d), is necessary to determine what constitutes "suitable work" under EUCA section 202(a)(3)(C). The individual's job prospects classification will establish the type of work the individual must seek and accept to maintain eligibility for Extended Benefits. To enable claimants to preserve this eligibility it is mandatory that the State classify and inform claimants of their job prospects and the kind of jobs they must accept and actively seek each week. This information is essential to enable claimants to protect their rights and understand what they must do to meet the eligibility requirements in State law for Extended Benefits. The States' duty to inform claimants of their responsibilities is explained in *Information to claimants* at § 615.8(h) of these regulations.

With respect to the comment that the job prospects classifications cause a funding problem, the minutes per unit (MPU) for Extended Benefit initial claims were increased on the Department's initiative to simplify administrative financing (Administrative Financing Initiative). The increased MPU for Extended Benefit initial claims includes the time for classifying an individual's job prospects. The job prospects classification is not a separately appealable nonmonetary determination. The determination with respect to job prospects is part of the fact finding in any suitable work or active search for work determination that is made when an issue arises and a determination must be made. Therefore, the requirement of classification of an individual's job prospects at § 615.8(d) is retained in the final regulations.

*Section 615.8(f) Refusal of work and § 615.8(g) Actively seeking work*

Sections 615.8 (f) and (g) provide for the conditions for disqualifying an individual for failing to conduct the required search for work and for failing to apply for or accept an offer of suitable work. These sections also explain the disqualification which applies for such failures and relate suitable work to a determination of the individual's job prospects. A SESA commented that in previous issuances the disqualification for failing to apply for or accept an offer of suitable work if job prospects were determined to be "good" was the disqualification provision in State law applicable to claims for regular compensation for refusing an offer of suitable work. The SESA also commented that the EB work test (sections 202(a)(3)(A) (i) and (ii)) of EUCA should not be applied to weeks of Extended Benefits paid retroactively.

It is Department's position that the work test may not be applied retroactively, as explained in our response to the comment regarding § 615.7(c)(3) of the proposed rule. We concur with this comment and the final regulation is consistent with this view.

The final rule provides, as did the proposed rule, that an individual shall be ineligible for Extended Benefits for the week the individual fails to conduct the required search for work or fails to accept or apply for an offer of suitable work. The individual's ineligibility shall continue thereafter until he/she is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount (4X4 disqualification), regardless of the individual's job prospects. This is based on a closer reading of sections 202(a)(3) (A) and (B) of the Act, and is a change from guidance previously furnished to the States. Subparagraph (B) relates the 4X4 disqualification to sections 202(a)(3)(A) (i) and (ii) without regard to the individual's job prospects. As provided in EUCA section 202(a)(3)(C), suitable work for an individual whose job prospects are "good" is determined in accordance with State law applicable to regular compensation. Section 202(a)(3)(C) makes no reference to the disqualification in applicable State law for refusing an offer of suitable work. On the other hand, section 202(a)(3)(B) specifically applies to any failure described in clause (i) or (ii) of subparagraph (A). Therefore, whether the failure is of a clause (i) or clause (ii) type, the 4X4 disqualification applies, and it is irrelevant for these purposes whether the claimant's job prospects are classified or determined to be "good" or "not good". For these reasons, no change is made to the final regulations.

*Section 615.12 Determination of "on" and "off" Indicators*

The proposed rule at § 615.12 provides for the computation by the State agency of the rate of insured unemployment statewide for purposes of triggering "on" or "off" the payment of extended benefits in the State. Only one SESA commented on the method of determining "on" and "off" indicators for the purpose of paying Extended Benefits.

The SESA commented that the formula for triggering "on" Extended Benefits does not work for it because of the State's huge land area. The unemployed workers in areas of high unemployment within the State are not eligible for Extended Benefits, in spite of their great need, because the trigger for Extended Benefits is based on the statewide rate of insured unemployment. The SESA suggested that different triggers be developed which would bring about more equitable treatment of the unemployed workers in a State large in land area comparable to benefits provided to unemployed workers in smaller States. The SESA further commented on the apparent widening of the gap between the total unemployment rate (TUR) in the State and the insured unemployment rate (IUR) and the possibility of establishing new indicators for Extended Benefits by combining the IUR and the TUR. The State also commented that it has never triggered "on" Extended Benefits based on the State IUR and that the State is ill-served by the current triggers for the Extended Benefit Program that respond only to the statewide rate of insured unemployment.

On June 18, 1987, the Department of Labor published for competitive bidding

a request for proposals (RFP) to conduct a study of the feasibility of substate area triggers for the payment of unemployment benefits. The purpose of this study is to design substate area benefit policy options under which Extended Benefits could be paid for durations beyond the regular UI program in depressed labor market areas while avoiding the payment of Extended Benefits in labor market areas that are not depressed. The study will be conducted from 10/1/87 to 3/31/89. The Department of Labor does not have the legal authority to establish triggering mechanisms for the payment of Extended Benefits based on unemployment in substate areas, or to alter the trigger criteria, because the EUCA specifically provides for triggers based solely on the statewide rate of insured unemployment. The interests of the State in changing the triggers would have to be addressed by legislation, not through the regulatory process. The study is designed to provide the Department and the Congress with the information and analysis necessary to make a responsible decision about this matter. Therefore, no change is made to the final regulations at § 615.12.

*Section 615.12(d)(1) Amendment of State indicator rates*

The proposed rule at § 615.12(d)(1) establishes a time limit for making retroactive corrections to State "on" or "off" or "no change" indicators. It also provides that any changes to the indicators within the time limit shall be subject to the concurrence of the Department. A SESA commented that this regulation could result in a State not receiving funds for the cost of taking initial Extended Benefits claims when an "on" indicator is amended during the third week following the indicator week. The SESA also commented that the phrase "concurrence of the Department" needed clarification.

Any State that processes Extended Benefits initial claims workload prior to amending an "on" indicator shall receive funds only for the administrative cost by activity by reporting the EB initial claims on the ETA 5159 report and in the EB section of the Quarterly Financial Report (UI 3). The State should explain in a footnote on the UI 3 why there is Extended Benefit initial claims activity when the State was not in an Extended Benefit Period.

The first comment appears to argue for reducing the time allowed to the States for amending an indicator to less than three weeks after the indicator week. This regulation allows the States only eight calendar days from the due date of the States' initial notice to the Secretary to discover errors in counts or computations and to amend their indicator rates. As provided in § 615.12(e), a State must notify the Secretary within 10 days after the end of any week if there is an "on" or "off" or "no change" indicator in the State. A reduction in the time to amend State indicators from three weeks to two weeks would in fact allow a State only four days to make such corrections and recomputations. The Department believes that eight days is a reasonable and suitable amount of time to allow States to discover errors and to make recomputations necessary for amending their indicators. For these reasons, the time limit for amending a State indicator will not be changed in the final regulations. Further, the commenter is correct that a State is not entitled to Federal sharing in any benefits paid outside an Extended Benefit Period or otherwise not in accordance with the terms and conditions of the Federal-State Extended Unemployment Compensation Act of 1970.

The concurrence of the Department means that the amendment of a State indicator shall not become final until the notice of amendment to a State indicator is accepted by the Department as provided in § 615.12(e). Paragraph (e) of § 615.12 provides that an indicator notice shall not become final until it is accepted by the Department. An amended indicator notice must also be acceptable to the Department. Accordingly, a reference to paragraph (e) of this section is included in paragraph (d) to define the "concurrence of the Department" in the final regulation.

*Section 615.14 Payments to States*

The proposed regulation at § 615.14(d) provides that the Department of Labor may withhold reimbursement of the Federal share to a State or require repayment of the Federal share of payments previously reimbursed for any payments that were not Extended Benefits because they were not paid under the terms and conditions that are consistent with the EUCA or the regulations. Seven SESAs (New York, Nevada, Tennessee, Illinois, West Virginia, Vermont and Ohio) questioned the legal authority of the Secretary to mandate withholding or recovering reimbursement of the Federal share for "Any payment made to a claimant for any week with respect to which the claimant was either ineligible for or not entitled to the payment." Three of the SESAs' comments included requests for clarification of this section. One of the SESAs contended that the proposed rules are contrary to the conformity procedures set forth in sections 3304 and 3310 of the Federal Unemployment Tax Act (notice, fair hearing and judicial review) and undermine the traditional sharing of Extended Benefit costs between the States and the Federal Government. One SESA commented that § 615.14(d) was inconsistent with Region V SESA Letter No. 57–85, and objected only if the proposed rules at §§ 615.14 (c) and (d) are retroactively applied.

Two SESAs commented that the proposed rules at §§ 615.14 (c) and (d) would require States to bear the full cost of any Extended Benefits paid which are subsequently determined to have been overpaid. A SESA commented that this runs counter to other federally-mandated benefit programs (UCFE, UCX, and FSC) which provide that the Federal account is only credited when overpaid benefits are recouped. One of the SESAs contends that in withholding reimbursement or requiring repayment based on a State's misinterpretation of Federal law or regulation, § 615.14(d) does not distinguish between a misinterpretation which is a blatant disregard of Federal law requirements, errors caused by honest misunderstanding or errors caused by conflicting or incorrect Federal directives. Several SESAs recommend that this section be rewritten so as to provide for the usual State procedures for overpayment determinations and recovery of EB overpayments with the Federal share credited to the Extended Unemployment Compensation Account upon recovery. Two SESAs commented that § 615.14(c)(9) means that the States will be responsible for the entire cost of any overpayment made under the Extended Benefit program. One SESA commented that only sharable regular benefits were subject to nonreimbursement after March 31, 1981 with respect to the unpaid waiting week provision in section 204(a)(2)(B) of the EUCA. Therefore, the proposed rule erroneously indicates that extended compensation was subject to nonreimbursement after March 31, 1981 rather than after September 25, 1982.

No changes were made in response to the foregoing comments on § 615.14 for the reasons which follow. The procedural requirements and substantive rules for reimbursing States for the Federal share of sharable extended compensation and sharable regular compensation are set forth in section 204, EUCA. Section 204(a)(1) provides that—

(1) There shall be paid to each State an amount equal to one half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

The term "sharable extended compensation" is defined in section 204(b) of the Act as Extended Benefits paid to an individual in the individual's eligibility period, up to the maximum limit prescribed in EUCA section 202(b)(1). Extended compensation is itself separately defined in section 205(3) as:

* * * compensation * * * payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the State law which satisfy the requirements of this title with respect to the payment of extended compensation.

Thus, sharable extended compensation is only those Extended Benefits paid "under those provisions of the State law which satisfy the requirements of this title with respect to the payment of" Extended Benefits. Sections 201–203 of the Act prescribe these requirements. Any benefit payment made under a State law that is not in accordance with those terms and conditions is not sharable extended compensation as defined in section 204(b) of the Act, since it is not extended compensation as defined in section 205(3) of the Act. Similarly, any payment to an individual for any week the individual was, for any reason, either ineligible for, or not entitled to, the payment is not sharable extended compensation because the payment is not in accord with the terms and conditions of sections 201–203 of the Act. This also means that any overpayment of extended compensation, whether or not the State waives recovery of such overpayment, is not sharable extended compensation because the payment did not satisfy the requirements of the Act with respect to the payment of Extended Benefits.

This conclusion is supported by section 204(d) of the Act, which reguires the Secretary to estimate the monthly payment each State "is entitled to receive" under the Act. No State is entitled to receive more than payment for the benefits described above, that is, its sharable benefits as defined in the Act. Therefore, section 204 of the Act precludes a payment to any State with respect to any benefit payment that was not paid under provisions of a State law that accord with all the terms and conditions for the payment of Extended Benefits specified in sections 201–203 of the Act. Where there is no authority to make a payment under section 204, there is no right in a State to receive a payment or obligation on the Secretary to make a payment. Section 204(d) of the Act states:

(d) There shall be paid to each State either in advance or by way of reimbursement, as may be determined by the Secretary, such sum as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any sum by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made upon the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency.

Section 204(d) provides the sole basis upon which the Secretary shall determine the amount which each State is to be paid each month. No hearing procedure is provided for or required under section 204. The financial assistance provisions of section 204 are not a part of the requirements encompassed by section 3304(a)(11) of the FUTA, and therefore, the procedural requirements of sections 3304 (c) and (d) of the FUTA are inapplicable to EUCA section 204. Paragraph (d) of § 615.14, however, sets forth a procedure for informal resolution of differences that may arise, which includes opportunities for the State to present its views and arguments. In addition to the procedures set forth in § 615.14, the Department may, in the exercise of its authority to assure that Federal funds are properly spent, alternatively recoup overpayments through the audit process.

