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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 316, 317, 351, 831, 842, 870, and 890

Providing Benefits for Certain Temporary Appointees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing health benefits, life insurance, and retirement to extend eligibility for coverage to employees serving under temporary appointments, when such appointments are specifically intended to lead to conversion to permanent appointments and are needed to fulfill an eligibility requirement for the conversion. The revised regulations also permit such employees to be treated as nontemporary for reduction in force purposes.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606-0960.

SUPPLEMENTARY INFORMATION: OPM issued regulations proposing these changes on May 25, 1990 (55 FR 21552). Comments on the proposed regulations were received from four Federal agencies, all of which supported the proposed changes.

Three of the agencies suggested expanding the benefits available to all temporary appointees. All three recommended that health benefits be offered during the first year of a temporary appointment, and one recommended that the Government contribute toward the premiums on the same basis as for permanent employees. One agency also recommended making life insurance and retirement benefits available to temporary appointees, although without the Government contribution. We have not adopted these suggestions. Because such changes exceed the scope of those included in the proposed regulations, it would be inappropriate to adopt them in final regulations. Moreover, because of the greater costs involved, proposals to provide benefits to all temporary employees must be considered in light of the need to hold down personnel costs in a time of budget austerity.

The final regulations include no substantive changes from the proposed regulations, but do include some technical and editorial changes. References to part 305, which has been superseded by pay reform legislation, have been dropped. The definition of provisional appointments, which was contained in § 316.401 of the proposed regulations, has been moved to a new § 316.403 for greater clarity. The provisions relating to health benefits contained in § 890.102 have been reworded to reflect previously published changes; § 890.301 has been revised to show that temporary employees have an opportunity to enroll or change enrollment if they are converted to provisional appointments; and §§ 890.501 and 890.502 are revised to clarify that provisional appointees are not treated as temporary employees, who must pay full premiums, with no Government contribution, in accordance with the provisions of 5 U.S.C. 8906a.

With these changes, we are adopting the proposed regulations as final.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations affect only the way in which Federal agencies appoint and compensate certain employees.

List of Subjects

5 CFR Parts 213 and 317

Government employees.

5 CFR Part 316

Government employees, Veterans.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Parts 831 and 842

Administrative practice and procedure, Claims, Firefighters, Government employees, Handicapped, Law enforcement officers, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement, Workers' compensation.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement, Claims.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 213, 316, 317, 351, 831, 842, 870, and 890 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Public Law 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h) and 8457.

2. In § 213.3302, paragraph (b) is revised to read as follows:

§ 213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

* * * * *

(b) Individual appointments under this authority may be made for 120 days, with one additional extension of 120 days. These positions must be of a confidential or policy-determining character and are subject to instructions issued by OPM. Appointments made under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

PART 316—TEMPORARY AND TERM EMPLOYMENT

3. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

4. § 316.401 is revised to read as follows:

§ 316.401 Purpose and duration.

(a) *Purpose.* OPM may authorize an agency to make a temporary limited appointment to meet an administrative need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period, or for provisional appointment leading to permanent appointment.

(1) Agencies may make temporary appointments as provided in § 316.402 below.

(2) Agencies may designate particular appointments as provisional appointments as provided in § 316.403 below.

(b) *Duration.* An agency may make a temporary appointment for a definite period of 1 year or less. In some cases, a time limit is specified in the applicable regulation or OPM authorization.

5. A new § 316.403 is added to read as follows:

§ 316.403 Designation of Provisional Appointments.

(a) *Conditions for designation.* An agency may designate a temporary appointment as a provisional appointment only when all of the following conditions are met:

(1) The appointment is made to fill a continuing position by a provisional appointment leading to permanent appointment when the position must be filled more quickly than would be possible under the procedures required for nontemporary appointment or when such a provisional appointment is a requirement of the applicable authority;

(2) The agency must have current budgetary and appointing authority for the nontemporary appointment (assuming satisfactory completion of the required procedures); and

(3) The agency must have a specific intention to convert the appointee to a nontemporary appointment under appropriate authority before the expiration of the temporary appointment, must state this intention in any written offer of employment and document this intention as part of the permanent record of the initial appointment in accordance with instructions issued by OPM in the Federal Personnel Manual.

(b) *Authority for provisional appointments.* Provisional appointments must be made under an authority established by law, Executive order, or regulation or granted by OPM. Appointments which may be treated as provisional appointments under this paragraph may be made under any appropriate authority, including, but not limited to:

(1) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(2), when the appointments are intended to afford eligibility for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

(2) Temporary appointments of nurses in the Department of Veterans Affairs, when the appointments are made under the provisions of section 4114 of title 38, United States Code, with the intention of converting the appointees to continuing appointments as soon as the appointees obtain required State certification or registration and/or the agency completes necessary verification of references;

(3) Identical Temporary Schedule C and New Temporary Schedule C appointments made under § 213.3302 of this chapter, when the appointees are to be converted to nontemporary Schedule C appointments upon OPM approval and completion of necessary clearances;

(4) Senior Executive Service limited term and limited emergency appointments made under § 317.601 of this chapter, when the appointees are to be converted to nontemporary appointments in the Senior Executive Service or to nontemporary Presidential appointments, upon further action, such as OPM approval, White House clearance, and/or confirmation by the Senate; and

(5) Temporary appointments of severely physically handicapped individuals, when such appointments are required to demonstrate qualifications for nontemporary appointment under § 213.3102(u) of this chapter, and when the appointees will be converted to such nontemporary appointment upon successful performance in the trial position.

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

6. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

7. In § 317.602, paragraph (a) is revised to read as follows:

§ 317.602 Conditions of appointment.

(a) A limited appointment may be made only to a general position. Appointments authorized under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 351—REDUCTION IN FORCE

8. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

9. In § 351.501, paragraph (b)(3) is revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment, as well as appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter.

PART 831—RETIREMENT

10. The authority citation for part 831 is revised to read as follows, and the authority citations following individual sections and subparts are removed:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99–251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100–203.

11. In § 831.201, paragraph (b) is amended by removing the period at the end of paragraph (b)(4) and adding a semicolon in its place, and by adding a new paragraph (b)(5) to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(5) The appointment meets the definition of a provisional appointment

contained in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

12. The authority citation for subpart A of part 842 continues to read as follows:

Authority: 5 U.S.C. 8461; § 842.105 also issued under 5 U.S.C. 8402(c)(1); § 842.106 also issued under 5 U.S.C. 8402(c)(1).

13. In § 842.105, paragraph (a)(1) is revised to read as follows:

§ 842.105 Regulatory exclusions.

(a) * * *

(1) Employees serving under appointments limited to 1 year or less, unless such appointments meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter; and

* * * * *

PART 870—BASIC LIFE INSURANCE

14. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

15. In § 870.202, paragraph (a)(1) is revised to read as follows:

§ 870.202 Exclusions.

(a) * * *

(1) An employee serving under an appointment limited to 1 year or less, except: (i) An employee so appointed for full-time employment or part-time employment with a regular tour of duty without break in service or after a separation of 3 days or less, following service in which he/she was insured, (ii) an acting postmaster, (iii) a Presidential appointee appointed to fill an, unexpired term; and (iv) an appointee whose appointment meets the definition of provisional appointment set out in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

16. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Public Law 100–654; § 890.803 also issued under sec. 303 of Public Law 99–569, 100 Stat. 3190, sec. 188 of Public Law 100–204, 101 Stat. 1331, and sec. 204 of Public Law 100–238, 101 Stat. 1744; subparts J and K also issued under titles I and II, respectively, of Public Law 100–654.

17. In § 890.102, paragraph (c)(1) is revised to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(1) An employee (other than an acting postmaster, a Presidential appointee appointed to fill an unexpired term, and an appointee whose appointment meets the definition of provisional appointment set out in §§ 316.401 and 316.403 of this chapter) who is serving under an appointment limited to 1 year or less and who has not completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

* * * * *

18. In § 890.301, paragraph (bb) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(bb) *Change from a temporary appointment under 5 U.S.C. 8906a to another type of covered appointment.* A temporary employee who is eligible to enroll according to provisions of 5 U.S.C. 8906a, which require payment of the full premium with no Government contribution, and who subsequently changes to an appointment that entitles the employee to receive the Government contribution toward the premium, may enroll or change to any other plan or option within 31 days after changing to the appointment that allows the Government contribution.

19. In § 890.501, paragraph (e) is revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) The employing office shall make a contribution for an employee for each pay period during which the enrollment continued except that certain temporary employees eligible under 5 U.S.C. 8906a must pay the full subscription charge including the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

20. In § 890.502, paragraph (b)(4) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(4) Employees who are eligible to enroll under 5 U.S.C. 8906a are responsible for payment of the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

[FR Doc. 91–5695 Filed 3–8–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV–91–242FR]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 911 and 915 for the 1991–92 fiscal year (April 1–March 31) for each marketing order. These expenditures and assessment rates are needed by the administrative committees established under these orders to pay their expenses and collect assessments from handlers to pay those expenses. The action will enable these committees to perform their duties and these orders to operate.

EFFECTIVE DATE: April 1, 1991 through March 31, 1992 for each order.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order Nos. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR part 915) regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 18 handlers of Florida limes and 42 handlers of Florida avocados subject to regulation under these marketing orders, and about 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (FLAC) met January 9, 1991, and unanimously recommended a 1991–92 budget with expenditures of $269,000 and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes shipped under M.O. 911. Budgeted expenditures for 1990–91 were $244,000, while the assessment rate was $0.18. FLAC assessment income for 1991–92 is estimated at $252,000, based on shipments of 1,400,000 bushels of assessable limes, and interest income estimated at $11,000. The FLAC plans to draw funds from its reserve of about $266,222 to cover the projected $6,000 deficit for 1991–92.

Major expenditure items in the FLAC budget for the 1991–92 fiscal year, compared with those budgeted for 1990–91 (in parentheses), are $157,000 ($112,000) for program administration, $102,000 ($101,500) for production research, and $10,000 ($30,000) for market development and public relations. The administration category includes expenditures for employee salaries and benefits, office operations, a financial audit, marketing order enforcement, FLAC travel, a contengency reserve, and various miscellaneous expenses. A $25,000 expenditure item in the FLAC's budget has been shifted from a proposed fund to pay inspection costs to the contingency fund. FLAC management recommended this action after being informed that expenditures to pay inspection costs are not authorized under the order, and it anticipates that the funds will be utilized for other authorized activities or placed in its reserve. Research for limes includes $25,000 for a water table study by Ghioto, Inc., $70,500 for a post-bloom drop study and $6,500 for a grove management study by the University of Florida. Market development includes a buyer tour ($2,000) and harvest festival tours ($3,000) by the Florida Department of Agriculture, and $5,000 for projects to be developed later. The research and market development projects will be submitted later, once they are recommended by the FLAC.

The Avocado Administrative Committee (AAC) met January 9, 1991, and unanimously recommended a 1991–92 budget with expenditures of $187,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under M.O. 915. Budgeted expenditures for 1990–91 were $150,500, while the assessment rate was $0.16. AAC assessment income for 1991–92 is estimated at $156,000, based on shipments of 975,000 bushels of assessable avocados, and interest income estimated at $7,000. The AAC plans to draw funds from its reserve of about $152,624 to cover the projected $24,000 deficit for 1991–92.

Major expenditure items in the AAC budget for the 1991–92 fiscal year, compared with those budgeted in 1990–91 (in parentheses), are $143,000 ($93,000) for program administration, $34,000 ($57,500) for production research, and $10,000 ($30,000) for market development and public relations. The administration category includes expenditures for employee salaries and benefits, office operations, a financial audit, marketing order enforcement, AAC travel, a contingency reserve, and various miscellaneous expenses. An $18,000 expenditure item in the AAC's budget has been shifted from a proposed fund to pay inspection costs to the contingency fund. AAC management recommended this action after being informed that expenditures to pay inspection costs are not authorized under the order, and it anticipates that the funds will be utilized for other authorized activities or placed in its reserve. Research for avocados includes $25,000 for a water table study by Ghioto, Inc., $2,500 for a tree topping and thining study and $6,500 for a grove management study by the University of Florida. Market development includes a buyer tour ($2,000) and harvest festival tours ($3,000) by the Florida Department of Agriculture, and $5,000 for projects to be developed later. The research and market development projects will be submitted later once they are recommended by the AAC.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of these orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds new §§ 911.230 and 915.230 under these orders. A proposed rule concerning this action was published in the **Federal Register** (56 FR 5367, February 11, 1991). Comments on the proposed rule were invited from interested persons until February 21, 1991. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final

rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year for these orders begins on April 1, 1991, and the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis; and (2) handlers are aware of this action, which was recommended by the committees at public meetings.