The comparison of the overpayment recovery procedures for Federal benefit overpayments with the Federal share of Extended Benefit overpayments and the application of the *Lopez Rule* to Extended Benefits are not apt. The States have entered into agreements with the Secretary to administer the Federal unemployment benefit programs (UCFE, UCX, TAA, DUA, FSC). The States act as agents for the Secretary to pay Federal unemployment benefits. On the other hand, Extended Benefits are State benefits for which the States receive 50 percent reimbursement as the Federal share. The conditions for reimbursing the States for sharable extended compensation are set forth in section 204 of the Act. Under these provisions and § 615.14, a State is entitled to be reimbursed for its cost of paying sharable benefits, which is to say benefits paid to eligible claimants in accordance with State law corresponding in all respects with the terms and conditions of sections 201–203 of the Act, except as such sharing is precluded by the provisions of sections 202(a)(6) and 204.

The sequence of audit reports and the intervals between the draft audit and the final determination for UI audit resolution in SESA Letter No. 57–85 are not consistent with § 615.14(d) of the proposed rule because they are separate and distinct processes. Section 615.14(d) provides an informal procedure for the adjustment of payments to a State under the authority in section 204(d) of the Act, whereas the SESA letter concerns audit resolutions. They are therefore different processes. For the reasons above, no change will be made to the final regulations at § 615.14. However, the final rule is clarified by adding a new paragraph (3) to the definition of "sharable compensation" in § 615.2(i) to assure consistency with § 615.14.

When the proposal to revise the EB regulations was published in the Federal Register in 1988, it was the Department's position that for a State to receive Federal sharing for extended and sharable regular compensation, the State was required to apply provisons of its law conforming to section 202(a)(3), EUCA to weeks of unemployment beginning after March 31, 1981. This was the date set forth in section 1024(b) of Pub. L. 96–499 and this date was the effective date for both extended and sharable regular compensation. However, for purposes of determining the Federal share of weeks of unemployment beginnning after March 31,1981, section 9151 of the Budget Reconciliation Act of 1987 (Pub. L. 100–203) changed the original effective date of section 202(a)(3) (March 31, 1981 as specified in section 1024(b) of Pub. L. 96–499) to weeks of unemployment beginning after October 31, 1981. This change makes extended and sharable regular compensation sharable for weeks of unemployment beginning after March 31, 1981 to October 31, 1981. If a State's legislature did not meet in 1981, section 202(a)(3), EUCA would apply to weeks of unemployment beginning after October 31, 1982. Therefore, the March 31, 1981, effective date for section 202(a)(3), EUCA in the proposed rule will be changed to weeks beginning after October 31, 1981 in the final regulation.

Pub. L. 96–499 amended the EUCA by adding paragraphs (3) to (5) to section 202(a). Section 202(a)(3) provides for active search for work and "suitable work" requirements for the payment of Extended Benefits; section 202(a)(4) relates to eligibility after certain disqualifications. The amendments to the EUCA in Pub. L. 96–499 appear under the heading "Limitation on Extended Unemployment Compensation Program". In addition, the language in 202(a)(3)(A) of the Act specifically refers only to "payment of extended compensation * * *." Therefore, Congress included old section 202(a)(5):

No payment shall be made under this Act to any State in respect to any sharable regular compensation paid to any individual for any week if, under the rules of paragraphs (3) and (4), extended compensation would not have been payable to such individual for such week.

The addition of this section 202(a)(5) meant that the active search for work and suitable work provisions in section 202(a)(3) of the Act (and section 202(a)(4)) would apply to regular compensation not as a requirement per se, but only as a condition of a State's entitlement to Federal sharing of regular compensation. With this purpose there was no need for the Congress to refer to the issue of Federal sharing for extended compensation in section 202(a)(5) of the Act, because sections 202(a)(3) and (4) are eligibility requirements for payment of Extended Benefits. Congress included section 202(a)(5), cited above, so that States which pay beyond 26 weeks of regular unemployment compensation and which did not choose to comply with sections 202(a) (3) and (4) would not be entitled to Federal sharing for regular compensation that would be otherwise sharable.

However, the fact that section 202(a)(5) did not refer to extended compensation led to misunderstanding. Therefore, in 1981, Congress amended old section 202(a)(5) by adding the words "extended compensation or." When Pub. L. 97–35 amended the EUCA to insert "extended compensation or" before "sharable regular compensation" in section 202(a)(6) (formerly (5)) of the Act, it created no new authority in regard to the requirements in sections 202(a) (3) and (4) of the Act. It simply clarified authority that already existed. Therefore, no change is made in the final regulations.

*Section 615.14(c)(8) Payments not to be reimbursed*

The proposed regulation at § 615.14(c)(8) provides that the Department shall not reimburse States for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar. A SESA commented that for the benefit of its claimants it rounds up the maximum benefit amount to the next higher dollar amount. The SESA expressed a preference for full reimbursement for the 50 percent Federal share when benefits are rounded up.

Section 204(a)(2)(D), EUCA, is specific. It limits reimbursement to the States of the Federal share of Extended Benefits paid if the States' benefit structure does not provide for rounding down to the next lower dollar amount in all circumstances. The regulations may not be written to contradict or change this provision of the Act and to authorize reimbursing States for the Federal share of Extended Benefits Paid when the State's benefit structure does not provide for rounding down to the next lower dollar amount. As in other matters of cost sharing, it is the State's choice to comply with the Federal law and obtain the benefits of such compliance; the Department is not authorized to permit the State to evade compliance and yet obtain the benefit. Therefore, § 615.14(c)(8) will be published in the final regulations without change.

*Section 615.15(c) Weekly record of Extended Benefit data*

The proposed regulation at § 615.15(c) prescribes the frequency and contents of the ETA 539 report. A SESA commented that the proposed rule identified this report as the ETA 5–39 and that in other issuances this report is identified as the ETA 539 report. The hyphen in 539 in the proposed rule was included through inadvertance. The hyphen is deleted in the final regulations.

**Other Changes**

Other technical and clarifying changes are made throughout the regulations, including correcting errors of inclusion and exclusion in the Notice of proposed Rulemaking published on October 24, 1986 (most notably in §§ 615.7(c)(3) and 615.8(e)(6)). Also as noted in the preamble of the Notice of Proposed Rulemaking, particularly as it relates to the requirements of section 202(a)(3), EUCA, these regulations differ from guidance previously furnished to the States in other issuances prior to the publication of the Notice of Proposed Rulemaking.

**Drafting Information**

This document was prepared under the direction and control of the Director of the Unemployment. Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 535–0600 (this is not a toll free number).

**Classification—Executive Order 12291**

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Some provisions may entail additional costs, for example, the active search for work and suitable work provisions, but the costs will be offset by savings in benefit expenditures by the tightened eligibility requirements. Accordingly, no regulatory impact analysis is required.

**Paperwork Reduction Act**

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 1205–0028 which applies to § 615.15.

**Regulatory Flexibility Act**

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements amendments to an individual entitlement program and has no economic impact on any small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

**List of Subjects in 20 CFR Part 615**

Employment and Training Administration, Labor, Unemployment compensation.

**Words of Issuance**

For the reasons set out in the preamble, Part 615 of Title 20 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, DC, on July 18, 1988.

**Roberts T. Jones,**

*Acting Assistant Secretary of Labor.*

## PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Sec.

Sec.



**Authority:** 26 U.S.C. 7805; 42 U.S.C. 1102; Secretary's Order No. 4–75 (40 FR 18515).

### § 615.1 Purpose.

The regulations in this Part are issued to implement the "Federal-State Extended Unemployment Compensation Act of 1970" as it has been amended, which requires, as a condition of tax offset under the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*), that a State unemployment compensation law provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals as prescribed in the Act. The benefits provided under State law, in accordance with the Act and this Part, are hereafter referred to as Extended Benefits, and the program is referred to as the Extended Benefit Program.

### § 615.2 Definitions.

For the purposes of the Act and this part—

(a) "Act" means the "Federal-State Extended Unemployment Compensation Act of 1970" (Title II of Pub. L. 91–373; 84 Stat. 695, 708), approved August 10, 1970, as amended from time to time, including the 1980 amendments in section 416 of Pub. L. 96–364 (94 Stat. 1208, 1310), approved September 26, 1980, and in sections 1022 and 1024 of Pub. L. 96–499 (94 Stat. 2599, 2656, 2658) approved December 5, 1980, and the 1981 amendments in sections 2401 through 2404 and section 2505(b) of Pub. L. 97–35 (95 Stat. 357, 874–875, 884) approved August 13, 1981, and the 1982 amendment in section 191 of Pub. L. 97–248 (96 Stat. 324, 407) approved September 3, 1982, and the 1983 amendment in section 522 of Pub. L. 98–21 (97 Stat. 65, 148) approved April 20, 1983.

(b) "Base period" means, with respect to an individual, the base period as determined under the applicable State law for the individual's applicable benefit year.

(c)(1) "Benefit year" means, with respect to an individual, the benefit year as defined in the applicable State law.

(2) "Applicable benefit year" means, with respect to an individual, the current benefit year if, at the time an initial claim for Extended Benefits is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for Extended Benefits is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed. The individual's most recent benefit year which expires in an Extended Benefit Period is the applicable benefit year if the individual cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)).

(d) "Compensation" and "unemployment compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

(e) "Regular compensation" means compensation payable to an individual under a State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

(f) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(g) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Act and this Part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to in this Part as Extended Benefits.

(h) "Eligibility period" means, with respect to an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an Extended Benefit Period, or with respect to a single benefit year, the weeks in the benefit year which begin in more than one Extended Benefit Period, and

(2) If the applicable benefit year ends within an Extended Benefit Period, any weeks thereafter which begin in such Extended Benefit Period, but an individual may not have more than one eligibility period with respect to any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to Extended Benefits.

(i) "Sharable compensation" means:

(1) Extended Benefits paid to an eligible individual under those provisions of a State law which are consistent with the Act and this Part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; and

(2) Regular compensation paid to an eligible individual with respect to weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual with respect to prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: *Provided*, that such regular compensation is paid under provisions of a State law which are consistent with the Act and this Part.

(3) Notwithstanding the preceding provisions of this paragraph, sharable compensation shall not include any regular or extended compensation with respect to which a State is not entitled to a payment under section 202(a)(6) or 204 of the Act or § 615.14 of this Part.

(j)(1) "Secretary" means the Secretary of Labor of the United States.

(2) "Department" means the United States Department of Labor, and shall include the Employment and Training

Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's authority under the Act in Secretary's Order No. 4–75 (40 FR 18515) and Secretary's Order No. 14–75.

(k)(1) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

(2) "Applicable State" means, with respect to an individual, the State with respect to which the individual is an "exhaustee" as defined in § 615.5, and in the case of a combined wage claim for regular compensation, the term means the "paying State" as defined in § 616.6(e) of this chapter.

(3) "State agency" means the State Employment Security Agency of a State which administers the State law.

(l)(1) "State law" means the unemployment compensation law of a State, approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

(2) "Applicable State law" means the law of the State which is the applicable State for an individual.

(m)(1) "Week" means, for purposes of eligibility for and payment of Extended Benefits, a week as defined in the applicable State law.

(2) "Week" means, for purposes of computation of Extended Benefit "on" and "off" and "no change" indicators and insured unemployment rates and the beginning and ending of Extended Benefit Periods, a calendar week.

(n)(1) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the Extended Benefit Program as if the individual filing a claim for Extended Benefits were filing a claim for regular compensation, except as provided in paragraph (n)(2) of this section.

(2) "Week of unemployment" in section 202(a)(3)(A) of the Act means a week of unemployment, as defined in paragraph (n)(1) of this section, for which the individual claims Extended Benefits or sharable regular benefits.