List of Subjects in 7 CFR Parts 911 and 915

Avocados, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for 7 CFR parts 911 and 915 continues to read as follows:

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

2. New §§ 911.230 and 915.230 are added to read as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 911—LIMES GROWN IN FLORIDA

§ 911.230 Expenses and assessment rate.

Expenses of $269,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.230 Expenses and assessment rate.

Expenses of $187,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: March 6, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5659 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1864, 1903, 1910, 1944, 1945, 1951, 1955, 1956, 1965, and 1980

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its debt settlement regulations. This action is taken to include debt settlement of all Housing Loans and to limit adjustment offers to 5 years except for Rural Housing (RH) loans. This action is intended to reduce the volume of settlements submitted to the Administrator and further implement the intent of the Food Security Act of 1985 and the Agricultural Credit Act of 1987.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, FmHA, room 5437, South Building, Washington, DC 20250, Telephone (202) 475–4008.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse action on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of the Revisions and the Comments Received

FmHA published a proposed rule in the **Federal Register** on July 13, 1989 (54 FR 29569) inviting comments until September 11, 1989. Seven comments on the proposed rule were received.

Section 1956.57(d)—One respondent commented that the prefatory comments to 54 FR 29570, "All security must be disposed of prior to debt settlement" was misleading since 54 FR 24571, §1956.57(d) explains that security property may be retained by the debtor in a compromise or adjustment arrangement. The Agency agrees that the prefatory comments were misleading. Section 1956.75(d) provides that security may be retained by the debtor in accordance with § 1956.66.

Section 1956.57(l)—One respondent recommended that subsection 1956.57(1), "Settlement where debtor owes more than one type of FmHA loan", be clarified to ensure a clear understanding by all parties that this does not apply to situations where a borrower has both an insured and guaranteed loan. The Agency does not feel it is necessary to change its present regulations since a guaranteed loan is a loan made by another lender and not an FmHA loan to be considered for debt settlement.

Section 1956.57(1)—One respondent recommended that § 1956.56(1), which states that a borrower cannot debt settle one loan if the borrower will remain indebted on another FmHA loan and continue as an active borrower, be changed. We do not feel a change is needed since subpart S of part 1951 of this chapter provides the authority to restructure debts including the authority to write off all or a part of the farmer program debts whereby the debtor can cash flow and continue in farming.

Section 1956.66(a)(1)—One respondent commented that 54 FR 29570, the preamble comment to this section says, "If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount, these funds will not be included as part of a compromise or adjustment offer" is confusing and should be clarified. The Agency agrees and revised § 1966.66(a)(1) to read "Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled."

Section 1956.70(b)(3) (ii) and (iii)—One respondent recommended a change in §§1956.70(b)(3)(ii) and 1956.70(b)(3)(iii) which requires on OGC opinion that a Confirmation Order or Completion Order in bankruptcy cases has discharged the obligor of liability to that part of the debt because it would overwork OGC. The Agency does not agree that it is necessary to change its proposed regulation because such opinions would not create an overload on the Office of the General Counsel.

Section 1956.85(a)(1)—One respondent recommended that 54 FR 29575 § 1956.85(a)(1) be changed so that payments would not have to accompany an application for debt settlement. FmHA Instruction 1956.85(a)(1) only indicates to the county office the proper procedure they must follow when a lump-sum payment is received. However, a change was made to

§ 1956.66 to authorize borrowers to submit applications for a compromise offer without an accompanying payment.

One respondent recommended that the debt settlement regulations for Housing loan programs be changed to drop the requirement that debts be all due and payable the same as Farmer Program loans. The Agency is adopting this comment in part. Housing loans are generally secured by a first lien on a lot and dwelling, whereas Farmer Program loans are often secured by a combination of real estate and chattel security requiring more servicing options. Therefore, FmHA is retaining the "due and payable" requirements for its secured single-family housing loans; however, it will not be required that any unsecured single-family housing loans be due and payable in order for a compromise or adjustment offer to be considered. Unsecured single-family housing loans generally represent an unsatisfied account balance remaining after the security has been liquidated.

One respondent commented that debtors should be notified of the availability of debt settlement in the following situations:

(1) All farmers who currently have FmHA debts for which the collateral has been fully liquidated.

(2) Whenever FmHA is considering liquidating a borrower's collateral.

(3) Before accepting a voluntary conveyance of security property.

Notice of the availability of compromise and adjustment debt settlements should be given at a meaningful time.

The Agency is not adopting this recommendation because the debt settlement authority is not a primary or preservation loan servicing option under 1951–S but rather an Administrative action authorizing the Agency to conclude its servicing of a borrower's account. Farmer Program borrowers are notified of the availability of debt settlement at several times. They are notified in paragraph IX of attachment 1 of subpart A to 7 CFR part 1951, subpart S, which is sent to all Farmer Program borrowers who are more than 180 days past due on their payments.

One respondent commented that FmHA should change its regulations to require a debt settlement commitment prior to voluntary conveyance of property to FmHA. A borrower may offer to convey security property in full satisfaction of his/her FmHA debt on Form FmHA 1955–1 "Offer to Convey Security." Prior to the actual voluntary conveyance the borrower's offer must be approved or rejected by the FmHA approval official, and for FP debts, by the FmHA County Committee. If this offer is accepted when a borrower actually conveys the property it is conveyed in accordance with the borrower's original offer on Form FmHA 1955–1 and the borrower is released from liability. A voluntary conveyance, if accepted, is preferable to debt settlement. Furthermore, for Farmer Program debtors § 1956.66 has been revised to permit the debtor to make an adjustment or compromise offer and retain any security for the debt until the offer is accepted. Therefore, the Agency does not accept this recommendation.

One respondent recommended that FmHA retain the language it has in the present FmHA Instruction § 1965.13(f)(2), that allows the borrower to use proceeds from the sale of real estate mortgaged to FmHA to pay additional income tax because of capital gains. The Agency does not adopt this recommendation because such releases increase the Agency's loan losses.

There were respondents who commented on various changes regarding sentence structure and word usage. The Agency did not adopt any of these changes.

The proposed change to § 1956.57(k)(2) involving a cross reference to subpart A of part 1951 of this chapter is not adopted because the proposed revision to subpart A of part 1951 of this chapter is not expected to be published until later this year.

The major changes are: (1) Security property may be retained prior to debt settlement under the conditions specified in § 1956.66; (2) If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount to be paid, (3) Deletes the requirement that debts be due and payable prior to debt settlement for Farmer Programs loans, but retains this requirement for secured housing debts; (4) Changes the approval authority for Single Family Housing debts; and (5) Adds debt settlement procedures for Multiple Family Housing debts.

These changes will remove part 1864 of chapter XVIII, title 7 of the CFR and incorporate all provisions of debt settlement of Housing loans into subpart B of part 1956. This incorporation will necessitate amendments to several parts of chapter XVIII, title 7, Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations.

Subpart A of part 1965 has been amended to remove the authority authorizing the use of sale proceeds for the payment of a borrower's capital gain tax.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), it has administratively been determined that this action will not have a significant economic impact on a substantial number of small entities.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownershp Loans
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Rural Housing Site Loans (10.411) and Soil and Water Loans (10.416) are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other programs are excluded from intergovernmental consultation.

This document has been reviewed in accordance with FmHA Instruction 1940–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, Public Law 91–190, an Environmental Impact Statement is not needed.

List of subjects

7 CFR Part 1864

Loan programs—Agriculture.

7 CFR Part 1903

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR part 1910

Applications, low and moderate income housing, marital status, discrimination, sex discrimination.

7 CFR Part 1944

Home improvement, Mobile homes, Mortgages, Rural housing.

7 CFR Part 1945

Disaster assistance.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan Programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1955

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

7 CFR Part 1956

Accounting, Loan Programs—Agriculture, rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—agricultural, Rural areas.

7 CFR Part 1980

Home improvement.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1864—[REMOVED AND RESERVED]

1. and 2. Part 1864 is removed and reserved.

PART 1903—VOLUNTARY DEBT ADJUSTMENT

3. The authority citation for part 1903 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Voluntary Debt Adjustment

§ 1903.2 [Amended]

4. Section 1903.2(b) is amended by removing the phrase "Part 1864 (FmHA Instruction 456.1) or."

PART 1910—GENERAL

5. The authority citation for part 1910 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 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.5 [Amended]

6., 7., and 8. Section 1910.5(c)(6) is amended by removing the phrase "and part 1864 of this chapter (FmHA Instruction 456.1)."

PART 1944—HOUSING

9. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

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

§ 1944.4 [Amended]

10. Section 1944.4(c) is amended by removing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1) or"

PART 1945—EMERGENCY

11. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§ 1945.167 [Amended]

12. Section 1945.167(j) is amended by removing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1).

PART 1951—SERVICING AND COLLECTIONS

13. 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, and 7 CFR 2.70.

Subpart A—Account Servicing Policies

§ 1951.15 [Amended]

14. Section 1951.15(e) is amended by removing the phrase "part 1864 of this chapter (FmHA Instruction 456.1) or."

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.909 [Amended]

15. Section 1951.909(a) is amended by removing the phrase "or part 1864 of this chapter (FmHA Instruction 456.1) as appropriate".

§ 1951.911 [Amended]

16. Section 1951.911(a)(5)(ii)(B) is amended by removing the phrase "and Part 1864 (FmHA Instruction 456.1)".

PART 1955—PROPERTY MANAGEMENT

17. 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, and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property.

§ 1955.18 [Amended]

18. Section 1955.18(f) is amended in the second sentence by changing the words "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B."

19. Section 1955.18(k) is amended by removing the phrase "and part 1864 of this chapter (FmHA Instruction 456.1)."

PART 1956—DEBT SETTLEMENT

20. The authority citation for part 56 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

21. Subpart B of part 1956 is revised to read as follows:

Subpart B—Debt Settlement—Farmer Programs and Housing

Sec.

1956.51 Purpose.
1956.52–1956.53 [Reserved]
1956.54 Definitions.
1956.55–1956.56 [Reserved]
1956.57 General provisions.
1956.58 Approval or rejection.
1956.59–1956.65 [Reserved]
1956.66 Compromise and adjustment of nonjudgment debts.
1956.67 Debts which the debtor is able to pay in full but refuses to do so.
1956.68 Compromise or adjustment without debtor's signature.
1956.69 [Reserved]
1956.70 Cancellation.
1956.71–1956.74 [Reserved]
1956.75 Chargeoff.
1956.76–1956.84 [Reserved]
1956.85 Payments and receipts.
1956.86–1956.95 [Reserved]
1956.96 Delinquent adjustment agreements.
1956.97 [Reserved]
1956.98 Disposition of promissory notes.
1956.99 Exception authority.
1956.100 OMB control number.

Sec.
Exhibit A—Settlement of Farmer Programs Debts

Subpart B—Debt Settlement—Farmer Programs and Housing

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed the United States for Farmers Home Administration (FmHA) Farmer Programs (FP), Single-Family Housing (SFH) and Multiple-Family Housing (MFH) programs. Settlement of claims against third party converters and settlement of Non-Program (NP) loans, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR parts 101–105.

§ 1956.52–1956.53 [Reserved]

§ 1956.54 Definitions.

(a) *Adjustment.* The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

(b) *Cancellation.* The final discharge of a debt without any payment on it.

(c) *Chargeoff.* The writing off of a debt and termination of collection activity without release of personal liability.

(d) *Compromise.* The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

(e) *Debtor.* The borrower of funds under any of the FmHA programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

(f) *Farmer programs loans.* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

(g) *Amount of debt.* The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

(h) *Servicing office.* The FmHA office that is responsible for the account.

(i) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "Settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(j) *Housing programs.* All programs and claims arising under programs administered by FmHA under title V of the Housing Act of 1949.

(k) *United States Attorney.* An attorney for the United States Department of Justice.

§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly. FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Collection efforts.* When debtors are contacted in an effort to collect, the employee in charge of the account will obtain from them essential information concerning their financial condition. This should include where applicable, but not limited to, obtaining Form FmHA 1910–5, "Request for Verification of Employment," debtors providing expense verification, verifying farm program benefits (Agriculture Stabilization Conservation Service/ Commodity Credit Corporation payments), and examining country records to determine what other assets the debtor has or recently disposed of. Also, where a spouse is not a co-debtor the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form FmHA 1956–1, "Application for Settlement of Indebtedness."

Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes may also be considered under this subpart.

(c) *Negotiating a settlement.* County Supervisors may approve compromises, adjustments, cancellations, or chargeoffs of SFH debts, regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Settlement offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will not review proposed settlement action for Housing Program loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.* (1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of part

1962, subpart A of this chapter or to Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, if will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlement may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA 1956–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA 1956–1 or Form FmHA 1956–2 (for housing loans) "Cancellation or Charge-off of FmHA Indebtedness," will be prepared by showing at the top of the form the name of the debtor requesting settlement, following by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 1956–1, or 1956–2 for housing loans.

(k) *Adjustment of debts when debtors are in bankruptcy.* FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under chapter 11, chapter 12, or chapter 13 when the plan calls for part of the FmHA debt to be canceled.

(1) Plans submitted by debtors under chapters 11, 12, and 13 must be sent to the State Director who will refer them to the United States Attorney through the Regional Attorney. When the plan calls for the adjustment of a debt to FmHA, the State Director will provide the Regional Attorney with a recommendation on acceptance or rejection of the plan.

(2) The U.S. Attorney wil advise the FmHA State Director through the Regional Attorney as to approval or rejection of the debtor's reorganization plan. Upon notification of an approval, the State Director will notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt.

(l) *Settlement where debtor owes more than one type of FmHA loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another FmHA loan and who will continue as an active borrower, except single family housing (SFH) in cases in which unusual circumstances exist such as where the borrower is unable to pay in full because he/she has ceased farming but still needs the dwelling, or because his/her income is limited due to age or a permanent health problem. In such cases, the facts will be fully documented in part VIII of Form FmHA 1956–1.

§ 1956.58 Approval or rejection.

Debt settlement cases not within the approval authority of the County Supervisor will be submitted for review in accordance with Exhibit A of this subpart (available in any FmHA office).

(a) *Approval authority.* Subject to applicable provisions of this subpart, approval and rejection authority for compromise, adjustment, cancellation, or chargeoff of debts is as follows:

(1) *Farmer Programs debts.*

(i) Except as provided in paragraph (a)(1)(ii) of this section, the State Director may approve or reject proposed debt settlements when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is less than $250,000 (including principal, interest, and other charges).

(ii) The State Director may approve the cancellation of debts discharged in a chapter 7 bankruptcy in accordance with § 1956.70(b)(3) of this subpart regardless of the amount of the outstanding indebtedness.

(iii) The Administrator or designee must approve or reject settlement when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is $250,000 or more (including principal, interest, and other charges).

(2) *Single Family Housing debts.*

The County Supervisor may approve, compromise, adjust, cancel or chargeoff of SFH debts regardless of amount.

(b) *Processing and approval.* The approval official will:

(1) Execute completed Form FmHA 1956–1 or Form FmHA 1956–2 when applicable, and process Form 1956–2 via

the terminal. Send the original approved Form FmHA 1956–1 to the Finance Office.

(2) Notify debtors in writing of approval of the settlement of their indebtedness in the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated.

(B) The accounts settled will be identified by reference to the accounts shown on Form FmHA 1956–1.

(ii) Cancellations under § 1956.70(a) and § 1956.70(c) of this subpart.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 of this subpart or cancelled under § 1956.70(b) of this subpart.

(c) *Requesting additional information.* Debtors requesting debt settlement must submit complete and accurate information from which a full determination of their financial condition can be made. When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the County Supervisor for SFH debts or State Director for all other housing and FP debts may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as appropriate under the circumstances. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

(d) *Rejection processing.* The County Supervisor for SFH debts or State Director for MFH and FP debts will:

(1) Insert the reasons for rejection on the Form FmHA 1956–1.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, is care of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected may appeal the rejection under subpart B of part 1900 of this chapter. In cases where the adverse decision maker is the County Committee, the County Supervisor will advise the debtor of appeal rights. If the debtor exercises his/her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his/her right to a hearing. If the hearing officer reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

§§ 1956.59–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property, if any. Application will be made on Form FmHA 1956–1 by the debtor; or if the debtor is unable to act, by another party having legal authority to act for the debtor. Collection of a lump sum offer may be deferred until the debtor is advised that the offer is approved. Upon full payment of the approved compromise or adjustment amount, FmHA will release the debtor from liability by delivering the note(s) to the debtor stamped "Satisfied by compromise or adjustment."

(a) *Farmer program debts.* The debt or any extension thereof on which compromise or adjustment is requested does not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Nonjudgment farmer program debts may be compromised or adjusted in accordance with the following conditions:

(1) Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section, plus any additional amounts the Agency determines the borrower is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sources of funds for making compromise and adjustment offers.

(iv) Amount of debtor's other debts.

(v) Amount of debtor's essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) *Housing debts (both Single-family and Multi-family).* Nonjudgment housing debts may be compromised or adjusted as follows:

(1) *Secured debt.* Secured debts may be compromised or adjusted provided:

(i) The debt is fully matured under the terms of the note or other instrument; or has been accelerated by written notice prior to the date of the settlement application.

(ii) A compromise offer must at least equal the value of the security as determined by FmHA (less any prior liens) plus any additional amount FmHA determines the debtor is able to pay based on a current financial statement.

(iii) An adjustment offer must meet the requirements of paragraph (b)(1)(ii) of this section, except payment is to be scheduled for payment over the shortest period FmHA determines is feasible based on the debtor's financial resources, but not to exceed 5 years.

(2) *Unsecured debt.* Unsecured debts considered under this subparagraph are most frequently account balances

remaining after the debtor has sold security property to another party/entity, or deeded it to FmHA, and was not released from liability. However, this subparagraph applies to any unsecured housing debt. An offer to compromise or adjust an unsecured debt must represent the maximum amount FmHA determines the borrower can pay based on a current financial statement and other information available to FmHA. An adjustment offer is to be scheduled for payment over the shortest period FmHA determines is feasible, but not to exceed 5 years.

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form FmHA 1956–1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount will not exceed $2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form FmHA 1956–1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application.* The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application.* Debts due the FmHA may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

(1) *Deceased debtors.* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form FmHA 1956–1 or Form FmHA 1956–2, for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance

with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the "Discharge of Debtor" order(s) by the court for all obligors.

(ii) For debts identified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, a copy of the order completing the plan (a similar order), and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in paragraph (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA 1956–1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§§ 1956.71–1956.74 [Reserved]

§1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 1956–1 or Form FmHA 1956–2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is $2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit.

(3) Even though FmHA considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff will be documented with a copy of the organization plan, a copy of the court order confirming the plan, an opinion by OGC that the order confirming the plan has discharged the debtor(s) of liability on the unsecured part of the debt.

§§ 1956.76–1956.84 [Reserved]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.*

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in subpart B, C, and K of part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form FmHA 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.*

(1) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances," on Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA 1956–1 in approved cases will be retained in the Finance Office.

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

(a) *Servicing office handling.* The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the

recommendation of the employee in charge of the account regarding the further handling of the case.

(b) *State Office handling.*

(1) In those instances in which the debtor is delinquent under the terms of the debt settlement agreement and is likely to be financially unable to meet the terms of the debt settlement agreement, consideration should be given by the State Director to canceling the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with the procedure for a new agreement.

(2) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee (for Farmer Programs loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable.

(3) When an adjustment agreement is canceled, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account. Upon receipt, the Finance Office will return the original Form FmHA 1956–1 to the State Office. The cancellation of an adjustment offer is appealable.

(c) *Disposition of payments.* If an agreement is voided, any payments received shall be retained as payments on the debt owed at the time of the compromise or adjustment offer.

§ 1956.97 [Reserved]

§ 1956.98 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of notes will be stamped "Satisfied by Approved Compromise," "Satisfied by Approved Cancellation," or "Satisfied by Completed Adjustment Offer." In such cases, the security instrument(s) will be released of record in the usual manner.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursant to FmHA Instruction 2033–A (available in any FmHA office). However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to Exhibit C of FmHA Instruction 2033–A (available in any FmHA office).

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision 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 would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956–1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0118. Public reporting burden for this collection of information is estimated to vary from *15* to *20* minutes per response, with an average of *20* minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Exhibit A to Subpart B—Settlement of Farmer Programs Debts

I. *General.*

This exhibit contains the procedures for review of debt settlement/release of liability cases.

II. *Information to be submitted.*

Cases submitted will be accompanied by:

A. Form FmHA 1956–1 "Application for Settlement of Indebtedness" (when applicable).

B. Servicing office files.

C. Transmittal memorandum. The State Director will make a definite recommendation for approval or rejection and furnish any additional information pertinent to the proposed settlement.

D. A summary of the review provided for in section IV of this exhibit.

III. *State Office review.*

All debt settlement/release of liability cases, and other cases as required by the State Director, will be reviewed thoroughly by the appropriate State Office loan staff member. The State Director may also appoint a review committee, qualified by experience and training, to review and make recommendations on settlements. The Committee should:

A. Determine the supervisory assistance given and its adequacy and the performance of the debtor.

B. Determine whether all security has been accounted for properly, whether releases have been made for authorized purposes, and whether collections have been made consistent with the income of the debtor and applied properly.

C. Determine the specific reasons for the lack of progress or failure of debtor.

D. Determine whether approval of the settlement is justifed on the basis of all the facts available and the prevailing regulations.

E. Determine whether any training in loan making or servicing is needed by any of the present FmHA personnel who perform such activities.

IV. The District Director will complete Attachment 1, "Debt Settlement/Release of Liability Summary," which will be concurred with by appropriate officials and filed in the case file.

Debt Settlement/Release of Liability Summary

NAME: _____
STATE: _____
CASE NO: _____
TYPE OF SETTLEMENT: _____
FARMING ENTERPRISE: _____
COMPROMISE/ADJUSTMENT AMOUNT: —

1. Accounts being settled. See Form FmHA 1956–1 for individual detailing by loan account.

Effective date _____
Total principal _____
Total Interest _____
Total FmHA debt _____

2. _____ Voluntary conveyance with release; 1955–A, § 1955.10(f)(2), _____

Transfer with release; 1965–A, § 1965.27(f), _____ Cash Sale with release; 1965–A, § 1965.26(f).

	Value of security	
Prior lienholder(s)	$	$
Authorized transaction expenses (broker, taxes, etc.).	+$	
Total FmHA debt	+$	
Subtotal debt/ expenses.	$	$
Amount to be written off.	$	$

The value of security will be established by a current appraisal and any prior lienholder debts will be verified.

3. Income statement and financial statement (attachments).

Release of liability actions in #2 above will be accompanied by income and financial information by completing the first two pages (only) of Form FmHA 1956–1. Income and expense will be indicated on a projected year basis. Business income will be documented on a pro form plan basis (Forms FmHA 431–2 or 431–4). Debt settlement action will be completed according to the Form FmHA 1956–1 FMI and Administrative Notices.

4. Due and payable or accelerated by (date): 1956–B settlement actions. Acceleration is not required prior to debt settlement of FP debts.
acceleration notice _____
Exhibit F, 1955–A _____
not applicable _____
Form FmHA 455–3 _____
fully matured _____

5. Date Exhibit A with Attachment 1 and 2 of FmHA Instruction 1951–S was sent to borrower _____.

6. Bankruptcy Cancellation (1956–B, § 1956.70(b)(3) Chapter 7 ____, Chapter 11 ____, Chapter 12 ____, Chapter 13 ____, Discharge of Debtor(s) dated _____, Order confirming plan dated _____

7. Cosigner or co-obligors: Yes ____ No ____. If yes, have all liable parties been addressed in the release of liability action or debt settlement application?