(o) For the purposes of section 202(a)(3) of the Act—

(1) "Employed," for the purposes of section 202(a)(3)(B)(ii) of the Act, and "employment," for the purposes of section 202(a)(4) of the Act, means service performed in an employer-employee relationship as defined in the State law; and that law also shall govern whether that service must be covered by it, must consist of consecutive weeks, and must consist of more weeks of work than are required under section 202(a)(3)(B) of the Act;

(2) "Individual's capabilities," for the purposes of section 202(a)(3)(C), means work which the individual has the physical and mental capacity to perform and which meets the minimum requirements of section 202(a)(3)(D);

(3) "Reasonably short period," for the purposes of section 202(a)(3)(C), means the number of weeks provided by the applicable State law;

(4) "Average weekly benefit amount," for the purposes of section 202(a)(3)(D)(i), means the weekly benefit amount (including dependents' allowances payable for a week of total unemployment and before any reduction because of earnings, pensions or other requirements) applicable to the week in which the individual failed to take an action which results in a disqualification as required by section 202(a)(3)(B) of the Act;

(5) "Gross average weekly remuneration," for the purposes of section 202(a)(3)(D)(i), means the remuneration offered for a week of work before any deductions for taxes or other purposes and, in case the offered pay may vary from week to week, it shall be determined on the basis of recent experience of workers performing work similar to the offered work for the employer who offered the work;

(6) "And," as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or";

(7) "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii), include statutory provisions and decisions based on statutory provisions, such as not requiring an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals; and such provisions shall also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(e) of the Trade Act of 1974;

(8) A "systematic and sustained effort," for the purposes of section 202(a)(3)(E), means—

(i) A high level of job search activity throughout the given week, compatible with the number of employers and employment opportunities in the labor market reasonably applicable to the individual,

(ii) A plan of search for work involving independent efforts on the part of each individual which results in contacts with persons who have the authority to hire or which follows whatever hiring procedure is required by a prospective employer in addition to any search offered by organized public and private agencies such as the State employment service or union or private placement offices or hiring halls,

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, in the same manner that such work is found by people in the community,

(iv) A search not limited to classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities, except that the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable),

(v) A search by every claimant, without exception for individuals or classes of individuals other than those in approved training, as required under section 3304(a)(8) of the Internal Revenue Code of 1986 or section 236(e) of the Trade Act of 1974,

(vi) A search suspended only when severe weather conditions or other calamity forces suspension of such activities by most members of the community, except that

(vii) The individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, if such individual normally obtains customary work through a hiring hall, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable);

(9) "Tangible evidence" of an active search for work, for the purposes of section 202(a)(3)(E), means a written record which can be verified, and which includes the actions taken, methods of applying for work, types of work sought, dates and places where work was sought, the name of the employer or person who was contacted and the outcome of the contact;

(10) "Date" of a disqualification, as used in section 202(a)(4), means the date the disqualification begins, as determined under the applicable State law;

(11) "Jury duty," for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service; and

(12) "Hospitalized for treatment of an emergency or life-threatening condition," as used in section 202(a)(3)(A)(ii), has the following meaning: "Hospitalized for treatment" means an individual was admitted to a hospital as an inpatient for medical treatment. Treatment is for an "emergency or life threatening condition" if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition, the term "medical treatment" refers to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition" or a "life-threatening condition" has been determined to exist by the hospital officials or attending physician, the status of the individual as so determined shall remain unchanged until release from the hospital.

(P)(1) "Claim filed in any State under the interstate benefit payment plan," as used in section 202(c), means any interstate claim for a week of unemployment filed pursuant to the Interstate Benefit Payment Plan, but does not include—

(i) A claim filed in Canada,

(ii) A visiting claim filed by an individual who has received permission from his/her regular reporting office to report temporarily to a local office in another State and who has been furnished intrastate claim forms on which to file claims, or

(iii) A transient claim filed by an individual who is moving from place to place searching for work, or an intrastate claim for Extended Benefits filed by an individual who does not reside in a State that is in an Extended Benefit Period,

(2) "The first 2 weeks," as used in section 202(c), means the first two weeks for which the individual files compensable claims for Extended Benefits under the Interstate Benefit Payment Plan in an agent State in which an Extended Benefit Period is not in effect during such weeks, and

(q) "Benefit structure" as used in section 204(a)(2)(D), for the requirement to round down to the "nearest lower full dollar amount" for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

(1) Amounts of regular weekly benefit payments,

(2) Amounts of additional and extended weekly benefit payments,

(3) The State maximum or minimum weekly benefit,

(4) Partial and part-total benefit payments,

(5) Amounts payable after deduction for pensions, and

(6) Amounts payable after any other deduction required by State law.

### § 615.3 Effective period of the program.

An Extended Benefit Program conforming with the Act and this Part shall be a requirement for a State law effective on and after January 1, 1972, pursuant to section 3304(a)(11) of the Internal Revenue Code of 1986, (26 U.S.C. 3304(a)(11)). Continuation of the program by a State in conformity and substantial compliance with the Act and this Part, throughout any 12-month period ending on October 31 of a year subsequent to 1972, shall be a condition of the certification of the State with respect to such 12-month period under section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)). Conformity with the Act and this Part in the payment of regular compensation and Extended Benefits to any individual shall be a continuing requirement, applicable to every week as a condition of a State's entitlement to payment for any compensation as provided in the Act and this Part.

### § 615.4 Eligibility requirements for Extended Benefits.

(a) *General.* An individual is entitled to Extended Benefits for a week of unemployment which begins in the individual's eligibility period if, with respect to such week, the individual is an exhaustee as defined in § 615.5, files a timely claim for Extended Benefits, and satisfies the pertinent requirements of the applicable State law which are consistent with the Act and this Part.

(b) *Qualifying for Extended Benefits.* The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual's applicable benefit year as required by section 202(a)(5) of the Act, (and if it does not also apply this requirement to the payment of sharable regular benefits, the State will not be entitled to a payment under § 615.14), as follows:

(1) One and one-half times the high quarter wages; or

(2) Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reduction because of earnings, pensions or other requirements) which applied to the most recent week of regular benefits; or

(3) Twenty weeks of full-time insured employment, and if this alternative is adopted, the term "full-time" shall have the meaning provided by the State law.

### § 615.5 Definition of "exhaustee."

(a)(1) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(i) Has received, prior to such week, all of the regular compensation that was payable under the applicable State law or any other State law (including regular compensation payable to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) for the applicable benefit year that includes such week; or

(ii) Has received, prior to such week, all of the regular compensation that was available under the applicable State law or any other State law (including regular compensation available to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) in the benefit year that includes such week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular compensation; or

(iii) The applicable benefit year having expired prior to such week and the individual is precluded from establishing a second (new) benefit year, or the individual established a second benefit year but is suspended indefinitely from receiving regular compensation, solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)): *Provided,* that, an individual shall not be entitled to Extended Benefits based on regular compensation in a second benefit year during which the individual is precluded from receiving regular compensation solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)); or

(iv) The applicable benefit year having expired prior to such week, the individual has insufficient wages or employment, or both, on the basis of which a new benefit year could be

established in any State that would include such week; and

(v) Has no right to unemployment compensation for such week under the Railroad Unemployment Insurance Act or such other Federal laws as are specified by the Department pursuant to this paragraph; and

(vi) Has not received and is not seeking for such week unemployment compensation under the unemployment compensation law of Canada, unless the Canadian agency finally determines that the individual is not entitled to unemployment compensation under the Canadian law for such week.

(2) An individual who becomes an exhaustee as defined above shall cease to be an exhaustee commencing with the first week that the individual becomes eligible for regular compensation under any State law or 5 U.S.C. Chapter 85, or has any right to unemployment compensation as provided in paragraph (a)(1)(v) of this section, or has received or is seeking unemployment compensation as provided in paragraph (a)(1)(vi) of this section. The individual's Extended Benefit Account shall be terminated upon the occurrence of any such week, and the individual shall have no further right to any balance in that Extended Benefit Account.

(b) *Special Rules.* For the purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, an individual shall be deemed to have received in the applicable benefit year all of the regular compensation payable according to the monetary determination, or available to the individual, as the case may be, even though—

(1) As a result of a pending appeal with respect to wages or employment or both that were not included in the original monetary determination with respect to such benefit year, the individual may subsequently be determined to be entitled to more or less regular compensation, or

(2) By reason of a provision in the State law that establishes the weeks of the year in which regular compensation may be paid to the individual on the basis of wages in seasonal employment—

(i) The individual may be entitled to regular compensation with respect to future weeks of unemployment in the next season or off season, as the case may be, but such compensation is not payable with respect to the week of unemployment for which Extended Benefits are claimed, and

(ii) The individual is otherwise an exhaustee within the meaning of this section with respect to rights to regular compensation during the season or off season in which that week of unemployment occurs, or

(3) Having established a benefit year, no regular compensation is payable during such year because wage credits were cancelled or the right to regular compensation was totally reduced as the result of the application of a disqualification.

(c) *Adjustment of week.* If it is subsequently determined as the result of a redetermination or appeal that an individual is an exhaustee as of a different week than was previously determined, the individual's rights to Extended Benefits shall be adjusted so as to accord with such redetermination or decision.

**§ 615.6 Extended Benefits; weekly amount.**

(a) *Total unemployment.* (1) The weekly amount of Extended Benefits payable to an individual for a week of total unemployment in the individual's eligibility period shall be the amount of regular compensation payable to the individual for a week of total unemployment during the applicable benefit year. If the individual had more than one weekly amount of regular compensation for total unemployment during such benefit year, the weekly amount of extended compensation for total unemployment shall be one of the following which applies as specified in the applicable State law:

(i) The average of such weekly amounts of regular compensation,

(ii) The last weekly benefit amount of regular compensation in such benefit year, or

(iii) An amount that is reasonably representative of the weekly amounts of regular compensation payable during such benefit year.

(2) If the method in paragraph (a)(1)(iii) of this section is adopted by a State, the State law shall specify how such amount is to be computed. If the method in paragraph (a)(1)(i) of this section is adopted by a State, and the amount computed is not an even dollar amount, the amount shall be raised or lowered to an even dollar amount as provided by the applicable State law for regular compensation.

(b) *Partial and part-total unemployment.* The weekly amount of Extended Benefits payable for a week of partial or part-total unemployment shall be determined under the provisions of the applicable State law which apply to regular compensation, computed on the basis of the weekly amount of Extended Benefits payable for a week of total unemployment as determined pursuant to paragraph (a) of this section.

**§ 615.7 Extended Benefits; maximum amount.**

(a) *Individual account.* An Extended Benefit Account shall be established for each individual determined to be eligible for Extended Benefits, in the sum of the maximum amount potentially payable to the individual as computed in accordance with paragraph (b) of this section.

(b) *Computation of amount in individual account.* (1) The amount established in the Extended Benefit Account of an individual, as the maximum amount potentially payable to the individual during the individual's eligibility period, shall be equal to the lesser of—

(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the individual's applicable benefit year.

(2) If the State law so provides, the amount in the individual's Extended Benefit Account shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to the individual under such law for prior weeks of unemployment in such benefit year which did not begin in an Extended Benefit Period.

(c) *Changes in accounts.* (1) If an individual is entitled to more or less Extended Benefits as a result of a redetermination or an appeal which awarded more or less regular compensation or Extended Benefits, an appropriate change shall be made in the individual's Extended Benefit Account pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(2) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to more regular compensation with respect to such week as the result of a redetermination or an appeal, the Extended Benefits paid shall be treated as if they were regular compensation up to the greater amount to which the individual has been determined to be entitled, and the State agency shall make appropriate adjustments between the regular and extended accounts. If the individual is entitled to more Extended Benefits as a result of being

entitled to more regular compensation, an amended determination shall be made of the individual's entitlement to Extended Benefits. If the greater amount of regular compensation results in an increased duration of regular compensation, the individual's status as an exhaustee shall be redetermined as of the new date of exhaustion of regular compensation.

(3) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to less regular compensation as the result of a redetermination or an appeal, and as a consequence is entitled to less Extended Benefits, any Extended Benefits paid in excess of the amount to which the individual is determined to be entitled after the redetermination or decision on appeal shall be considered an overpayment which the individual shall have to repay on the same basis and in the same manner that excess payments of regular compensation are required to be repaid under the applicable State law. If such decision reduces the duration of regular compensation payable to the individual, the claim for Extended Benefits shall be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits. Any such changes shall be made pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(d) *Reduction because of trade readjustment allowances.* Section 233(d) of the Trade Act of 1974 (and section 204(a)(2)(C) of the Act), requiring a reduction of Extended Benefits because of the receipt of trade readjustment allowances, shall be applied as follows:

(1) The reduction of Extended Benefits shall apply only to an individual who has not exhausted his/her Extended Benefits at the end of the benefit year;

(2) The amount to be deducted is the product of the weekly benefit amount for Extended Benefits multiplied by the number of weeks for which trade readjustment allowances were paid (regardless of the amount paid for any such week) up to the close of the last week that begins in the benefit year; and

(3) The amount to be deducted shall be deducted from the balance of Extended Benefits not used as of the close of the last week which begins in the benefit year.

**§ 615.8 Provisions of State law applicable to claims.**

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part, the terms and conditions of the applicable State law which apply to claims for, and the payment of, regular compensation shall apply to claims for, and the payment of, Extended Benefits. The provisions of the applicable State law which shall apply to claims for, and the payment of, Extended Benefits include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and employers, as appropriate;

(4) Determinations, redeterminations, and appeal and review;

(5) Ability to work and availability for work, except as provided otherwise in this section;

(6) Disqualifications, including disqualifying income provisions, except as provided by paragraph (c) of this section;

(7) Overpayments, and the recovery thereof;

(8) Administrative and criminal penalties;

(9) The Interstate Benefit Payment Plan;

(10) The Interstate Arrangement for Combining Employment and Wages, in accordance with Part 616 of this chapter.

(b) *Provisions not to be applicable.* The State law and regulations shall specify those of its terms and conditions which shall not be applicable to claims for, or payment of, Extended Benefits. Among such terms and conditions shall be at least those relating to—

(1) Any waiting period;

(2) Monetary or other qualifying requirements, except as provided in § 615.4(b); and

(3) Computation of weekly and total regular compensation.