8. Describe the borrower(s) background and chances for success at the time of initial loan.

_____

9. Was this borrower properly and adequately supervised? Give details.

_____

10. Were Farm and Home plans realistic? Give details.

_____

11. Were releases proper and in accordance with the Forms FmHA 431–2 and 1962–1? Note improper releases.

_____

12. Is all FmHA security property properly accounted for? Give details.

_____

13. Summarize borrower's performance and reasons for failure.

_____

14. Comments. Note any deficiencies and make recommendations for approval or denial of settlement.

_____

15. Recommended action or training to prevent losses of this nature in the future.

_____

Prepared by: _____
District Director
Date: _____
State Director Concurrence _____
Date: _____
National Office Concurrence _____
Date: _____

Part 1965—REAL PROPERTY

22. The authority citation for part 1965 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 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases

23. § 1965.13(f)(2) is revised to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

* * * * *

(f) * * *

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay for personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the payee.

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

24. § 1965.65(b)(2) is amended by changing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B of Part 1956 of this chapter."

PART 1980—GENERAL

25. The authority citation for part 1980 is revised to read as follows:

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

Subpart D—Rural Housing Program Loans

§ 1980.350 [Amended]

26. § 1980.350(j)(2) is amended by changing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B of Part 1956 of this chapter."

Dated: October 10, 1990.

La Verne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 91–5657 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AA82

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: In 1985, the FDIC adopted minimum supervisory leverage capital ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). In 1989, the FDIC adopted minimum supervisory risk-based capital ratios of core and total capital to risk-weighted assets.

The FDIC risk-based capital policy statement indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC subsequently issued proposed

amendments to the part 325 leverage capital regulation (55 FR 39288, September 26, 1990). Based on a review of the comments received in response to the proposal and on related safety and soundness consideration, and in an effort to further promote uniform capital standards among the federal banking agencies, the FDIC Board of Directors has now decided to adopt amendments to part 325 of the FDIC's regulations (12 CFR part 325).

These revisions will replace the primary and total capital definitions with a Tier 1 (core) capital definition and establish a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System) that are not anticipating or experiencing any significant growth. All other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum requirement (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth). State nonmember banks with capital below the minimum leverage capital requirement will be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC.

In addition, the previous 3 percent leverage test, which was based on primary capital and used for determining when a depository institution was in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act, is being replaced with a new 2 percent "unsafe or unsound condition" test based solely on Tier 1 capital. The revisions also add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") for determining the safety and soundness and capital adequacy of savings associations. Finally, certain portions of part 325 have been reformatted, with conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital, in order to appropriately reflect the revisions.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Assistant Director, Division of Supervision (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), or Claude A. Rollin, Counsel, Legal Division (202/898–3985).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under control number 3064–0075, pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The collection consists of capital plans that are required to be filed by state nonmember banks pursuant to § 325.3(c)(3) when these institutions fail to comply with the minimum leverage capital requirement set forth in § 325.3(b). Most state nonmember banks with less than the minimum leverage capital requirement have been identified as institutions that have more than normal levels of risk and already are subject to formal or informal proceedings which establish their minimum capital requirements and set forth capital plans for achieving the minimum requirements. However, it is anticipated that a relatively small number of state nonmember banks may fail the minimum leverage capital requirement set forth in § 325.3(b) but not yet be subject to formal or informal enforcement proceedings for achieving the required capital level. It is estimated that no more than five such institutions will have to file initial capital plans with the FDIC pursuant to § 325.3(c)(3). The estimated annual reporting burden for these institutions is:

Number of Respondents: 5.
Number of Responses Per Respondent: 1.
Total Annual Responses: 5.
Hours Per Response: 60.
Total Annual Burden Hours: 300.

In addition, seventeen banks in the FDIC's capital forebearance program and seven banks in the agricultural loan loss deferral program must also submit or update capital plans under OMB control number 3064–0075. The total annual reporting burden for all 29 banks submitting capital plans under OMB control number 3064–0075 is 1,300 hours (44.8 hours per bank). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064–0075), Washington, DC 20503.

Background

The FDIC adopted in 1985 (50 FR 11136, March 19, 1985) minimum supervisory leverage ratios of capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). These minimums were contained in part 325 of the FDIC's regulations (12 CFR part 325) and set forth a minimum primary capital ratio of 5.5 percent and a minimum total capital (primary plus secondary) ratio of 6 percent. The definition of primary capital included common stockholders' equity (i.e., common stock, surplus, and undivided profits), as well as perpetual preferred stock, minority interests in consolidated subsidiaries, the allowance for loan and lease losses, net worth certificates, and limited amounts of mandatory convertible debt. Secondary capital consisted of subordinated notes and debentures and limited-life preferred stock.

The FDIC adopted in 1989 (54 FR 11509, March 21, 1989) minimum supervisory risk-based capital ratios of capital to risk-weighted assets. These minimum risk-based ratios are defined in the policy statement included as appendix A to part 325. The policy statement sets forth a minimum total capital (core plus supplementary) ratio of 8 percent that banks are generally expected to meet when the risk-based framework is fully phased in at year-end 1992, as well as an interim 7.25 percent ratio that banks are expected to meet by year-end 1990.

When fully phased-in, at least one-half of the minimum total capital requirement (i.e., 4 percent) must be comprised of Tier 1 (core) capital elements. Core capital is comprised essentially of common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries. Supplementary capital includes the allowance for loan losses (subject to certain limits), cumulative perpetual and long-term preferred stock, hybrid capital instruments such as mandatory convertible debt, and limited amounts of term subordinated debt and intermediate-term preferred stock.

The leverage and risk-based capital standards are only minimums that apply to the most sound, well-run institutions. As a result, most institutions are expected to and, in fact, do operate with capital ratios well above the minimum standards.

The FDIC subsequently issued proposed amendments to the part 325

leverage capital regulation, subject to a comment period which expired on November 13, 1990 (55 FR 39288, September 26, 1990). Based on a review of the comments received in response to the proposal and on related safety and soundness considerations, and in an effort to further promote uniform capital standards among the federal banking agencies, the FDIC Board of Directors has decided to adopt amendments to part 325 of the FDIC's regulations. In summary, these revisions will:

(1) Replace the primary and total capital definitions with a Tier 1 (core) capital definition;

(2) Eliminate the minimum 5.5 percent primary and 6 percent total capital ratio requirements for state nonmember banks and replace them with a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council) that are not anticipating or experiencing any significant growth; all other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum, (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth);

(3) Provide that state nonmember banks with capital below the minimum leverage capital requirement will be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC;

(4) Replace the 3 percent leverage test, which was based on primary capital, for determining when a depository institution is in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act with a new 2 percent "unsafe or unsound condition" test based solely on Tier 1 capital;

(5) Add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") for determining the safety and soundness and capital adequacy of savings associations; and

(6) Reformat certain portions of part 325 and make conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital to appropriately reflect the revisions.

Sections I through VI of this preamble provide a detailed discussion as to the nature of these revisions and section VII summarizes the comments received in response to the September 26 proposal.

I. Leverage Standard

At the time the risk-based capital policy statement was adopted in 1989, the FDIC indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC has now decided to adopt amendments to the existing part 325 leverage standard and to retain this revised standard and use it in conjunction with the minimum risk-based capital standard.

The FDIC believes that retention of some form of leverage standard is desirable in order to maintain some constraint on a bank's overall leverage. Retention of an overall leverage constraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk and various operational risks, the assignment of a significant volume of assets to the zero percent or other low risk-weight categories under the risk-based framework could allow a bank to assume an unwarranted degree of leveraging and risk-taking without an appropriate capital cushion. Maintenance of a prudent leverage standard will help minimize and restrain such excessive growth.

However, the FDIC recognizes that different capital definitions for leverage and risk-based purposes carry the potential for confusion and perhaps an element of undue burden. As a result, the FDIC is adopting a revised leverage standard that is based on the definition of Tier 1 core capital presently used in the risk-based framework. In conjunction with this revision, the FDIC hopes to maintain an effective minimum leverage standard, using the new core capital definition that is substantially consistent with the previous 6 percent leverage standard that used a broader definition of capital.

II. Minimum Leverage Capital Requirement

The revisions to the leverage standard will result in a definition of capital (i.e., core capital) which, for most state nonmember banks, only includes common stockholders' equity, less all intangible assets other than limited amounts of mortgage servicing rights. (Most banks have only common equity capital and do not have any significant amounts of the other two Tier 1 capital elements, i.e., noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries.) This definition of capital is much narrower than the primary capital definition used in the prior leverage standard which, in addition to core capital, included all forms of perpetual preferred stock, the entire amount of the allowance for loan and lease losses, and certain amounts of mandatory convertible debt.

In view of the fact that these other primary capital elements usually did not comprise more than 1 to 2 percent of a bank's total assets, and since these elements no longer will be included in the definition of capital under the revised leverage standard, the FDIC believes that a minimum leverage standard of 4 to 5 percent, based on core capital, is substantially equivalent with the previous 5.5 percent primary capital and 6 percent total capital leverage standards. At the same time, the FDIC believes it important to adopt a revised minimum leverage standard that is substantially similar to those recently adopted for national banks and state member banks by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

In view of this, the FDIC has decided to eliminate from the part 325 leverage regulation the definitions for primary and total capital, replace them with a single definition of Tier 1 (or core) capital, and establish a minimum leverage standard of 3 percent Tier 1 capital to total assets for the most highly rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System) that are not anticipating or experiencing any significant growth. All other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum requirement—that is, an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly rated or that are anticipating or experiencing significant growth. Once again, it is emphasized that this requirement is only a minimum and most institutions are expected to operate with capital levels well above the minimum that are commensurate with the institutions' particular risk profiles.

Until year-end 1992, a difference will exist in the definition of Tier 1 capital under the FDIC's revised leverage standard versus the Tier 1 capital definition in the FDIC's risk-based guidelines. For risk-based capital purposes, a transition period is allowed

until year-end 1992, during which time frame a limited amount of supplementary capital elements that would otherwise be included in Tier 2 capital can be included as part of Tier 1 capital. Under the revised leverage standard, no such transition or phase-in period is allowed and only those capital elements that technically meet the definition of core capital can be included as part of Tier 1 capital.

III. Unsafe or Unsound Practice and Capital Plans

The revised rule continues to provide that any state nonmember bank not in compliance with the minimum leverage capital requirement does not have adequate capital and will be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act unless the bank is in compliance with a written agreement or has submitted and is in compliance with a capital plan approved by the FDIC. (This, however, does not preclude the FDIC from taking action against any bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.) However, the revised regulation also requires any state nonmember bank that has less than the minimum leverage capital requirement to submit to its FDIC regional director for review and approval a reasonable capital plan for achieving the minimum capital requirement, with such plan to be submitted within 60 days of the date as of which the bank fails to comply with the capital requirement.

Any FDIC-insured institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure also will be deemed to have an inadequate capital structure if it does not meet this minimum leverage capital requirement and normally will not receive approval for such an application. In addition, since FDIC now is the insurer for savings associations, the revised leverage standard also covers any applications filed by these institutions that require the FDIC to make an evaluation of the institution's capital adequacy. This could include applications for deposit insurance or for the right to exercise additional powers, as well as certain applications for mergers, acquisitions or other business combinations. This minimum leverage standard does not, however, apply in the case of remedial-type applications or notices, such as those relating to junk bond divestment plans or the rollover of brokered deposits in undercapitalized institutions.

Except in conjunction with the consideration of certain types of applications noted above, the part 325 minimum leverage capital requirement will not directly apply to savings associations for which the FDIC is not the primary regulator. Rather, savings associations are subject to the minimum tangible capital, core leverage, and risk-based capital requirements that are included in part 567 of the Office of Thrift Supervision (OTS) regulations (12 CFR part 567).

However, under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. In making this determination, the FDIC will evaluate whether the insured institution meets the minimum leverage capital standards set forth in part 325, but will also consider the extent to which the institution is in compliance with the capital requirements of its primary regulator and any related capital plans. Both the OTS and the FDIC capital rules represent minimum standards and institutions may be required to operate with capital levels well above the minimums.

IV. "Unsafe or Unsound Condition" Leverage Ratio Test

The existing part 325 regulation contains a provision indicating that any FDIC-insured bank (including any national, state member or state nonmember bank) with a ratio of primary capital to total assets of less than three percent would be deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)). The FDIC believes it is appropriate to retain an "unsafe or unsound condition" provision in the revised part 325 and that such a provision should apply to all FDIC-insured depository institutions, including savings associations. At the same time, however, since the FDIC is eliminating the primary and total capital definitions and replacing them with one based on the more narrow definition of core capital, the FDIC believes it is also appropriate to reduce the ratio used in determining an unsafe or unsound condition from 3 percent to 2 percent.

Therefore, the FDIC is amending § 325.4(c) to indicate that any insured depository institution with a Tier 1 capital to total assets ratio of less than two percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act. However, § 325.4(c)(1) also indicates that an institution which has entered into and is in compliance with a written agreement with the FDIC to increase its capital and take any other action deemed necessary for the institution to be operated in a safe and sound manner will not be subject to a proceeding by the FDIC pursuant to section 8(a) solely an account of its capital ratios.

An institution with a Tier 1 leverage ratio in excess of two percent may also be operating in an unsafe or unsound condition. Thus, the FDIC is not precluded from bringing section 8(a) or other enforcement action against an institution with Tier 1 capital in excess of this amount if the circumstances deem such action to be appropriate, including those situations where the institution is experiencing adverse results or other problems with regard to asset quality, earnings, liquidity, interest rate risk, or other factors.

V. Application of Part 325 to Savings Associations

Certain provisions have been added to part 325 to reflect the fact that the FDIC, in addition to insuring savings associations, also has certain additional supervisory authorities over these institutions. These include: The authority to approve or disapprove certain applications that require the FDIC to evaluate an institution's capital structure, such as applications for deposit insurance or the right to exercise additional powers and certain applications for mergers, acquisitions or business combinations; the authority to take section 8(b) and/or 8(c) enforcement actions in accordance with section 8(t) of the FDI Act when an unsafe or unsound practice exists; and the authority to initiate section 8(a) termination of insurance proceedings when an institution is in an unsafe or unsound condition. These additional supervisory responsibilities were effectively given to the FDIC in FIRREA.

The FDIC, however, also recognizes that the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum Tier 1 (core) leverage, tangible capital and risk-based capital requirements for savings associations (see 12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the Tier 1 capital treatment for investments in subsidiaries and for certain intangible assets. In determining

whether a savings association's application should be approved, or whether an unsafe or unsound practice or condition exists, the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325, including any qualifying supervisory goodwill which, over a phase-out period, is eligible for inclusion in core capital pursuant to FIRREA and 12 CFR part 567. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) the minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements approved by the OTS, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

It is also noted that, pursuant to section 18(n) of the FDI Act (12 U.S.C. 1828(n)), the federal banking agencies (including the OTS) cannot allow any insured depository institutions to include an unidentifiable intangible asset (i.e., goodwill) in their calculation of compliance with the appropriate capital standards if such intangible asset was acquired after April 12, 1989. In addition, for part 325 purposes, mutual savings associations with "nonwithdrawable accounts" or "pledged deposits" may include these instruments as Tier 1 capital to the extent these instruments are the functional equivalent of common equity capital or noncumulative perpetual preferred stock and to the extent they are allowed to be included as core capital under the OTS capital standards.

VI. Other Revisions to Part 325

The FDIC also is reformatting certain portions of part 325 and making conforming adjustments to the FDIC's Statement of Policy on Risk-Based Capital, which was adopted in 1989 and is included as appendix A to part 325, and to the FDIC's Statement of Policy on Capital, which was initially adopted in 1985 when the original part 325 leverage standard was issued and which now is being revised and added as a new appendix B to part 325. In this regard:

(1) New definitions have been added to part 325 for Tier 1 (core) capital and for the various elements that comprise Tier 1 capital, replacing the existing definitions for primary, secondary and total capital;

(2) Definitions for mandatory convertible debt and term subordinated debt obligations have been moved from the body of the part 325 leverage regulation to the risk-based capital policy statement at appendix A, since these instruments no longer qualify as capital under the revised leverage standard but will continue to qualify as Tier 2 capital under the risk-based framework;

(3) The 1985 Statement of Policy on Capital has been updated to include references to certain of the new supervisory responsibilities for savings associations that were granted to the FDIC pursuant to FIRREA;

(4) The two interpretations previously set forth in §§ 325.101 and 325.102 will be maintained but relocated to other parts of the FDIC capital standards, with interpretation 325.101 incorporated into the risk-based capital policy statement at appendix A and interpretation 325.102 added to § 325.5(e) of the part 325 regulation; and

(5) Certain references in part 325 regarding the treatment of mortgage servicing rights have been modified. In this regard, on December 11, 1990, the FDIC Board of Directors adopted a final rule on mortgage servicing rights (55 FR 53137, December 27, 1990) that limits the amount of purchased mortgage servicing rights that state nonmember banks and savings associations can recognize for regulatory capital purposes. Any purchased servicing intangible assets above the limits will be deducted from assets and capital in determining the appropriate capital ratios, subject to certain exceptions for grandfathered purchased servicing intangibles and separately capitalized mortgage banking subsidiaries. This final rule became effective January 28, 1991, and is already incorporated into part 325. However, due to the revised leverage standard that is now being adopted by the FDIC, certain formatting changes to the recently adopted mortgage servicing rights rule, including different section numbers and references, are now necessary in order to appropriately incorporate that rule into the part 325 language for the revised leverage standard. In particular, the references regarding the regulatory capital treatment of mortgage servicing rights are being changed from § 325.5(g) to 325.5(f).

VII. Summary and Analysis of Comments Letters

The proposal for a revised leverage standard was published in the **Federal Register** on September 26, 1990 (55 FR 39288) for a 45-day comment period that expired on November 13, 1990. Fifty-one comment letters were received, including 28 from banks and bank holding companies, 10 from savings associations, seven from bank and thrift trade associations, four from banking regulators and two from attorneys representing various financial institutions.

Of the 51 respondents, 29 were in favor of the general nature of the proposed leverage capital revisions, 20 were generally opposed to the suggested revisions, and two offered comments on certain specifics of the proposal but provided no general comments on the proposed changes. With respect to the 20 commentators that were generally opposed to the proposed revisions, 12 were against the changes because they felt the suggested leverage ratio was too low and three objected to either the lack of a phase-in or transition period for the revised rule or the failure to include the allowance for loan losses in the proposed definition for leverage capital, but only five objected to the proposed rule because of their belief that the revised leverage capital requirements would be too high.

The seven trade associations that responded, including the American Bankers Association, the Independent Bankers Association of America, the Massachusetts Bankers Association, the Mortgage Bankers Association, the National Council of Savings Institutions, the New Jersey Council of Savings Institutions, and the Texas Bankers Association, generally favored the basic nature of the proposed changes, although some raised concerns over the direct linkage of an institution's CAMEL rating to its minimum leverage capital requirement, the exclusion of subordinated debt from the definition of leverage capital, or the imposition of limitations on the amount of purchased mortgage servicing rights that can be recognized for regulatory capital purposes. In addition, the Independent Bankers Association of America suggested that the minimum leverage standard should be at least as high as 4 to 4½ percent through the end of 1992 in order to allow regulators additional time to gain experience in using the risk-based framework and in developing additional components of the risk-based system, such as how to factor in interest rate risk.

With respect to comments received from banking regulators, the Conference of State Bank Supervisors suggested that the FDIC should not allow the risk-based capital framework to reduce minimum capital standards and the Kentucky Department for Financial Institutions was strongly against the proposed leverage standard, which it believed would effectively reduce minimum capital standards for depository institutions. In addition, the Office of the Comptroller of the Currency (OCC), although in general

agreement with the proposed revisions, suggested certain changes (which have been made) to ensure that the specific language of the FDIC minimum leverage capital requirement is closer to that used by the OCC and the Federal Reserve System. The OCC also urged the FDIC to adequately enforce the risk-based capital framework.

The following is a discussion of the specific issues for which the FDIC requested comment in the September 26 proposal:

A. Tier 1 Definition of Capital

Most of the respondents that specifically addressed this question contended that the use of Tier 1 (or core) capital as the capital definition was an appropriate revision from the primary and secondary capital definitions currently used for the leverage standard. However, four respondents believed that all purchased mortgage servicing intangible assets should be recognized for regulatory (and Tier 1) capital purposes, another four suggested that all identifiable intangibles should be recognized, two commentators supported the inclusion of some subordinated debt in the leverage capital definition, and one respondent believed that the loan loss allowance should also be included in Tier 1 capital. On the other hand, one savings association recommended that all mortgage servicing rights should be deducted from capital. For the reasons that are addressed in detail in the FDIC's final rule on mortgage servicing rights (55 FR 53137, December 27, 1990) the FDIC will continue to deduct all intangible assets (except for limited amounts of purchased mortgage servicing rights) from capital and assets when calculating the amount of Tier 1 capital. In addition, as originally proposed, the FDIC will exclude both subordinated debt and the loan loss allowance from the definition of Tier 1 capital under the leverage standard. This treatment of subordinated debt and loan loss allowances is consistent with that adopted in 1990 by the Office of the Comptroller of the Currency and the Federal Reserve System in their revised leverage standards, and with the fully phased-in definition of Tier 1 capital under the risk-based framework that was adopted in 1989 by the federal banking agencies, including the FDIC.

B. Minimum Leverage Ratio Requirement

With respect to the adoption of a 3 percent Tier 1 capital to total assets leverage ratio for highly-rated state nonmember banks (i.e., those with a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth and a requirement that all other institutions meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth), 19 respondents suggested minimum standards that were different from those proposed.

In this regard, five commentators believed a single 3 percent minimum standard should be adopted, whereas two other respondents suggested a minimum standard of at least 4 percent. However, 12 commenters supported much higher minimum standards for Tier 1 leverage capital of from 6 to 8 percent of assets. Some of the respondents supported a sliding scale where specific capital requirements would be set for banks based on the CAMEL ratings or other measures of risk, in order to eliminate the uncertainty that would otherwise exist as to an institution's actual minimum capital requirement. However, a number of commenters were opposed to any direct tie-in between a bank's minimum capital requirement and its CAMEL rating, due to concerns about the subjective process used in determining a bank's CAMEL rating, the length of time that can exist between examinations (which potentially could render the most recent CAMEL rating obsolete based on changing conditions), and the possibility that confidential bank CAMEL ratings may at least indirectly be publicly disclosed if such ratings are used to determine minimum statutory capital requirements.

The FDIC appreciates and shares some of the concern expressed by respondents over the use of the CAMEL rating as a direct mechanism in determining minimum capital requirements. The FDIC intends to monitor closely the effect of incorporating this supervisory tool into the part 325 regulation. However, from a practical viewpoint, the FDIC does not foresee any major problems in this regard since, under the revised regulation, only banks with a composite CAMEL rating of 1 that are not anticipating or experiencing any significant growth may be afforded a lower minimum leverage capital requirement.

The revised standard will require all other institutions to retain a minimum leverage ratio of at least 100 to 200 basis points above the 3 percent minimum. As a result, most banks will be required to maintain a minimum leverage capital ratio of at least 4 to 5 percent.

In setting the minimum leverage capital requirement for most banks at "not less than 4 percent," the FDIC wishes to emphasize that (a) the revised leverage capital standard is intended to closely approximate (rather than reduce) the effective minimum under the existing 6 percent standard, after giving effect to the revised and more narrow definition of capital, and (b) the revised leverage standard represents only a "minimum" requirement and most institutions are expected to and, in fact, do operate with capital levels well above the minimum.