(c) *Terminating disqualifications.* A disqualification in a State law, as to any individual who voluntarily left work, was suspended or discharged for misconduct, gross misconduct or the commission or conviction of a crime, or refused an offer of or a referral to work, as provided in sections 202(a) (4) and (6) of the Act—

(1) As applied to regular benefits which are not sharable, is not subject to any limitation in sections 202(a) (4) and (6);

(2) As applied to eligibility for Extended Benefits, shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds for regular benefits which are not sharable; and if the State law does not also apply this provision to the payment of what would otherwise be sharable regular benefits, the State will not be entitled to a payment under the Act and § 615.14 in regard to such regular compensation; and

(3) Will not apply in regard to eligibility for Extended Benefits in a subsequent eligibility period.

(d) *Classification and determination of job prospects.* (1) As to each individual who files an initial claim for Extended Benefits (or sharable regular compensation), the State agency shall classify the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period, as "good" or "not good," and shall promptly (not later than the end of the week in which the initial claim is filed) notify the individual in writing of such classification and of the requirements applicable to the individual under the provisions of the applicable State law corresponding to section 202(a)(3) of the Act and this Part. Such requirements shall be applicable beginning with the week following the week in which the individual is furnished such written notice.

(2) If an individual is thus classified as having good prospects, but those prospects are not realized by the close of the period the State law specifies as a reasonably short period, the individual's prospects will be automatically reclassified as "not good" or classified as "good" or "not good" depending on the individual's job prospects as of that date.

(3) Whenever, as part of a determination of an individual's eligibility for benefits, an issue arises concerning the individual's failure to apply for or accept an offer of work (sections 202(a)(3)(A)(i) and (F) of the Act and paragraphs (e) and (f) of this section), or to actively engage in seeking work (sections 202(a)(3)(A)(ii) and (E) of the Act and paragraph (g) of this section), a written appealable determination shall be made which includes a finding as to the individual's job prospects at the time the issue arose. The reasons for allowing or denying benefits in the written notice of determination shall explain how the individual's job prospects relate to the decision to allow or deny benefits.

(4) If an individual's job prospects are determined in accordance with the preceding paragraph (3) to be "good," the suitability of work will be determined under the standard State law provisions applicable to claimants for regular compensation which is not sharable; and if determined to be "not good," the suitability of work will be

determined under the definition of suitable work in the State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and this Part. Any determination or classification of an individual's job prospects is mutually exclusive, and only one suitable work definition shall be applied to a claimant as to any failure to accept or apply for work or seek work with respect to any week.

(e) *Requirement of referral to work.* (1) The State law shall provide, as required by section 202(a)(3)(F) of the Act and this Part, that the State agency shall refer every claimant for Extended Benefits to work which is "suitable work" as provided in paragraph (d)(4) of this section, beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section.

(2) To make such referrals, the State agency shall assure that each Extended Benefit claimant is registered for work and continues to be considered for referral to job openings as long as he/she continues to claim benefits.

(3) In referring claimants to available job openings, the State agency shall apply to Extended Benefit claimants the same priorities, policies, and judgments as it does to other applicants, except that it shall not restrict referrals only to work at higher skill levels, prior rates of pay, customary work, or preferences as to work or pay for individuals whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good."

(4) For referral purposes, any work which does not exceed the individual's capabilities shall be considered suitable work for an Extended Benefit claimant whose job prospects have been classified as or determined to be "not good", except as modified by this paragraph (e).

(5) For Extended Benefit claimants whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good", work shall not be suitable, and referral to a job shall not be made, if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service,

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage, or

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(6) In addition, if the State agency classifies or determines that an individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are "good," referral shall not be made to a job if such referral would not be made under the State law provisions applicable to claimants for regular benefits which are not sharable, and such referrals shall be limited to work which the individual is required to make a "systematic and sustained effort" to search for as defined in § 615.2(o)(8).

(7) For the purposes of the foregoing paragraphs of this paragraph (e), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(8) If the State law does not also apply this paragraph (e) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(f) *Refusal of work.* (1) The State law shall provide, as required by section 202(a)(3)(A)(i) of the Act and this Part, that if an individual who claims Extended Benefits fails to accept an offer of work or fails to apply for work to which he/she was referred by the State agency—

(i) If the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are determined to be "good," the State agency shall determine whether the work is suitable under the standard State law provisions which apply to claimants for regular compensation which is not sharable, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law; or

(ii) If the individual's prospects for obtaining work in his/her customary occupation are determined to be "not good," the State agency shall determine whether the work is suitable under the applicable State law provisions corresponding to sections 202(a)(3) (C) and (D) of the Act and paragraphs (e)(5) and (f)(2) of this section, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(2) For an individual whose prospects of obtaining work in his/her customary occupation within the period specified by State law are classified or determined to be "not good," the term "suitable work" shall mean any work which is within the individual's capabilities, except that work shall not be suitable if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service, or

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage,

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(3) For the purposes of the foregoing paragraphs of this paragraph (f), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(4) If the State law does not also apply this paragraph (f) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(g) *Actively seeking work.* (1) The State law shall provide, as required by sections 202(a)(3) (A)(ii) and (E) of the Act and this Part, that an individual who claims Extended Benefits shall be required to make a systematic and sustained effort (as defined in § 615.2(o)(8)) to search for work which is

"suitable work" as provided in paragraph (d)(4) of this section, throughout each week beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section, and to furnish to the State agency with each claim tangible evidence of such efforts.

(2) If the individual fails to thus search for work, or to furnish tangible evidence of such efforts, he/she shall be ineligible for Extended Benefits for the week in which the failure occurred and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(3)(i) A State law may provide that eligibility for Extended Benefits be determined under the applicable provisions of State law for regular compensation which is not sharable, without regard to the active search provisions otherwise applicable in paragraph (g)(1) of this section, for any individual who fails to engage in a systematic and sustained search for work throughout any week because such individual is—

(A) Serving on jury duty, or

(B) Hospitalized for treatment of an emergency or life-threatening condition.

(ii) The conditions in (i) (A) and (B) must be applied to individuals filing claims for Extended Benefits in the same manner as applied to individuals filing claims for regular compensation which is not sharable compensation.

(4) For the purposes of the foregoing paragraphs of this paragraph (g), State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations.

(5) If the State law does not also apply this paragraph (g) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under the Act and § 615.14 in regard to such regular compensation.

(h) *Information to claimants.* The State agency shall assure that each Extended Benefit claimant (and claimant for sharable regular compensation) is informed in writing—

(1) Of the State agency's classification of his/her prospects for finding work in his/her customary occupation within the time set out in paragraph (d) as "good" or "not good,"

(2) What kind of jobs he/she may be referred to, depending on the classification of his/her job prospects,

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to furnish tangible evidence of such search for each week for which Extended Benefits or sharable regular benefits are claimed, beginning with the week following the week in which such information is furnished in writing to the individual.

### § 615.9 Restrictions on entitlement.

(a) *Disqualifications.* If the week of unemployment for which an individual claims Extended Benefits is a week to which a disqualification for regular compensation applies, including a reduction because of the receipt of disqualifying income, or would apply but for the fact that the individual has exhausted all rights to such compensation, the individual shall be disqualified in the same degree from receipt of Extended Benefits for that week.

(b) *Additional compensation.* No individual shall be paid additional compensation and Extended Benefits with respect to the same week. If both are payable by a State with respect to the same week, the State law may provide for the payment of Extended Benefits instead of additional compensation with respect to the week. If Extended Benefits are payable to an individual by one State and additional compensation is payable to the individual for the same week by another State, the individual may elect which of the two types of compensation to claim.

(c) *Interstate claims.* An individual who files claims for Extended Benefits under the Interstate Benefit Payment Plan, in a State which is not in an Extended Benefit Period for the week(s) for which Extended Benefits are claimed, shall not be paid more than the first two weeks for which he/she files such claims.

(d) *Other restrictions.* The restrictions on entitlement specified in this section are in addition to other restrictions in the Act and this Part on eligibility for and entitlement to Extended Benefits.

### § 615.10 Special provisions for employers.

(a) *Charging contributing employers.* (1) Section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(a)(1)) does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers.

(2) A State law may, however, consistently with section 3303(a)(1), require the charging of Extended Benefits paid to an individual; and if it does, it may provide for charging all or any portion of such compensation paid.

(3) Sharable regular compensation must be charged as all other regular compensation is charged under the State law.

(b) *Payments by reimbursing employers.* If an employer is reimbursing the State unemployment fund in lieu of paying contributions pursuant to the requirements of State law conforming with sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), the State law shall require the employer to reimburse the State unemployment fund for not less than 50 percent of any sharable compensation that is attributable under the State law to service with such employer; and as to any compensation which is not sharable compensation under § 615.14, the State law shall require the employer to reimburse the State unemployment fund for 100 percent, instead of 50 percent, of any such compensation paid.

### § 615.11 Extended Benefit Periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an Extended Benefit Period shall begin in a State on the first day of the third calendar week after a week for which there is a State "on" indicator in that State.

(b) *Ending date.* Except as provided in paragraph (c) of this section, an Extended Benefit Period in a State shall end on the last day of the third week after the first week for which there is a State "off" indicator in that State.

(c) *Duration.* An Extended Benefit Period which becomes effective in any State shall continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No Extended Benefit Period may begin in any State by reason of a State "on" indicator before the 14th week after the ending of a Prior Extended Benefit Period with respect to such State.

### § 615.12 Determination of "on" and "off" indicators.

(a) *Standard State indicators.* (1) There is a State "on" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the

rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years, and

(ii) Equalled or exceeded 5.0 percent.

(2) There is a State "off" indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Was less than 120 percent of the average of such rates for the corresponding 13 week periods ending in each of the preceding two calendar years, or

(ii) Was less than 5.0 percent.

(3) The standard State indicators in this paragraph (a) shall apply to weeks beginning after September 25, 1982.

(b) *Optional State indicators.* (1)(i) A State may, in addition to the State indicators in paragraph (a) of this section, provide by its law that there shall be a State "on" indicator in the State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law equalled or exceeded 6.0 percent even though it did not meet the 120 percent factor required under paragraph (a).

(ii) A State which adopts the optional State indicator must also provide that, when it is in an Extended Benefit Period, there will not be an "off" indicator until (A) the State rate of insured unemployment is less than 6.0 percent, and (B) either its rate of insured unemployment is less than 5.0 percent or is less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

(2) The optional State indicators in this paragraph (b) shall apply to weeks beginning after September 25, 1982.

(c) *Computation of rate of insured unemployment.*—(1) *Equation.* Each week the State agency head shall calculate the rate of insured unemployment under the State law (not seasonally adjusted) for purposes of determining the State "on" and "off" and "no change" indicators. In making such calculations the State agency head shall use a fraction, the numerator of which shall be the weekly average number of weeks claimed in claims filed (not seasonally adjusted) in the State in the 13-week period ending with the week for which the determination is made, and the denominator of which shall be the average monthly employment covered by the State law for the first four of the last six calendar quarters ending before the close of the 13-week period. The quotient obtained is to be computed to four decimal places, and is not otherwise rounded, and is to be expressed as a percentage by multiplying the resultant decimal fraction by 100.

(2) *Counting weeks claimed.* To determine the average number of weeks claimed in claims filed to serve as the numerator under paragraph (c)(1), the State agency shall include claims for all weeks for regular compensation, including claims taken as agent State under the Interstate Benefit Payment Plan. It shall exclude claims—

(i) For Extended Benefits under any State law,

(ii) For additional compensation under any State law, and

(iii) Under any Federal law except joint claims which combine regular compensation and compensation payable under 5 U.S.C. Chapter 85.

(3) *Method of computing the State 120 percent factor.* The rate of insured unemployment for a current 13-week period shall be divided by the average of the rates of insured unemployment for the corresponding 13-week periods in each of the two preceding calendar years to determine whether the rate is equal to 120 percent of the average rate for the two years. The quotient obtained shall be computed to four decimal places and not otherwise rounded, and shall be expressed as a percentage by multiplying the resultant decimal fraction by 100. The average of the rates for the corresponding 13-week periods in each of the two preceding calendar years shall be one-half the sum of such rates computed to four decimal places and not otherwise rounded. To determine which are the corresponding weeks in the preceding years—

(i) The weeks shall be numbered starting with week number 1 as the first week ending in each calendar year.

(ii) The 13-week period ending with any numbered week in the current year shall correspond to the period ending with that same numbered week in each preceding year.

(iii) When that period in the current year ends with week number 53, the corresponding period in preceding years shall end with week number 52 if there is no week number 53.

(d) *Amendment of State indicator rates.* (1) Because figures used for determinations under this section may contain errors and because it is not practical to apply any correction in a State "on" or "off" or "no change" indicator retroactively either to recover amounts paid or to adjudicate claims for past periods in which claimants failed to make the required active search for work, any determination by the head of a State agency of an "on" or "off" or "no change" indicator shall not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure shall be used to redetermine the rate of insured unemployment and of the 120 percent factor for that week and all subsequent weeks, but no determination of previous "on" or "off" or "no change" indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change hereunder shall be subject to the concurrence of the Department as provided in paragraph (e) of this section.