Thus, the FDIC is not precluded from requiring a particular institution to maintain a higher capital level based on an institution's particular risk profile. Where deemed appropriate, the FDIC may pursue such efforts through informal means, including the use of memorandums of understanding, or through formal initiatives, such as cease and desist orders. The failure to comply with any agreements or orders arising from such actions, or to meet the terms of any capital plan submitted to and approved by the FDIC, may be viewed as an unsafe or unsound practice or may give rise to an unsafe or unsound condition.

In addition, institutions are cautioned not to lower their existing capital levels or leverage additional assets solely as a result of this revision to the minimum leverage standard.

C. Unsafe or Unsound Condition

With respect to whether the proposed 2 percent Tier 1 leverage test would be an appropriate benchmark to use for determining when an insured depository institution is operating in an unsafe or unsound condition, only five respondents directly commented on this issue. Two of the respondents felt the 2 percent figure was an appropriate benchmark, two believed it was unnecessary, and the remaining respondent felt that it might reduce the FDIC's flexibility in resolving problem bank situations if the 2 percent "unsafe or unsound condition" leverage ratio test is adopted and rigidly enforced.

Ever since the FDIC initially implemented its leverage regulation back in 1985, it has applied an "unsafe or unsound" leverage test and has found it to be an effective, yet fair, supervisory tool. Prior to this current revision, the FDIC required state nonmember banks to meet a 5.5 percent minimum primary capital (and a 6 percent total capital) leverage standard and applied to all FDIC-insured banks a 3 percent "unsafe or unsound condition" leverage test,

which also was based on primary capital.

The FDIC believes it appropriate to maintain an "unsafe or unsound condition" test and that the necessary degree of flexibility is built into such a test since an insured depository institution with capital below that level will not be subject to a proceeding pursuant to section 8(a) of the FDI Act solely on account of its capital ratios if it is in compliance with a written agreement to which the FDIC is a party for increasing its capital to a level that is deemed appropriate by the FDIC. However, since the revised minimum leverage standard will be based on a more narrow definition of capital (Tier 1 capital), the FDIC has decided to lower the "unsafe or unsound condition" leverage ratio test to 2 percent.

D. Applicability of Part 325 to Savings Associations

Specific comment also was requested regarding the application of the proposed part 325 provisions to savings associations, consistent with the FDIC's added supervisory responsibilities over savings associations that arose pursuant to FIRREA. Five respondents specifically addressed this issue. Two commentators were concerned about the language in the policy statement which seemed to present uncertainties as to whether qualifying supervisory goodwill would count as capital whenever the FDIC calculates a savings association's part 325 Tier 1 capital.

The intent of the revised part 325 regulation is to recognize qualifying supervisory goodwill of a savings association to the extent that the Office of Thrift Supervision recognizes such goodwill under the OTS capital regulation (12 CFR part 567) and the FDIC has clarified the language in the final version of the appendix B policy statement to part 325 to remove this uncertainty. For savings associations, qualifying supervisory goodwill is being phased out of capital over a transition period that expires at year-end 1994.

Another respondent suggested that, since net worth certificates were previously approved by Congress as a form of regulatory capital, the revised part 325 leverage capital definition, even though based on the more narrow Tier 1 definition of capital, should continue to include net worth certificates as a capital component. However, this would be inconsistent with the manner in which the FDIC presently treats another form of regulatory capital, agricultural loan losses deferred pursuant to 12 U.S.C. 1823(j) and 12 CFR part 324, which are included in Tier 2 capital under the risk-based capital framework but excluded from the risk-based definition of Tier 1 capital. In addition, the OTS, under the part 567 capital regulation that it applies to savings associations, does not allow net worth certificates, mutual capital certificates or income capital certificates to be included in Tier 1 capital for either the leverage or risk-based standards, but only allows these regulatory capital elements to be included as Tier 2 capital in the risk-based standard.

Two commenters suggested that the FDIC part 325 capital standard should not apply at all to savings associations, but rather that savings associations should look solely to the OTS and its part 567 capital regulation. Further, one of these respondents believed that any written agreements addressing unsafe or unsound conditions arising as a result of inadequate capital levels should not need to be signed by the FDIC, but should be solely between the OTS and the savings association.

The FDIC acknowledges that, as the primary federal regulator of savings associations, the OTS has the primary supervisory responsibilities over these institutions. However, in view of the FDIC's role as the ultimate insurer of savings associations and its responsibilities under FIRREA and the Federal Deposit Insurance Act to review certain applications of savings associations and evaluate whether unsafe or unsound practices or conditions exist, the FDIC needs to consider the risk that these associations may pose to the insurance fund. As a result, the final amendments to part 325 address these statutory responsibilities. The FDIC notes that part 325 also applies to national banks and state member banks in those situations where the FDIC is requested or required to evaluate the adequacy of such a depository institution's capital structure.

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to part 325 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of title 12 of the Code of Federal Regulations to read as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1464(t), 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 3907, 3909.

2. Sections 325.1 through 325.6 are revised to read as follows:

§ 325.1 Scope.

The provisions of this part apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of an insured depository institution's capital structure. The FDIC is required to evaluate capital before approving various applications by insured depository institutions. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of state nonmember banks it insures and supervises and in determining whether depository institutions are in an unsafe or unsound condition. This part establishes the criteria and standards FDIC will use in calculating the minimum leverage capital requirement and in determining capital adequacy. In addition, appendix A to this part sets forth the FDIC's risk-based capital policy statement and appendix B to this part includes a statement of policy on capital adequacy that provides interpretational and definitional guidance as to how this part will be administered and enforced. This part also prescribes the maximum amount of purchased mortgage servicing rights that insured savings associations may include in calculating their tangible capital requirement. This part shall be applicable to any proceedings instituted or agreements entered into after April 10, 1991.

§ 325.2 Definitions.

(a) *Allowance for loan and lease losses* means those general valuation allowances that have been established through charges against earnings to absorb losses on loans and lease financing receivables. Allowances for loan and lease losses exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and specific reserves created against identified losses.

(b) *Assets classified loss* means:

(1) When measured as of the date of examination of an insured depository institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be a loss; or

(B) By evaluations made by the insured depository institution since its most recent examination to be a loss; and

(ii) That have not been charged off from the insured depository institution's books or collected.

(c) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the FDI Act (12 U.S.C. 1813(q)).

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities.

(e) *Identified losses* means:

(1) When measured as of the date of examination of an insured depository institution, those items that have been determined by an evaluation made by a state or federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowance for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, liabilities not shown on the institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages); and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the insured depository institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the insured depository institution's books nor has the item been collected or otherwise settled.

(f) *Insured depository institution* means any depository institution (except for a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*)

(g) *Intangible assets* means those assets that are required to be reported as intangible assets in a banking institution's "Reports of Condition and Income" (Call Report) or in a savings association's "Thrift Financial Report."

(h) *Minority interests in consolidated subsidiaries* means minority interests in equity capital accounts of those subsidiaries that have been consolidated for the purpose of computing regulatory capital under this part, except that minority interests which fail to provide meaningful capital support are excluded from this definition.

(i) *Mortgage servicing rights* means those intagible assets that represent the purchased rights to perform the servicing function for a specific group of mortgage loans that are owned by others. Mortgage servicing rights must be amortized over a period not to exceed 15 years or their estimated useful life, whichever is shorter. For purposes of determining regulatory capital under this part, purchased mortgage servicing rights will be recognized only to the extent the rights meet the conditions, limitations and restrictions described in § 325.5(f).

(j) *Noncumulative perpetual preferred stock* means perpetual preferred stock (and related surplus) where the issuer has the option to waive payment of dividends and where the dividends so waived do not accumulate to future periods nor do they represent a contingent claim on the issuer. Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market and remarketable preferred stock, are excluded from this definition of noncumulative perpetual preferred stock, regardless of whether the dividends are cumulative or noncumulative.

(k) *Perpetual preferred stock* means a preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(l) *Savings association* means any federally-chartered savings association, any state-chartered savings association, and any corporation (other than a bank) that the Board of Directors of the FDIC and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(m) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing rights eligible for inclusion in core capital pursuant to § 325.5(f) and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR Part 567), minus identified losses, and minus investments in securities subsidiaries subject to 12 CFR 337.4 and investments in mortgage banking subsidiaries subject to § 325.5(f)(7) of this part.

(n) *Total assets* means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Report) or, for savings associations, the consolidated total assets required to be included in the "Thrift Financial Report," as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c), 325.5(d) and 325.5(f)(7) of this part), minus intangible assets (other than mortgage servicing rights eligible for inclusion in core capital pursuant to § 325.5(f) and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567), and minus assets classified loss and any other assets that are deducted in determining Tier 1 capital. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

(o) *Written agreement* means an agreement in writing executed by authorized representatives entered into with the FDIC by an insured depository institution which is enforceable by an action under section 8(a) and/or section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)).

§ 325.3 Minimum leverage capital requirement.

(a) *General.* Banks must maintain at least the minimum leverage capital requirement set forth in this section. The capital standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Thus, the FDIC is not precluded from requiring an institution to maintain a higher capital level based on the institution's particular risk profile. Where the FDIC determines that the financial history or condition, managerial resources and/or the future earnings prospects of a bank are not adequate, or where a bank has sizable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the FDIC may determine that the minimum amount of capital for that bank is greater than the minimum standards stated in this section. These same criteria will apply to any insured depository institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure.

(b) *Minimum leverage capital requirement.* (1) The minimum leverage capital requirement for a bank (or an insured depository institution making application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 3 percent if the FDIC determines that the institution is not anticipating or experiencing significant growth and has well-diversified risk, including no undue interest rate risk exposure, excellent asset quality, high liquidity, good earnings and in general is considered a strong banking organization, rated composite 1 under the Uniform Financial Institutions Rating System (the CAMEL rating system) established by the Federal Financial Institutions Examination Council.

(2) For all but the most highly-rated institutions meeting the conditions set forth in paragraph (b)(1) of this section, the minimum leverage capital requirement for a bank (or for an insured depository institution making an application to the FDIC) shall be 3 percent plus an additional cushion of at least 100 to 200 basis points and therefore shall consist of a ratio of Tier 1 capital to total assets of not less than 4 percent.

(c) *Insured depository institutions with less than the minimum leverage capital requirement.* (1) A bank (or an insured depository institution making an application to the FDIC) operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(2) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(3) A bank having less than the minimum leverage capital requirement shall, within 60 days of the date as of which it fails to comply with the capital requirement, submit to its FDIC regional director for review and approval a reasonable plan describing the means and timing by which the bank shall achieve its minimum leverage capital requirement.

(4) In any merger, acquisition or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(d) *Exceptions.* Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, such action is taken to lessen the risk to the FDIC posed by an insured depository institution under such threat of instability.

(2) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

(Approved by the Office of Management and Budget under control number 3064–0075 for use through December 31, 1993)

§ 325.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of federal deposit insurance, all insured depository institutions must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any bank which has less than its minimum leverage capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such a bank which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the bank to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios. The FDIC is not precluded from taking section 8(b)(1), section 8(c) or any other enforcement action against a bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate. Under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC also may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure.

(c) *Unsafe or unsound condition.* Any insured depository institution with a ratio of Tier 1 capital to total assets that is less than two percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) A bank with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with the FDIC (or any other insured depository institution with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with its primary federal regulator and to which agreement the FDIC is a party) to increase its Tier 1

leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its capital ratios.

(2) An insured depository institution with a ratio of Tier 1 capital to total assets that is equal to or greater than two percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured depository institution has a ratio of Tier 1 capital to total assets that is equal to or greater than two percent.

§ 325.5 Miscellaneous.

(a) *Intangible assets.* Any intangible assets that were explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis will be included in capital under the terms and conditions that were approved by the FDIC, provided that the intangible asset is being amortized over a period not to exceed 15 years or its estimated useful life, whichever is shorter. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), an unidentifiable intangible asset such as goodwill, if acquired after April 12, 1989, cannot be included in calculating regulatory capital under this part.