(2) Any determination of the rate of insured unemployment and its effect on an "on" or "off" or "no change" indicator may be challenged by appeal or by other proceedings, as shall be provided by State law, but the implementation of any change in the indicator from one week to another shall not be stayed or postponed. In a hearing on any such challenge the issue may be limited to the accuracy of the determination of the rate of insured unemployment. If an error in that rate affecting the "on" or "off" or "no change" indicator is discovered in such a hearing or other proceeding, its retroactive effect shall be limited as provided in paragraph (d)(1).

(e) *Notice to Secretary.* Within 10 calendar days after the end of any week with respect to which the head of a State agency has determined that there is an "on," or "off," or "no change" indicator in the State, the head of the State agency shall notify the Department of the determination. The notice shall state clearly the State agency head's determination of the specific week for which there is a State "on" or "off" or "no change" indicator. The notice shall include also the State agency head's findings supporting the determination, with a certification that the findings are made in accordance with the requirements of this § 615.15. Determinations and findings made as provided in this section shall be accepted by the Department, but the head of the State agency shall comply with such provisions as the Department may find necessary to assure the

correctness and verification of notices given under this paragraph. A notice shall not become final for purposes of the Act and this part until such notice is accepted by the Department.

**§ 615.13 Announcement of the beginning and ending of Extended Benefit Periods.**

(a) *State indicators.* Upon receipt of the notice required by § 615.12(e) which is acceptable to the Department, the Department shall publish in the **Federal Register** a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the Extended Benefit Period, whichever is appropriate. The Department shall also notify appropriate news media, the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head's determination of such State "on" or "off" indicator and of its effect.

(b) *Publicity by State.* Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an Extended Benefit Period will begin in the State, or an "off" indicator by reason of which an Extended Benefit Period in the State will end, the head of the State agency shall promptly announce the determination through appropriate news media in the State and notify the Department in accordance with § 615.12(e). Such announcement shall include the beginning or ending date of the Extended Benefit Period, whichever is appropriate. In the case of an Extended Benefit Period that is about to begin, the announcement shall describe clearly the unemployed individuals who may be eligible for Extended Benefits during the period, and in the case of an Extended Benefit Period that is about to end, the announcement shall also describe clearly the individuals whose entitlement to Extended Benefits will be terminated.

(c) *Notices to individuals.* (1) Whenever there has been a determination that an Extended Benefit Period will begin in a State, the State agency shall provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end prior to the beginning of the Extended Benefit Period, and who exhausted all rights under the State law to regular compensation before the beginning of the Extended Benefit Period.

(2) The State agency shall provide such notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during an Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

(3) The notices required by paragraphs (c) (1) and (2) of this section shall describe those actions required of claimants for sharable regular compensation and Extended Benefits and those disqualifications which apply to such benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there has been a determination that an Extended Benefit Period will end in a State, the State agency shall provide prompt written notice to each individual who is currently filing claims for Extended Benefits of the forthcoming end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits.

**§ 615.14 Payments to States.**

(a) *Sharable compensation.* (1) The Department shall promptly upon receipt of a State's report of its expenditures for a calendar month reimburse the State in the amount of the sharable compensation the State is entitled to receive under the Act and this Part.

(2) The Department may instead advance to a State for any period not greater than one day the amount the Department estimates the State will be entitled to be paid under the Act and this Part for that period.

(3) Any payment to a State under this section shall be based upon the Department's determination of the amount the State is entitled to be paid under the Act and this Part, and such amount shall be reduced or increased, as the case may be, by any amount by which the Department finds that a previous payment was greater or less than the amount that should have been paid to the State.

(4) Any payment to a State pursuant to this paragraph (a) shall be made by a transfer from the extended unemployment compensation account in the Unemployment Trust Fund to the account of the State in such Fund, in accordance with section 204(e) of the Act.

(b) *Payments not to be made to States.* Because a State law must contain provisions fully consistent with sections 202 and 203 of the Act, the Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986—

(1) In respect of any regular or extended compensation paid to any individual for any week if the State does not apply—

(i) The provisions of the State law required by section 202(a)(3) and this Part, relating to failure to accept work offered or to apply for work or to actively engage in seeking work, as to weeks beginning after October 31, 1981, except for any State which the State legislature did not meet in 1981 as to weeks beginning after October 1, 1982 or the provisions of State law required by section 202(a)(4) and this Part, relating to terminating a disqualification, as to weeks beginning after March 31, 1981;

(ii) The provisions of the State law required by section 202(a)(5) and this Part, relating to qualifying employment, as to weeks beginning after September 25, 1982; or

(2) In respect of any regular or extended compensation paid to any individual for any week which was not payable by reason of the provision of the State law required by section 202(c) and this Part, as to weeks which begin after May 31, 1981, or May 31, 1982, as determined by the Department with regard to each State.

(c) *Payments not to be reimbursed.* The Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986, in respect of any regular or extended compensation paid under a State law—

(1) As provided in section 204(a)(1) of the Act and this Part, if the payment made was not sharable extended compensation or sharable regular compensation;

(2) As provided in section 204(a)(2)(A) of the Act, if the State is entitled to reimbursement for the payment under the provisions of any Federal law other than the Act;

(3) As provided in section 204(a)(2)(B) of the Act, if for the first week in an individual's eligibility period with respect to which Extended Benefits or sharable regular benefits are paid to the individual, that first week begins after December 5, 1980, and the State law provides for the payment (at any time or under any circumstances) of regular compensation to any individual for the first week of unemployment in any such individual's benefit year; except that—

(i) In the case of a State with respect to which the Department finds that legislation is required in order to end the payment (at any time or under any circumstances) of regular compensation for any such first week of unemployment, this paragraph (c)(3)

shall not apply to the first week in an individual's eligibility period which began before the end of the first regularly scheduled session of the State legislature that ends after January 4, 1981, as determined by the Department; and

(ii) In the case of a State law which is changed so that regular compensation is not paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall not apply to any week which begins after the effective date of such change in the State law; and

(iii) In the case of a State law which is changed so that regular compensation is paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall apply to all weeks which begin after the effective date of such change in the State law;

(4) As provided in section 204(a)(2)(C) of the Act and this Part, for any week with respect to which Extended Benefits are not payable because of the payment of trade readjustment allowances, as provided in section 233(d) of the Trade Act of 1974, and § 615.7(d). This paragraph (c)(4) applies to any week which begins after October 31, 1982, or 1983, as determined by the Department in regard to each State;

(5) As provided in section 204(a)(2)(D) of the Act and this Part, if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount, for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount. This paragraph (c)(5) shall apply to any sharable regular compensation or Extended Benefits paid to individuals whose eligibility periods begin on or after October 1, 1983, unless a later date, as determined by the Department, applies in a particular State under the grace period of section 191(b)(2) of Pub. L. 97-248;

(6) As provided in section 204(a)(3) of the Act, to the extent that such compensation is based upon employment and wages in service performed for governmental entities or instrumentalities to which section 3306(c)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(c)(7)) applies, in the proportion that wages for such service in the base period bear to the total base period wages;

(7) If the payment made was not sharable extended compensation or sharable regular compensation because the payment was not consistent with the requirements of—

(i) Section 202(a)(3) of the Act, and § 615.8 (e), (f), or (g);

(ii) Section 202(a)(4) of the Act, and § 615.8(c); or

(iii) Section 202(a)(5) of the Act, and § 615.4(b);

(8) If the payment made was not sharable extended compensation or sharable regular compensation because there was not in effect in the State an Extended Benefit Period in accord with the Act and this Part; or

(9) For any week with respect to which the claimant was either ineligible for or not entitled to the payment.

(d) *Effectuating authorization for reimbursement.* (1) If the Department believes that reimbursement should not be authorized with respect to any payments made by a State that are claimed to be sharable compensation paid by the State, because the State law does not contain provisions required by the Act and this Part, or because such law is not interpreted or applied in rules, regulations, determinations or decisions in a manner that is consistent with those requirements, the Department may at any time notify the State agency in writing of the Department's view. The State agency shall be given an opportunity to present its views and arguments if desired.

(2) The Department shall thereupon decide whether the State law fails to include the required provisions or is not interpreted and applied so as to satisfy the requirements of the Act and this Part. If the Department finds that such requirements are not met, the Department shall notify the State agency of its decision and the effect thereof on the State's entitlement to reimbursement under this section and the provisions of section 204 of the Act.

(3) Thereafter, the Department shall not authorize any payment under paragraph (a) of this section in respect of any sharable regular or extended compensation if the State law does not contain all of the provisions required by sections 202 and 203 of the Act and this Part, or if the State law, rules, regulations, determinations or decisions are not consistent with such requirements, or which would not have been payable if the State law contained the provisions required by the Act and this Part or if the State law, rules, regulations, determinations or decisions had been consistent with such requirements. Loss of reimbursement for such compensation shall begin with the date the State law was required to contain such provisions, and shall continue until such time as the Department finds that such law, rules and regulations have been revised or the interpretations followed pursuant to such determinations and decisions have been overruled and payments are made or denied so as to accord with the Federal law requirements of the Act and this Part, but no reimbursement shall be authorized with respect to any payment that did not fully accord with the Act and this Part.

(4) A State agency may request reconsideration of a decision issued pursuant to paragraph (d)(2) above, within 10 calendar days of the date of such decision, and shall be given an opportunity to present views and arguments if desired.

(5) Concurrence of the Department in any State law provision, rule, regulation, determination or decision shall not be presumed from the absence of notice issued pursuant to this section or from a certification of the State issued pursuant to section 3304(c) of the Internal Revenue Code of 1986.

(6) Upon finding that a State has made payments for which it claims reimbursement that are not consistent with the Act or this Part, such claim shall be denied; and if the State has already been paid such claim in advance or by reimbursement, it shall be required to repay the full amount to the Department. Such repayment may be made by transfer of funds from the State's account in the Unemployment Trust Fund to the Extended Unemployment Compensation Account in the Fund, or by offset against any current advances or reimbursements to which the State is otherwise entitled, or the amount repayable may be recovered for the Extended Unemployment Compensation Account by other means and from any other sources that may be available to the United States or the Department.

(e) *Compensation under Federal unemployment compensation programs.* The Department shall promptly reimburse each State which has paid sharable compensation based on service covered by the UCFE and UCX Programs (Parts 609 and 614 of this chapter, respectively) pursuant to 5 U.S.C. Chapter 85, an amount which represents the full amount of such sharable compensation paid under the State law, or may make advances to the State. Such amounts shall be paid from the Federal Employees Compensation Account established for those programs, rather than from the Extended Unemployment Compensation Account.

(f) *Combined-wage claims.* If an individual was paid benefits under the Interstate Arrangement for Combining Employment and Wages (Part 616 of this

chapter) any payment required by paragraph (a) of this section shall be made to the States which contributed the wage credits.

(g) *Interstate claims.* Where sharable compensation is paid to an individual under the provisions of the Interstate Benefit Payment Plan, any payment required by paragraph (a) of this section shall be made only to the liable State.

**§ 615.15 Records and reports.**

(a) *General.* State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this Part.

(b) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the Extended Benefit Program as the Department requires, and will make all such records available for inspection, examination and audit by such Federal officials or employees as the Secretary or the Department may designate or as may be required by law.

(c) *Weekly report of Extended Benefit data.* Each State shall file with the Department within 10 calendar days after the end of each calendar week a weekly report entitled ETA 539, Extended Benefit Data. The report shall include:

(1) The data reported on the form ETA 539 for the week ending (date). Week-ending dates shall always be the Saturday ending date of the calendar week beginning at 12:01 a.m. Sunday and ending 12:00 p.m. Saturday.

(2)(i) The number of continued weeks claimed for regular compensation in claims filed during the week ending (date). The report shall include intrastate continued weeks claimed and interstate continued weeks claimed (taken as agent State) but shall exclude interstate continued weeks claimed (received as liable State) and continued weeks claimed for regular compensation filed solely under 5 U.S.C. Chapter 85; and

(ii) The report of the number of continued weeks claimed filed in the State for regular compensation shall not be adjusted for seasonality.

(3) The average weekly number of weeks claimed in claims filed in the most recent calendar week and the immediately preceding 12 calendar weeks.

(4) The rate of insured unemployment for the current 13-week period.

(5) The average of the rates of insured unemployment in corresponding 13-week periods in the preceding two years.

(6) The current rate of insured unemployment as a percentage of the average of the rates in the corresponding 13-week periods in the preceding two years.

(7) The 12 month average monthly employment covered by the State law for the first 4 of the last 6 complete calendar quarters ending prior to the end of the last week of the current 13-week period to which the insured unemployment data relate. Such covered employment shall exclude Federal civilian and military employment covered by 5 U.S.C. Chapter 85.

(8) The date that a State Extended Benefit Period begins or ends, or a report that there is no change in the existing Extended Benefit Period status.

(d) *Methodology.* The State agency head shall submit to the Department, for approval, the method used to identify and select the weeks claimed which are used in the determination of an "on" or "off" or "no change" indicator. Any change proposed in the method of identification and selection of such weeks claimed constitutes a new plan which must be submitted to and approved by the Department prior to implementing the new plan.

(Approved by the Office of Management and Budget under Control Number 1205–0028).

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Monday
July 25, 1988

Part III

# Department of Health and Human Services

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program; Notice of Proposed Rulemaking

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 60**

**Health Education Assistance Loan Program**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend existing regulations governing the Health Education Assistant Loan (HEAL) program to clarify the litigation requirement for all lenders and holders and to clarify the applicability of various sections of the HEAL regulations to the Student Loan Marketing Association (Sallie Mae). Since it was the Department's intent that all lenders and holders be subject to this requirement, this proposed rule would amend the language of the litigation provision to assure that all lenders and holders must litigate as part of their due diligence procedures.

**DATE:** Comments on this proposed rule are invited. To be considered, comments must be received by August 24, 1988.

**ADDRESSES:** Respondents should address written comments to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

**SUPPLEMENTARY INFORMATION:** On January 8, 1987, the Department published final regulations (52 FR 730) to improve the procedures at schools and lending institutions for making, servicing, and collecting HEAL loans and to clarify the rights and responsibilities of lenders, holders, schools, borrowers, and the Federal Government. Since publication of these regulations, there has been confusion regarding the applicability of the litigation requirement contained in § 60.35(c)(3) to HEAL lenders and holders. Some lenders and holders have attempted to interpret this requirement as not applying to them because of the wording of the provision. Since it was the Department's intent that all lenders and holders be subject to this requirement, this proposed rule would amend the language of the litigation provision to assure that all lenders and holders must litigate as part of their due diligence procedures. The litigation provision would also be amended to include criteria for lenders and holders to follow in determining when litigation is required.

There has also been confusion regarding the applicability to Sallie Mae of certain regulatory provisions. This confusion has arisen as a result of Sallie Mae's unique position in the HEAL program. Under the HEAL statute, Sallie Mae is not included in the definition of an eligible HEAL lender, but is authorized to purchase, service, and sell loans insured by the Secretary under the HEAL program. This makes Sallie Mae the only organization included under sections 727–739 of the Public Health Service (PHS) Act which is not authorized to originate HEAL loans but is authorized to buy and hold them. We note that a HEAL loan, by statute, can only be sold to an eligible HEAL lender or to Sallie Mae.

Sallie Mae's exclusion from the definition of eligible lenders in the HEAL statute has caused misunderstandings regarding whether certain regulatory provisions addressed to lenders apply to Sallie Mae as well. Therefore, these proposed regulatory amendments are designed to clarify the applicability to Sallie Mae of the sections of the HEAL regulations discussed below. The Department notes that Sallie Mae has been cooperating in efforts to resolve the applicability of the existing litigation provision.

*Section 60.31 The application to be a HEAL lender*

The Department is proposing to amend paragraph (a) of this section to state that, to be a lender or a holder of HEAL loans, an organization must submit an application to the Secretary annually. This change would extend the existing requirement for an annual application to include holders, such as Sallie Mae, as well as lenders

*Section 60.32 The HEAL lender insurance contract*

The Department is proposing to amend paragraph (a) of this section to clarify that a holder of HEAL loans must be approved by and sign a contract with the Secretary. This requirement already exists for lenders, and is being extended to include holders.

The Department is also proposing to add a new paragraph (d) to this section to state that any holder that is not also a lender must enter into a contract with the Secretary annually to hold HEAL loans. Annual contracts are already required for HEAL lenders.

*Section 60.35 HEAL loan collection*

The Department is proposing to amend paragraph (c)(3) of this section to clarify that all lenders and holders are required to use litigation in the collection of HEAL loans, and to clarify when litigation must be used. The existing regulatory language, which requires litigation in accordance with the procedures a lender uses in the collection of its other loans of comparable dollar value, has caused confusion because lenders consider HEAL loans unique and have asserted that it is difficult to identify other loans that are of "comparable dollar value." This provision has also had the unintended effect of excluding one HEAL loan holder from the litigation requirement since that holder has informed the Department that it never utilizes litigation in the collection of any of its other loans.

The Department did not intend to exclude any lender or holder from this important step of the due diligence process, and is proposing to revise this section to clarify that a lender's or holder's collection practices for HEAL loans must include the use of litigation, after collection attempts have failed, except in the following situations:

(1) The lender or holder, despite the use of skip-tracing procedures, is unable to locate a defaulted borrower and is therefore unable to effect service upon the borrower;

(2) The total HEAL debt, including interest and late charges, is less than $1,500, unless the lender or holder has a policy or practice of litigating loan amounts of less than $1,500, in which case the Secretary may require the lender or holder to follow the same policy or practice regarding HEAL loans; or

(3) The lender or holder reasonably determines, and the Secretary concurs, that the probable expense to it of suing a defaulted borrower will be equal to or greater than the probable recovery of the debt during the period of a judgment. In this case, the lender or holder would be required to note the basis for its determination of the probable expense and recovery in the documentation submitted with the claim, and compare it to the normal commerical standards regarding expenses of litigation and probable recovery.

The Department is proposing to exclude loans with a value of less than $1,500 from the litigation requirement since it believes that the costs of litigating in these cases would be overly burdensome to the lender or holder compared with the expected return. The proposal to require a lender or holder to compare the probable expense of litigation with the probable recovery during the period of a judgment is designed to assure that a borrower's future earning potential is evaluated in determining whether to litigate. This provision should allow exceptions to the litigation requirement when it is unlikely that the borrower's financial situation will improve in the future, while requiring litigation in those cases where a borrower's ability to repay can be expected to improve over time.

These proposed exceptions do not mean that the Department itself will not pursue these debts after paying the claims. Indeed, the Department's policy is to pursue recovery on *all* debts which it receives through assignment. Accordingly, it is important to emphasize that payment by the Department of a claim to the lender or holder does not alter the student's obligation to repay the full amount owed under the HEAL program.

The Department is also proposing to clarify in this section that a lender or holder may satisfy its obligation to litigate by obtaining a judgment against a defaulted borrower and recording that judgment. Upon obtaining and recording such a judgment, the lender or holder must either pursue collection of the judgment or assign the judgment to the Secretary. This provision recognizes that, since the lender or holder will bear the costs of litigation if it is not able to collect from the borrower, the lender or holder may want to minimize these costs by assigning the judgment to the Department immediately. The Department believes that, even without further effort on the part of lenders or holders, the obtaining of a judgment prior to the filing of a default claim will serve to reduce defaults and will thus benefit the HEAL program. However, the Department also does not want to prohibit lenders or holders from pursuing collection of a judgment where they believe that payment will be forthcoming as a result of the legal proceedings. Therefore, this provision is designed to give a lender or holder flexibility in determining whether to continue its collection efforts after obtaining a judgment or to immediately assign the judgment to the Department.

It has been the Department's intent, in developing the litigation provision, that the use of litigation by all lenders and holders would be an effective deterrent to default and would reduce unnecessary expenditures from the Student Loan Insurance Fund (SLIF). Should the Department find, after additional experience with this provision, that the litigation requirement needs further restructuring to be most effective in preventing default or reducing SLIF expenditures, this provision may be reexamined.

*Section 60.40 Procedures for filing claims*

The Department is proposing to add a new paragraph (c)(1)(ii) to this section to clarify the time frames for filing a claim when the lender or holder has sued a defaulted borrower. This paragraph would explain that the lender or holder must file its claim with the Department within 30 days of obtaining the judgment if it does not pursue collection of the judgment. If the lender or holder does pursue collection of the judgment, and the debtor fails to make payment pursuant to the judgment, the lender or holder must file its claim within 120 days after the debtor's failure to make payment. These time frames are consistent with those applicable to the filing of default claims for which litigation is not required.

The Department is also proposing to clarify in this section that when a lender or holder files a default claim for which litigation was required, the lender or holder must assign the judgment to the Secretary as part of the default claim. Although this is already required for the Department to be able to pursue collection of a judgment after a default claim is paid, it is not specifically stated in the existing regulations.

*Section 60.41 Determination of amount of loss on claims*

The Department is proposing to add a new paragraph (d) to this section to clarify how claims will be paid when litigation has been required. Subparagraph (1) addresses the amount of the payment on a claim when the lender or holder has agreed to accept less than the unpaid balance of principal and interest on a HEAL loan through entering into a stipulated or consent judgment. In any such case, the amount payable on the default claim will be limited to the judgment amount. This will ensure that the Department will not be obligated to pay more on a default claim than it legally will be able to collect from the borrower, in cases where the lender or holder voluntarily agreed to the lesser amount.

Subparagraph (2) deals with situations where the lender or holder does not prevail in court or is awarded a judgment in an amount which is less than the unpaid balance of principal and interest on a HEAL loan, due to circumstances not within the control of the lender or holder (or a prior holder of the loan) and not due to negligence on the part of the lender or holder (or a prior holder of the loan). In these cases, the Department will pay the lender or holder the unpaid balance of principal and interest on the HEAL loan, provided that the claim would otherwise qualify for payment and that the lender or holder has filed by the due date a notice of appeal. In this instance, the lender or holder must file the claim with the Secretary within 10 days of receiving the adverse decision. This provision is designed to protect the lender or holder from having to absorb the loss of principal and interest that would otherwise be paid to it had the court ruled in the lender's or holder's favor, and that was not lost due to any fault on the part of the lender or holder.

**Regulatory Flexibility Act and Executive Order 12291**

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of lenders and holders. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders or holders.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

**Paperwork Reduction Act of 1980**

These proposed regulations do not affect the recordkeeping, reporting, or disclosure/notification requirements for the HEAL program.

**List of Subjects in 42 CFR Part 60**

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs-education, Student aid, Loan programs-health.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR Part 60 as follows:

Dated: March 25, 1988.
**Robert E. Windom,**
*Assistant Secretary for Health.*

Approved: May 20, 1988.
**Otis R. Bowen,**
*Secretary.*
(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

## PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for Part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sections 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532 (42 U.S.C. 294–1941).

2. Section 60.31 is amended by revising the heading of the section and paragraph (a) to read as follows:

### § 60.31 The application to be a HEAL lender or holder.

(a) In order to be a HEAL lender or holder, an eligible organization must submit an application to the Secretary annually.

* * * * *

3. Section 60.32 is amended by revising the heading of the section and paragraph (a) and adding a new paragraph (d) to read as follows:

### § 60.32 The HEAL lender or holder insurance contract.

(a) (1) If the Secretary approves an application to be a HEAL lender or holder, the Secretary and the lender or holder must sign an insurance contract. Under this contract, the lender or holder agrees to comply with all the laws, regulations, and other requirements applicable to its participation in the HEAL program and the Secretary agrees to insure each eligible HEAL loan held by the lender or holder against the borrower's default, death, total and permanent disability, or bankruptcy. The Secretary's insurance covers 100 percent of the lender's or holder's losses on both unpaid principal and interest, except to the extent that a borrower may have a defense on the loan other than infancy.

(2) HEAL insurance, however, is not unconditional. The Secretary issues HEAL insurance on the implied representations of the lender or holder that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by the lender and any subsequent holder of the loan with the HEAL statute and regulations, the insurance contract, and its own loan management procedures set forth in writing pursuant to § 60.31(c). The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or a lender or holder may hold. Each HEAL lender or holder has either a standard insurance contract, a comprehensive insurance contract, or an insurance contract to hold HEAL loans with the Secretary, as described below.

* * * * *

(d) *Contract to hold HEAL loans.* An eligible holder of HEAL loans which is not also a lender must enter into an annual contract with the Secretary to hold HEAL loans. This contract will specify the holder's authority and responsibilities under the HEAL statute and regulations.

4. Section 60.35 is amended by revising paragraph (c)(3) to read as follows:

### § 60.35 HEAL loan collection.

* * * * *

(c) * * *

(3) The use of litigation, after collection attempts have failed, except in the following situations:

(i) The lender or holder, despite the use of skip-tracing procedures, as required in paragraph (a)(2) of this section, is unable to locate a defaulted borrower and is therefore unable to effect service upon the borrower;

(ii) The total HEAL debt owed to the lender or holder by a defaulted borrower, including interest and late charges, is less than $1,500, unless the lender or holder has a policy or practice of litigating loan amounts of less than $1,500, in which case the Secretary may require the lender or holder to follow the same policy or practice regarding HEAL loans; or

(iii) The lender or holder determines, and the Secretary concurs, that the probable expense to it of suing a defaulted borrower will be equal to or greater than the probable recovery of the debt during the period of a judgment. In this case, the lender or holder shall note the basis for its determination of the probable expense and recovery in the documentation submitted with the claim, and compare its determination to normal commercial experience with litigation expense and probable recovery.