(b) *Reservation of authority.* Notwithstanding the definition of "Tier 1 capital" in § 325.2(m) of this part and the risk-based capital definitions of Tier 1 and Tier 2 capital in appendix A to this part, the Director of the Division of Supervision may, if the Director finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of Tier 1 or Tier 2 capital, permit one or more insured depository institutions to include all or a portion of such instrument, entry, or account as Tier 1 or Tier 2 capital, permanently, or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Supervision may, if the Director finds that a particular Tier 1 or Tier 2 capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from Tier 1 or Tier 2 capital.

(c) *Securities subsidiary.* For purposes of this part, any securities subsidiary subject to 12 CFR 337.4 shall not be consolidated with its bank parent and any investment therein shall be deducted from the bank parent's Tier 1 capital and total assets.

(d) *Depository institution subsidiary.* Any domestic depository institution subsidiary that is not consolidated in the "Reports of Condition and Income" (Call Report) of its insured parent bank shall be consolidated with the insured parent bank for purposes of this part. The financial statements of the subsidiary that are to be used for this consolidation must be prepared in the same manner as the "Reports of Condition and Income" (Call Report). A domestic depository institution subsidiary of a savings association shall be consolidated for purposes of this part if such consolidation also is required pursuant to the capital requirements of the association's primary federal regulator.

(e) *Restrictions relating to capital components.* To qualify as Tier 1 capital under this part or Tier 1 or Tier 2 capital under appendix A to this part, a capital instrument must not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices. A condition, covenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it:

(1) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(2) Results in significantly higher dividends or interest payments in the event of deterioration in the financial condition of the issuer;

(3) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; or

(4) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

Other conditions and covenants that are not expressly listed in paragraphs (e)(1) through (e)(4) of this section also may be inconsistent with safe and sound banking practices.

(f) *Treatment of purchased mortgage servicing rights.* For purposes of determining regulatory capital under this part, purchased mortgage servicing rights will be deducted from assets and from equity capital to the extent that the rights do not meet the conditions, limitations and restrictions described in this section.

(1) *Annual and quarterly market valuations.* An independent market valuation of purchased mortgage servicing rights shall be performed at least annually. The annual independent market valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. The valuation shall be based on an analysis of the current fair market value of the purchased servicing intangibles, determined by applying an appropriate market discount rate to the net servicing cash flows. This annual independent market valuation may be based on a review and analysis by an independent mortgage servicing valuation expert of the reasonableness of the internal calculations and assumptions used by the institution to determine fair market value. In addition to the annual independent market valuation, the institution shall calculate an estimated fair market value for the purchased mortgage servicing rights at least quarterly.

(2) *Quarterly determination of book value.* Purchased mortgage servicing rights shall be carried at a book value that does not exceed the discounted amount of estimated future net servicing income of the rights. Management of the institution shall review the carrying value at least quarterly, maintain a written record of its review, and adjust the book value as necessary. If unanticipated prepayments occur, a writedown of the book value of the purchased mortgage servicing rights should be made to the extent that the discounted amount of future net servicing income is less than the asset's carrying amount. The evaluation of future net servicing income shall be performed on a discounted approach if the institution wishes to allow its purchased mortgage servicing rights to be recognized for regulatory capital purposes under this part.

(3) *Mortgage servicing rights limitation.* For purposes of calculating regulatory capital under this part (but not for financial statement purposes), the balance sheet asset for purchased mortgage servicing rights will be reduced to an amount equal to the lesser of:

(i) 90 percent of the fair market value of the purchased mortgage servicing rights, determined in accordance with paragraph (f)(1) of this section; or

(ii) 90 percent of the original purchase price paid for the mortgage servicing rights; or

(iii) 100 percent of the remaining unamortized book value of the servicing rights, determined in accordance with paragraph (f)(2) of this section.

(4) *Core capital limitation.* The maximum allowable amount of a state nonmember bank's purchased mortgage

servicing rights will be limited to the lesser of:

(i) 50 percent of the amount of core capital that exists before the deduction of any disallowed purchased mortgage servicing rights; or

(ii) The amount of purchased mortgage servicing rights determined in accordance with paragraph (f)(3) of this section.

(5) *Tangible capital limitation for savings associations.* The maximum allowable amount of purchased mortgage servicing rights for purposes of calculating a savings association's tangible capital under the capital regulation issued by the Office of Thrift Supervision (12 CFR part 567) shall not exceed the lesser of:

(i) 100 percent of the amount of tangible capital that exists before the deduction of any disallowed purchased mortgage servicing rights; or

(ii) The amount of purchased mortgage servicing rights determined in accordance with paragraph (f)(3) of this section.

This tangible capital limitation is established pursuant to section 5(t)(4)(C) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(t).

(6) *Grandfathering.* Nothwithstanding the core capital and tangible capital limitations described in paragraphs (f)(4) and (f)(5) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights existed on or before February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the institution's primary federal regulator, provided that the book value of these purchased mortgage servicing rights is amortized in accordance with generally accepted accounting principles and in accordance with paragraph (f)(2) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (f)(4) and (f)(5) of this section. To the extent that grandfathered purchased mortgage servicing rights exist, the allowable amount of nongrandfathered purchased mortgage servicing rights will be reduced accordingly.

(7) *Exemption for certain mortgage banking subsidiaries.* Purchased mortgage servicing rights held by subsidiaries that would otherwise be consolidated for regulatory capital purposes will not be subject to the deductions and limitations described in this section provided the subsidiary is a separately capitalized subsidiary that is engaged in mortgage banking activities. For purposes of this part, a mortgage banking subsidiary may be deemed to be a separately capitalized subsidiary provided that:

(i) The parent institution's investment in, and extensions of credit to, the subsidiary are deducted from equity capital when calculating regulatory capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c–1; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank or savings association, the subsidiary is an organization separate and apart from any bank or savings association, and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association nor insured by the FDIC.

This exemption will not apply if the institution's primary federal regulator determines that the mortgage banking subsidiary's transactions with its parent institution are not conducted on an arms-length basis. Whenever this exemption applies, the assets and liabilities of the mortgage banking subsidiary of a state nonmember bank need not be consolidated for purposes of calculating regulatory capital under this part, provided that all investments in, and extensions of credit to, the subsidiary are deducted from assets and equity capital when calculating regulatory capital under this part. The mortgage banking subsidiary of a savings association may qualify as a separately capitalized subsidiary for purposes of this part, even if the assets and liabilities of the subsidiary are required to be consolidated under the capital standards of the association's primary federal regulator, provided that an amount equal to the association's investments in, and extensions of credit to, the subsidiary are deducted from equity capital when calculating the amount of the association's tangible capital.

(8) *Case-by-case exemption.* A savings association that is in the process of establishing a separately capitalized mortgage banking subsidiary or affiliate and that is deemed by its primary federal regulator to be well-run and in a sound condition may receive a temporary exemption from the tangible capital limitation specified in paragraph (f)(5) of this section, provided that the FDIC Director of the Division of Supervision concurs with the granting of the case-by-case exemption. In order to continue to qualify for this temporary case-by-case exemption, the association must remain in compliance with all the terms set forth by its primary federal regulator as conditions for granting the exemption. The expiration date for any case-by-case exemption that is granted shall not extend beyond December 31, 1991.

§ 325.6 Issuance of directives.

(a) *General.* A directive is a final order issued to a bank that fails to maintain capital at or above the minimum leverage capital requirement as set forth in §§ 325.3 and 325.4. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b).

(b) *Issuance of directives.* If a bank is operating with less than the minimum leverage capital requirement established by this regulation, the Board of Directors, or its designee(s), may issue and serve upon any insured state nonmember bank a directive requiring the bank to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the bank to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the bank shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the bank may be required under the terms of the directive to adhere to and monitor compliance with the plan. The directive may be issued during the course of an examination of the bank, or at any other time that the FDIC deems appropriate, if the bank is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to a bank pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the bank of its intent to issue a directive. The notice shall include the current Tier 1 leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital

requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the bank may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The bank's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3) After considering the bank's response, the appropriate designated FDIC official(s) shall serve upon the bank a written determination addressing the bank's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the bank to:

(i) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(ii) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(iii) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(iv) A combination of the above actions.

If a directive is to be issued, it may be served upon the bank along with the final determination.

(4) Any bank, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the bank to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever a bank fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any bank, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law. In addition to addressing a bank's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with appendix A to this part.

§§ 325.101, 325.102 [Removed]

3. Sections 325.101 and 325.102 are removed.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

4. The last sentence of the last paragraph in section I.A.1 of appendix A to part 325 is revised to read as follows:

* * * * *

I. * * *

A. * * *

1. * * * Mortgage servicing rights that do not meet the conditions, limitations and restrictions described in 12 CFR 325.5(f) will not be recognized for risk-based capital purposes.

* * * * *

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

5. The second paragraph of section I.A.2.(c)(4) of appendix A to part 325 is revised to read as follows:

* * * * *

I. * * *

A. * * *

2. * * *

(c) * * *

(4) * * *

Mandatory convertible debt securities, which are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments, will qualify as hybrid capital instruments provided the maturity of these instruments is 12 years or less and the instruments meet the criteria set forth below for "term subordinated debt." There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

* * * * *

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

(6) The last sentence of the first paragraph of section I.A.2.(d) of appendix A to part 325 is revised and three new sentences are added as concluding text at the end of the first paragraph of section I.A.2.(d) to read as follows:

* * * * *

I. * * *

A. * * *

2. * * *

(d) * * * For state nonmember banks, a "term subordinated debt" instrument is an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least five years; or

(ii) In the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years; provided that the Director of the Division of Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the Director has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph I.A.2.(d)(2) shall not apply to mandatory convertible debt obligations or issues;

(3) States express that the obligation:

(i) Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors; and

(ii) Is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior written consent of the FDIC or other primary federal regulator; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

Subordinated debt obligations issued prior to December 2, 1987 that satisfied the definition of the term "subordinated note and debenture" that was in effect prior to that date also will be deemed to be term subordinated debt for risk-based capital purposes. An optional redemption ("call") provision in a subordinated debt instrument that is exercisable by the issuing bank in less than five years will not be deemed to constitute a maturity of less than five years, provided that the obligation otherwise has a stated contractual maturity of at least five years; the call is exercisable solely at the

discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and the call is exercisable only with the express prior written consent of the FDIC under 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation. Optional redemption provisions will be accorded similar treatment when determining the perpetual nature and/or maturity of preferred stock and other capital instruments.

* * * * *

7. The existing Statement of Policy on Capital (50 FR 11189, March 15, 1985) is amended and added as a new appendix B to part 325 to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

Part 325 of the Federal Deposit Insurance Corporation rules and regulations (12 CFR part 325) sets forth minimum leverage capital requirements for fundamentally sound, well-managed banks having no material or significant financial weaknesses. It also defines capital and sets forth sanctions which will be used against banks which are in violation of the part 325 regulation. This statement of policy on capital adequacy provides some interpretational and definitional guidance as to how this part 325 regulation will be administered and enforced by the FDIC. This statement of policy also addresses certain aspects of the FDIC's minimum risk-based capital guidelines that are set forth in appendix A to part 325.

I. Enforcement of Minimum Capital Requirements

Section 325.3(b)(1) specifies that FDIC-supervised, state-chartered nonmember commercial and savings banks (or other insured depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) must maintain a minimum leverage ratio of Tier 1 (or core) capital to total assets of at least 3 percent; however, this minimum only applies to the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum. That is, in accordance with § 325.3(b)(2), an absolute minimum leverage ratio of not less than 4 percent must be maintained by those banks that are not highly-rated or that are anticipating or experiencing significant growth.

In addition to the minimum leverage capital standards, section III of appendix A to part 325 indicates that state nonmember banks generally are expected to maintain a minimum risk-based capital ratio of qualifying total capital to risk-weighted assets of 8 percent by December 31, 1992 (and at least 7.25 percent by December 31, 1990), with at least one-half of that total capital amount consisting of Tier 1 capital.

State nonmember banks (hereinafter referred to as "banks") operating with leverage capital ratios below the minimums set forth in Part 325 will be deemed to have inadequate capital and will be in violation of the part 325 regulation. Furthermore, banks operating with risk-based capital ratios below the minimums set forth in appendix A to part 325 generally will be deemed to have inadequate capital. Banks failing to meet the minimum leverage and/or risk-based capital ratios normally can expect to have any application submitted to the FDIC denied (if such application requires the FDIC to evaluate the adequacy of the institution's capital structure) and also can expect to be subject to the use of capital directives or other formal enforcement action by the FDIC to increase capital.