A lender or holder will be deemed to have satisfied its duty to litigate, if it obtains a judgment from a court of competent jurisdiction against the defaulted borrower and records that judgment with the appropriate State or local governmental entity. Upon obtaining and recording such a judgment, the lender or holder must either pursue collection of the judgment or, within 30 days of obtaining the judgment, assign the judgment to the Secretary.

* * * * *

5. Section 60.40 is amended by redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as (c)(1)(iii), and (c)(1)(iv) respectively, and adding new paragraph (c)(1)(ii) to read as follows:

### § 60.40 Procedures for filing claims.

* * * * *

(c) * * *

(1) * * *

(ii) If a lender or holder files suit against a defaulted borrower pursuant to § 60.35(c)(3), and pursues collection of the judgment obtained as a result of the suit, it may retain the account. However, if the debtor fails to make payment pursuant to the judgment, the lender or holder must file a default claim with the Secretary within 120 days after the debtor's failure to make payment. Except as provided for in § 60.41(d)(2), if a lender or holder files suit against a defaulted borrower pursuant to § 60.35(c)(3), and obtains a judgment against that borrower, but does not pursue collection of that judgment, then it must file a default claim with the Secretary within 30 days of obtaining the judgment. In either of these cases, the lender or holder must assign the judgment to the Secretary as part of the default claim.

* * * * *

6. Section 60.41 is amended by redesignating paragraphs (d) and (e) as (e) and (f) respectively and adding new paragraph (d) to read as follows:

### § 60.41 Determination of amount of loss on claims.

* * * * *

(d) *Special rules for loans which have been subject to litigation.*

(1) In the course of discharging its collection and litigation duties under these rules, a lender or holder may settle or otherwise compromise a claim against a defaulted borrower for an amount less than the unpaid balance of the principal and interest on a HEAL loan. In such instances, the amount due under the settlement agreement must be incorporated into a stipulated judgment and the amount payable to the lender or holder from the Secretary on the default claim will be limited to the unliquidated portion of that stipulated judgment. In no event, however, will the amount payable to the lender or holder from the Secretary exceed the amount of the stipulated judgment.

(2) If a lender or holder should not prevail in any litigation undertaken

pursuant to § 60.35(c)(3) or should be awarded a judgment at an amount less than the unpaid balance of principal and interest on a HEAL loan, due to circumstances not within the control of the lender or holder (or a prior holder of the loan) and not due to negligence on the part of the lender or holder (or a prior holder of the loan), the lender or holder may file a default claim with the Secretary and such claim shall be paid, provided that the claim would otherwise qualify for payment and that the lender or holder has filed by the due date a notice of appeal. In this instance, the lender or holder must file the claim with the Secretary within 10 days of receiving the adverse decision.

* * * * *

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# Reader Aids

Federal Register

Vol. 53, No. 142

Monday, July 25, 1988

## INFORMATION AND ASSISTANCE

### Federal Register

| | |
|---|---|
| Index, finding aids & general information | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections to published documents | 523-5237 |
| Document drafting information | 523-5237 |
| Machine readable documents | 523-5237 |

### Code of Federal Regulations

| | |
|---|---|
| Index, finding aids & general information | 523-5227 |
| Printing schedules | 523-3419 |

### Laws

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | 523-6641 |
| Additional information | 523-5230 |

### Presidential Documents

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the Presidents | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

### The United States Government Manual

| | |
|---|---|
| General information | 523-5230 |

### Other Services

| | |
|---|---|
| Data base and machine readable specifications | 523-3408 |
| Guide to Record Retention Requirements | 523-3187 |
| Legal staff | 523-4534 |
| Library | 523-5240 |
| Privacy Act Compilation | 523-3187 |
| Public Laws Update Service (PLUS) | 523-6641 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, JULY



## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 1 CFR

305.....26025
310.....26025

### 3 CFR

102.....25872

**Proclamations:**

5836.....24921
5837.....25300
5838.....25301
5839.....25479
5840.....26984

**Executive Orders:**

12364 (Amended by 12645).....26750
12644.....26417
12645.....26750
12646.....26986

**Administrative Orders:**

Memorandums:
May 23, 1988.....26023

Presidential Determinations:
No. 88-19 of June 7, 1988.....26419

### 4 CFR

7.....26421

### 5 CFR

Ch. XIV.....25129
551.....27147
723.....25872
930.....26562
1207.....25872
1262.....25872
2416.....25872

**Proposed Rules:**

317.....27695
890.....26781

### 7 CFR

2.....26217
68.....26751
210.....25303, 27469
220.....25303
226.....25303
246.....25310
250.....26217, 27469
272.....26219
273.....26219
301.....24923
401.....27663
735.....27147
905.....26585
910.....24928, 26033, 26752, 27664
916.....27151
917.....27151
919.....27151
945.....26752
947.....24929
961.....26423
998.....26754
1030.....26758, 27798
1126.....26226
1230.....27477
1421.....27450
1427.....26761
1823.....26587
1864.....26587
1900.....26398
1901.....27819
1902.....26587
1940.....26228
1941.....26587
1942.....26587
1943.....26587
1944.....26587
1945.....26587
1951.....26587, 27819
1955.....27819
1965.....27819
1980.....26400

**Proposed Rules:**

1d.....26076
13.....26443
180.....26781
917.....26782
920.....26444
927.....24953
929.....25495
948.....27524
967.....25495
987.....26784
989.....25496
993.....26602
999.....25496
1030.....26369
1040.....27699
1079.....26446, 27450, 27863
1106.....27174
1126.....27174
1408.....26081
1944.....27844
1955.....27844

### 8 CFR

103.....26034
210.....27335
214.....26230
271.....26034

### 9 CFR

78.....24929, 26231, 27843, 27844
92.....26425, 27846

**Proposed Rules:**

50.....26262
51.....26262
77.....26262
78.....26262
92.....26262
94.....25498

201.....26082, 27700
203.....26082, 27174
303.....27525
327.....27866
381.....27525

**10 CFR**

35.....27665
70.....26591
1015.....27798

**Proposed Rules:**

2.....25345
50.....25169, 26447, 27174, 27701

**12 CFR**

202.....26987
204.....24930
549.....25129
563.....27153, 27667, 27814
569a.....25129
569c.....25129
570.....27673
606.....25481
611.....27155
615.....27156
617.....27155
622.....27284
623.....27284
748.....26232

**Proposed Rules:**

336.....26262
535.....25500
569c.....25169

**13 CFR**

121.....26426

**14 CFR**

21.....26036
23.....26134
25.....26036, 26134
27.....26134
29.....26134
39.....25134-25140, 25315, 25317, 26038-26040, 26042-26045, 26762, 26764, 26765, 26988, 26989, 27478, 27479, 27847
71.....25141, 25143, 25321, 25322, 26046, 26232, 26426, 27106, 27481, 27660, 27848, 27849
73.....25323
75.....25143, 27106
91.....26134, 26592
97.....26233, 27675
121.....26134
125.....26134
135.....26134
234.....27676
255.....27676
1215.....26235
1251.....25872
1261.....27481

**Proposed Rules:**

Ch. I.....27051
21.....26086
25.....26086
39.....25171, 25172, 26785, 26787, 27051, 27176, 27527, 27529, 27869
71.....25174, 25175, 25345, 25347, 25406, 26087, 26275-26278, 27350, 27530, 27870
91.....25050
221.....25615, 27351
389.....25615

**15 CFR**

4b.....26235
8c.....25722
371.....26047
373.....27156
375.....25144, 27157
385.....25325
386.....25145
399.....25146, 26047, 27156

**Proposed Rules:**

370.....26131
386.....26131
801.....26603

**16 CFR**

13.....26236, 26990, 27335
305.....26237

**Proposed Rules:**

13.....25502, 27357, 27871
419.....25503

**17 CFR**

140.....27677
200.....25872
201.....26427
240.....26376, 26992

**Proposed Rules:**

1.....26447
180.....24954
229.....26718
230.....26718
239.....27872
274.....27872

**18 CFR**

2.....26434
4.....26992
37.....27483
161.....25240
250.....25240
292.....26992
375.....26992
380.....26436

**Proposed Rules:**

154.....27704
284.....25628, 25629
385.....25628, 25629

**19 CFR**

12.....26238

**Proposed Rules:**

122.....26604
175.....26605

**20 CFR**

404.....25481
416.....25150, 25481
615.....27926

**21 CFR**

5.....26048
74.....26766, 26768
81.....25127, 26766, 26768
82.....26766, 26768
172.....26559
193.....26131
430.....26712
436.....26712
442.....26712
510.....25151
520.....27344, 27850
522.....26559, 27005, 27850
524.....26242, 27850
526.....27850
529.....27850
540.....27850
558.....25152, 27006, 27345, 27852
561.....26131
862.....25050

**Proposed Rules:**

355.....26559
606.....27265
868.....27878

**22 CFR**

711.....25872
1510.....25872

**23 CFR**

160.....25484
645.....24932
658.....25484

**24 CFR**

290.....27158
511.....25462
888.....25326
990.....25152

**Proposed Rules:**

125.....25576
200.....25434
203.....25434
234.....25434
964.....25276
965.....25348

**25 CFR**

179.....25952

**26 CFR**

1.....26050, 26243, 27006, 27035, 27489, 27595,
602.....27035, 27489, 27595

**Proposed Rules:**

1.....26279, 26448, 27053, 27531, 27532, 27595
602.....27053, 27595

**27 CFR**

4.....27045
19.....25155
20.....25155
252.....25155

**Proposed Rules:**

4.....26448
12.....26448
55.....27452
71.....26088

**28 CFR**

2.....24933
16.....27161
51.....25327

**29 CFR**

100.....25872
1910.....26437, 27345, 27679
1915.....27679
1917.....27679
1918.....27679
1926.....27345, 27679
1928.....27679
2610.....25591, 25722
2644.....24933
2676.....27679

**Proposed Rules:**

502.....27304
1625.....26788, 26789, 27360
1910.....24956, 26790
1915.....26790
1918.....26790
1953.....26797
2584.....27704

**30 CFR**

7.....25569
18.....25569
250.....26066, 27853
251.....25242
280.....25242
762.....26582
842.....26728
843.....26728
901.....25486
905.....26570
934.....26246
935.....26592

**Proposed Rules:**

7.....25569
25.....25569
75.....26449
202.....26942
203.....26942
206.....26942
212.....26942
250.....25349, 27853
736.....27361
740.....27361
750.....27361
915.....26606, 27362
917.....24957
934.....26280
942.....26566

**31 CFR**

25.....25422

**32 CFR**

199.....25327
203.....27511
266.....26246
273.....27162
292.....25157
706.....25487, 25488
1636.....25328

**33 CFR**

1.....25118
3.....24934, 25118
4.....24936
19.....25118
26.....25118
54.....25118
67.....25118
81.....25118
89.....25118
100.....24936, 24937, 26246, 26247, 26770
114.....25118
116.....25118
117.....25118, 26248, 26249, 27680
130.....25118
131.....25118
132.....25118
135.....25118
136.....25118
137.....25118
140.....25118
144.....25118
148.....25118

149.....25118
150.....25118
153.....25118
154.....25118
156.....25118
157.....25118
159.....25118
160.....25118
164.....25118
165.....26771, 27681
174.....25118
179.....25118
181.....25118
183.....25118
209.....27511
245.....27511
334.....27681

**Proposed Rules:**

66.....27708
100.....26281, 26449
117.....24958
164.....27708
165.....27711
166.....24959, 26282, 27711

**34 CFR**

222.....26772
367.....26976
562.....24937
600.....25489
602.....25088
603.....25088
700.....27108
779.....27114

**Proposed Rules:**

200.....26214
316.....26190
318.....26190

**36 CFR**

9.....25160
251.....26594, 27682
1208.....25872

**37 CFR**

**Proposed Rules:**

1.....27177

**38 CFR**

1.....25489
4.....24938
15.....25872
36.....27047, 27048

**Proposed Rules:**

21.....27054, 27533

**39 CFR**

111.....26249, 27853

**40 CFR**

52.....25329, 25330, 26250, 26256, 27514, 27858
60.....27685
61.....27685
81.....27346
85.....25331
180.....26438-26440, 27347
185.....26131
186.....26131
260.....27290
261.....27162, 27290
262.....27164
264.....27164
265.....27164
268.....27164
270.....27164
600.....25331
761.....27322

**Proposed Rules:**

50.....27362
51.....27362
52.....25176, 25177, 25509, 26607, 26609, 27363, 27366, 27711, 27716
58.....27362
65.....24938
81.....25178, 27368
117.....27268
131.....26968, 27882
141.....25108
142.....25108
145.....27534
156.....25970, 27717
170.....25970, 27717
180.....26450, 26452, 26453, 27370
261.....26283, 26455
300.....27371
302.....27268
355.....27268
440.....24939
761.....25049
796.....25049

**Proposed Rules:**

52.....24964
180.....25049
300.....26090

**41 CFR**

101-6.....26773, 27518
101-26.....26595
101-41.....25162, 26779

**Proposed Rules:**

201-1.....26610
201-30.....26610
201-32.....26610

**42 CFR**

51d.....27859
51f.....27859
405.....26067

**Proposed Rules:**

50.....25631
60.....27950
411.....26712
412.....25240, 27535
417.....27718
1003.....25240
3480.....26942

**43 CFR**

4.....27686

**44 CFR**

16.....25872
59.....25332
60.....25332
62.....26559
64.....25591, 26799

**Proposed Rules:**

300.....26746

**45 CFR**

31.....25592
85.....25595, 26559
303.....27518
305.....27518
2001.....27519

**Proposed Rules:**

613.....26611

**46 CFR**

35.....27686
78.....27686
97.....27686
108.....27686
167.....27686
196.....27686
502.....27859

**Proposed Rules:**

4.....25926
5.....25926
16.....25926
571.....27178
581.....26091

**47 CFR**

0.....27861
1.....26596
22.....26073, 27165
43.....24940
63.....24940
65.....26074
73.....24940, 24942, 25167, 25168, 25332-25337, 25490, 26074, 26075, 26597, 26598, 27049, 27165-27167
76.....27167
90.....25607

**Proposed Rules:**

15.....26092
22.....25633, 26288, 27883
36.....24964
69.....27372
73.....24966, 24967, 25178, 25350-25352, 26612-26615, 26798, 27179-27183
80.....27883

**48 CFR**

Ch. 6.....26158

**Proposed Rules:**

Ch. 2, App. I.....27055
5.....27460
6.....27460
9.....27460
13.....27460
14.....27460
15.....25572, 27460
17.....27460
19.....27460
22.....27460
23.....27460
25.....27460
30.....27460
31.....27460
35.....27460
42.....25102, 27460
45.....25084, 27460
47.....27460
52.....25102, 27460
53.....25085, 27460
242.....27055
542.....26092
701.....25634
715.....25634
717.....25634
752.....25634
1452.....26560
1480.....26560
1801.....26932
1804.....26932
1805.....26932
1807.....26932
1808.....26932
1815.....26932
1816.....26932
1817.....26932
1822.....26932
1824.....26932
1828.....26932
1832.....26932
1839.....26932
1842.....26932
1845.....26932
1852.....26932
1870.....26932

**49 CFR**

191.....24942
192.....24942, 25892, 26560
193.....24942, 25892, 26560
195.....24942, 25892
383.....27628
390.....27688
391.....27688
392.....27688
393.....27688
394.....27688
395.....27688
396.....27688
397.....27688
501.....26257
510.....26257
511.....26257
571.....25337, 27106

**Proposed Rules:**

24.....27598
192.....24968, 26615
193.....26615
195.....24968, 26615
382.....25353
552.....27056
571.....25354
653.....25910, 26289
1105.....24971
1152.....24971
1201.....27374

**50 CFR**

17.....25608, 26369, 27130-27137, 27689
20.....24951
280.....27693
285.....27798
620.....27798
630.....27693, 27798
638.....27798
640.....27798
641.....27798
642.....25611, 27693, 27798
645.....27798
646.....27798
649.....27798
650.....27798
651.....27798
652.....27798
653.....27798
654.....27798
655.....27798
657.....27798
658.....27798
661.....26599, 27798
662.....27798
663.....27798
669.....27798
672.....25491, 26441, 27798
674.....25492, 26779, 27798
675.....25493, 26599, 27798
676.....27798
680.....27519, 27798
681.....27798
683.....27798

685.....27798

**Proposed Rules:**

17.....25179–25185, 25511, 26616, 27724, 27884
20.....26197, 27728
23.....26799, 26802
32.....26461
611.....27887
625.....27536
651.....26617
662.....26617

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**Last List July 20, 1988**

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| 4 | 14.00 | Jan. 1, 1988 |
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| 46-51 | 16.00 | Jan. 1, 1988 |
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| 53-209 | 18.00 | Jan. 1, 1988 |
| 210-299 | 22.00 | Jan. 1, 1988 |
| 300-399 | 11.00 | Jan. 1, 1988 |
| 400-699 | 17.00 | Jan. 1, 1988 |
| 700-899 | 22.00 | Jan. 1, 1988 |
| 900-999 | 26.00 | Jan. 1, 1988 |
| 1000-1059 | 15.00 | Jan. 1, 1988 |
| 1060-1119 | 12.00 | Jan. 1, 1988 |
| 1120-1199 | 11.00 | Jan. 1, 1988 |
| 1200-1499 | 17.00 | Jan. 1, 1988 |
| 1500-1899 | 9.50 | Jan. 1, 1988 |
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| **9 Parts:** | | |
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| 200-End | 17.00 | Jan. 1, 1988 |
| **10 Parts:** | | |
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| 51-199 | 14.00 | Jan. 1, 1988 |
| 200-399 | 13.00 | [2] Jan. 1, 1987 |
| 400-499 | 13.00 | Jan. 1, 1988 |
| 500-End | 24.00 | Jan. 1, 1988 |
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| 200-219 | 10.00 | Jan. 1, 1988 |
| 220-299 | 14.00 | Jan. 1, 1988 |
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| 500-599 | 18.00 | Jan. 1, 1988 |
| 600-End | 12.00 | Jan. 1, 1988 |
| 13 | 20.00 | Jan. 1, 1988 |
| **14 Parts:** | | |
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| 140-199 | 9.50 | Jan. 1, 1988 |
| 200-1199 | 20.00 | Jan. 1, 1988 |
| 1200-End | 12.00 | Jan. 1, 1988 |
| **15 Parts:** | | |
| 0-299 | 10.00 | Jan. 1, 1988 |
| 300-399 | 20.00 | Jan. 1, 1988 |
| 400-End | 14.00 | Jan. 1, 1988 |
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| 150-999 | 13.00 | Jan. 1, 1988 |
| 1000-End | 19.00 | Jan. 1, 1988 |
| **17 Parts:** | | |
| 1-199 | 14.00 | Apr. 1, 1988 |
| 200-239 | 14.00 | Apr. 1, 1987 |
| 240-End | 19.00 | Apr. 1, 1987 |
| **18 Parts:** | | |
| *1-149 | 15.00 | Apr. 1, 1988 |
| *150-279 | 12.00 | Apr. 1, 1988 |
| 280-399 | 13.00 | Apr. 1, 1987 |
| *400-End | 9.00 | Apr. 1, 1988 |
| **19 Parts:** | | |
| 1-199 | 27.00 | Apr. 1, 1987 |
| 200-End | 5.50 | Apr. 1, 1988 |
| **20 Parts:** | | |
| 1-399 | 12.00 | Apr. 1, 1988 |
| 400-499 | 23.00 | Apr. 1, 1988 |
| 500-End | 25.00 | Apr. 1, 1988 |
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| 170-199 | 16.00 | Apr. 1, 1988 |
| 200-299 | 5.00 | Apr. 1, 1988 |
| 300-499 | 26.00 | Apr. 1, 1988 |
| *500-599 | 20.00 | Apr. 1, 1988 |
| 600-799 | 7.50 | Apr. 1, 1988 |
| 800-1299 | 16.00 | Apr. 1, 1988 |
| 1300-End | 6.00 | Apr. 1, 1988 |
| **22 Parts:** | | |
| 1-299 | 19.00 | Apr. 1, 1987 |
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| 23 | 16.00 | Apr. 1, 1988 |
| **24 Parts:** | | |
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| §§ 1.170-1.300 | 17.00 | Apr. 1, 1988 |
| §§ 1.301-1.400 | 14.00 | Apr. 1, 1988 |
| §§ 1.401-1.500 | 24.00 | Apr. 1, 1988 |
| §§ 1.501-1.640 | 15.00 | Apr. 1, 1987 |
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| §§ 1.851-1.1000 | 28.00 | Apr. 1, 1988 |
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| §§ 1.1401-End | 21.00 | Apr. 1, 1988 |
| *2-29 | 19.00 | Apr. 1, 1988 |
| 30-39 | 14.00 | Apr. 1, 1988 |
| 40-49 | 13.00 | Apr. 1, 1988 |
| 50-299 | 15.00 | Apr. 1, 1988 |
| 300-499 | 15.00 | Apr. 1, 1988 |
| 500-599 | 8.00 | [3] Apr. 1, 1980 |
| 600-End | 6.00 | Apr. 1, 1988 |
| **27 Parts:** | | |
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| 200-End | 13.00 | Apr. 1, 1987 |
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| Title | Price | Revision Date |
|---|---|---|
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| **30 Parts:** | | |
| 0–199 | 20.00 | July 1, 1987 |
| 200–699 | 8.50 | July 1, 1987 |
| 700–End | 18.00 | July 1, 1987 |
| **31 Parts:** | | |
| 0–199 | 12.00 | July 1, 1987 |
| 200–End | 16.00 | July 1, 1987 |
| **32 Parts:** | | |
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| 190–399 | 23.00 | July 1, 1987 |
| 400–629 | 21.00 | July 1, 1987 |
| 630–699 | 13.00 | [5] July 1, 1986 |
| 700–799 | 15.00 | July 1, 1987 |
| 800–End | 16.00 | July 1, 1987 |
| **33 Parts:** | | |
| 1–199 | 27.00 | July 1, 1987 |
| 200–End | 19.00 | July 1, 1987 |
| **34 Parts:** | | |
| 1–299 | 20.00 | July 1, 1987 |
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| 400–End | 23.00 | July 1, 1987 |
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[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

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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] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

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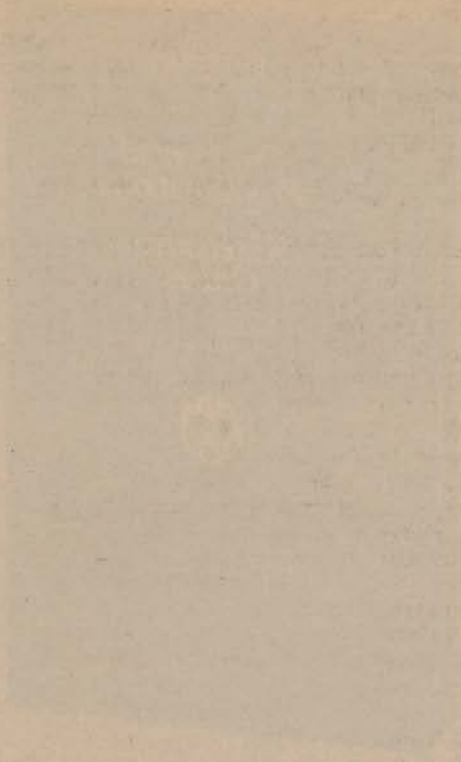

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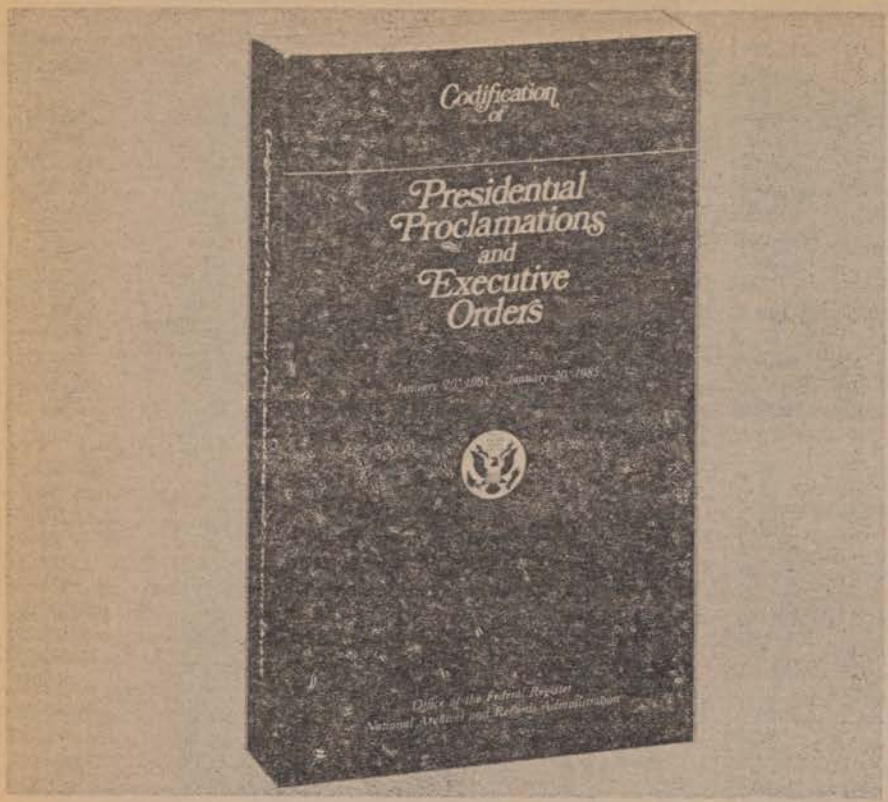


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