Capital adequacy in banks which have capital ratios at or above the minimums will be assessed and enforced based on the following factors (these same criteria will apply to any insured depository institutions making applications to the FDIC and to any other circumstances in which the FDIC is requested or required to evaluate the adequacy of a depository institution's capital structure):

A. Banks Which Are Fundamentally Sound and Well-Managed

The minimum leverage capital ratios set forth in § 325.3(b)(2) and the minimum risk-based capital ratios set forth in section III of appendix A to part 325 generally will be viewed as the minimum acceptable capital standards for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. While the FDIC will make this determination in each bank based upon its own condition and specific circumstances, this definition will generally apply to those banks evidencing a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Banks meeting this definition which are in compliance with the minimum leverage and risk-based capital ratio standards will not generally be required by the FDIC to raise new capital from external sources.

The FDIC does, however, encourage such banks to maintain capital well above the minimums, particularly those institutions that are anticipating or experiencing significant growth, and will carefully evaluate their earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital. Adverse trends or deficiencies in these areas will be subject to criticism at regular examinations and may be an important factor in the FDIC's action on applications submitted by such banks. In addition, the FDIC's consideration of capital adequacy in banks making applications to the FDIC will also fully examine the expected impact of those applications on the bank's ability to maintain its capital adequacy. In all cases, banks should maintain capital commensurate with the level and nature of risks, including the volume and severity of adversely classified assets, to which they are exposed.

B. All Other Banks

Banks not meeting the definition set forth in I.A. of this appendix, that is, banks evidencing a level of risk which is at least as great as that normally associated with a Composite rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System, will be required to maintain capital higher than the minimum regulatory requirement and at a level deemed appropriate in relation to the degree of risk within the institution. These higher capital levels will normally be addressed through memorandums of understanding between the FDIC and the bank or, in cases of more pronounced risk, through the use of formal enforcement actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

C. Capital Requirements of Primary Regulator

Notwithstanding I.A. and B. of this appendix, all banks (or other depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) will be expected to meet any capital requirements established by their primary state or federal regulator which exceed the minimum capital requirement set forth in the FDIC's part 325 regulation. In addition, the FDIC will, when establishing capital requirements higher than the minimum set forth in the regulation, consult with an institution's primary state or federal regulator.

II. Capital Plans

Section 325.4(b) specifies that any bank which has less than its minimum leverage capital requirement is deemed to be engaging in an unsafe or unsound banking practice unless it has submitted, and is in compliance with, a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate.

A bank having less than the minimum leverage capital requirement is required to submit a reasonable plan to the FDIC within 60 days of the date as of which it fails to comply with the capital requirement (§ 325.3(c)(3)). The amount of time allowed to achieve the minimum leverage capital requirement will be evaluated by the FDIC on a case-by-case basis and will depend on a number of factors, including the viability of the bank and whether it is fundamentally sound and well-managed.

Banks evidencing more than normal levels of risk will normally have their minimum capital requirements established in a formal or informal enforcement proceeding. The time frames for meeting these requirements will be set forth in such actions and will generally require some immediate action on the bank's part to meet its minimum capital requirement. The reasonableness of capital plans submitted by depository institutions in connection with applications as provided for in § 325.3(d)(2) will be determined in conjunction with the FDIC's consideration of the application.

III. Written Agreements

Section 325.4(c) provides that any insured depository institution with a Tier 1 capital to total assets (leverage) ratio of less than 2 percent must enter into and be in compliance with a written agreement with the FDIC (or with its primary federal regulator with FDIC as a party to the agreement) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate or may be subject to a section 8(a) termination of insurance action by the FDIC. Except in the very rarest of circumstances, the FDIC will require that such agreements contemplate immediate efforts by the depository institution to acquire the required capital.

A bank which has issued net worth certificates to the FDIC or received approval from the FDIC to defer agricultural loan losses will be considered to be in compliance with this written agreement requirement for so long as it is in compliance with the FDIC requirements set forth in the net worth certificate program and/or agricultrual loan loss deferral program, provided that both its board and the FDIC agree that the net worth certificate or agricutural loan loss deferral agreements they enter into or have entered into are written agreements as defined in the part 325 regulation. In addition, a savings association with qualifying supervisory goodwill that is being recognized as Tier 1 capital by the association's primary federal regulator will be allowed to recognize this intangible asset for purposes of calculating core capital under part 325.

The guidance in this section III is not intended to preclude the FDIC from taking section 8(a) or other enforcement action against any institution, regardless of its capital level, if the specific circumstances deem such action to be appropriate.

IV. Capital Components

Section 325.2 sets forth the definition of Tier 1 capital for the leverage standard as well as the definitions for the various instruments and accounts which are included therein. Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests. The following provides some additional guidance with respect to some of the items that affect the calculation of Tier 1 capital.

A. Intangible Assets

The FDIC permits state nonmember banks to record intangible assets on their books and to report the value of assets in the Consolidated Reports of Condition and Income ("Call Report"). As noted in the instructions for preparation of the Consolidated Reports of Condition and Income (published by the Federal Financial Institutions Examination Council), intangible assets may arise from business combinations accounted for under the purchase method in accordance with Accounting Principles Board Opinion No. 16, as amended, and acquisitions of portions or segments of another institution's business, such as branch offices, mortgage servicing portfolios, and credit card portfolios.

Intangible assets created from such transactions may be booked in accordance with generally accepted accounting principles with one exception. For the purpose of reporting such assets on Call Reports, banks reporting to the FDIC shall amortize such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Notwithstanding the authority to report all intangible assets in the Consolidated Reports of Condition and Income, § 325.2(m) of the regulation specifies that mortgage servicing rights are the only intangible assets which will be allowed as Tier 1 capital.[1] The portion of equity capital represented by other types of intangible assets will be deducted from equity capital and assets in the computation of a bank's Tier 1 capital. Certain of these intangible assets may, however, be recognized for regulatory capital purposes if explicitly approved by the Director of the Division of Supervision as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in regulatory capital under the terms and conditions that are specifically approved by the FDIC.[2]

In certain instances banks may have investments in unconsolidated subsidiaries or joint ventures that have large volumes of intangible assets. In such instances the bank's consolidated statements will reflect an investment in a tangible asset even though such investment will, in fact, be represented by a large volume of intangible assets. In any such situation where this is material, the bank's investment in the unconsolidated subsidiary will be divided into a tangible and an intangible portion based on the percentage of intangible assets to total assets in the subsidiary. The intangible portion of the investment will be treated as if it were an intangible asset on the bank's books in the calculation of Tier 1 capital. However, intangible assets in the form of purchased mortgage servicing rights, including purchased servicing intangibles held by mortgage banking subsidiaries, are subject to the specific criteria set forth in § 325.5(f).

B. Perpetual Preferred Stock

Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Also, pursuant to section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)), a state nonmember bank cannot, without the prior consent of the FDIC, reduce the amount or retire any part of its perferred stock. (This prior consent is also required for the reduction or retirement of any part of a state nonmember bank's common stock or capital notes and debentures.)

Noncumulative perpetual preferred stock is generally included in Tier 1 capital. Nonetheless, it is possible for banks to issue preferred stock with a dividend rate which escalates to such a high rate that the terms become so onerous as to effectively force the bank to call the issue (for example, an issue with a low initial rate that is scheduled to escalate to much higher rates in subsequent periods). Preferred stock issues with such onerous terms have much the same characteristics as limited life preferred stock in that the bank would be effectively forced to redeem the issue to avoid performance of the onerous terms. Such instruments may be disallowed as Tier 1 capital and, for risk-based capital purposes, would be included in Tier 2 capital only to the extent that the instruments fall within the limitations applicable to intermeidate-term preferred stock. Banks which are contemplating issues bearing terms which may be so characterized are encouraged to submit them to the appropriate FDIC regional office for review prior to issuance. Nothing herein shall prohibit banks from issuing floating rate preferred stock issues where the rate is constant in relation to some outside market or index rate. However, noncumulative floating rate instruments where the rate paid is based in some part on the current credit standing of the bank, and all cumulative preferred stock instruments, are excluded from Tier 1 capital. These instruments are included in Tier 2 capital for risk-based capital purposes in accordance with the limitations set forth in appendix A to part 325.

The FDIC will also require that issues of perpetual preferred stock be consistent with safe and sound banking practices. Issues which would unduly enrich insiders or which contain dividend rates or other terms which are inconsistent with safe and sound banking practices will likely be the subject of appropriate supervisory response from the FDIC. Banks contemplating preferred stock issues which may pose safety and soundness concerns are encouraged to submit such issues to the appropriate FDIC regional office for review prior to sale. Pursuant to § 325.5(e), capital instruments that contain or that are subject to any conditions, covenants, terms, restrictions or provisions that are

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[1] Although intangible assets in the form of purchased mortgage servicing rights are generally recognized for regulatory capital purposes, the ——deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts. In this regard, purchased mortgage servicing rights will be recognized for regulatory capital purposes only to the extent the rights meet the conditions, limitations and restrictions described in § 325.5(f).

[2] This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

inconsistent with safe and sound banking practices will not qualify as capital under part 325.

C. Other Instruments or Transactions Which Fail to Provide Capital Support

Section 325.5(b) specifies that any capital component or balance sheet entry or account which has characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses shall be deducted from capital. An example involves certain types of minority interests in consolidated subsidiaries. Minority interests in consolidated subsidiaries have been included in capital based on the fact that they provide capital support to the risk in the consolidated subsidiaries. Certain transactions have been structured where a bank forms a subsidiary by transferring essentially risk-free or low-risk assets to the subsidiary in exchange for common stock of the subsidiary. The subsidiary then sells preferred stock to third parties.

The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, represents an essentially risk-free or low-risk investment for the preferred stockholders. This type of minority interest fails to provide any meaningful capital support to the consolidated entity inasmuch as it has a preferred claim on the essentially risk-free or low-risk assets of the subsidiary. In addition, certain minority interests are not substantially equivalent to permanent equity in that the interests must be paid off on specified future dates, or at the option of the holders of the minority interests, or contain other provisions or features that limit the ability of the minority interests to effectively absorb losses. Capital instruments or transactions of this nature which fail to absorb losses or provide meaningful capital support will be deducted from Tier 1 capital.

D. Mandatory Convertible Debt

Mandatory convertible debt securities are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments. The maturity of these instruments must be 12 years or less and the instruments must also meet the other criteria set forth in appendix A to part 325. Mandatory convertible debt is excluded from Tier 1 capital but, for risk-based capital purposes, is included in Tier 2 capital as a "hybrid capital instrument."

So-called "equity commitment notes," which merely require a bank to sell common or perpetual preferred stock during the life of the subordinated debt obligation, are specifically excluded from the definition of mandatory convertible debt securities and are only included in Tier 2 capital under the risk-based capital framework to the extent that they satisfy the requirements and limitations for "term subordinated debt" set forth in appendix A to part 325.

V. Analysis of Consolidated Companies

In determining a bank's compliance with its minimum capital requirements the FDIC will, with three exceptions, generally utilize the bank's consolidated statements as defined in the instructions for the preparation of Consolidated Reports of Condition and Income.

The first exception relates to securities subsidiaries of state nonmember banks which are subject to § 337.4 of the FDIC's rules and regulations (12 CFR 337.4). Any subsidiary subject to this section must be a bona fide subsidiary which is adequately capitalized. In addition, § 337.4(b)(3) requires that any insured state nonmember bank's investment in such a subsidiary shall not be counted towards the bank's capital. In those instances where the securities subsidiary is consolidated in the bank's Consolidated Report of Condition it will be necessary, for the purpose of calculating the bank's Tier 1 capital, to adjust the Consolidated Report of Condition in such a manner as to reflect the bank's investment in the securities subsidiary on the equity method. In this case, and in those cases where the securities subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of the bank's Tier 1 capital ratio. The second exception deals with mortgage banking subsidiaries established pursuant to § 325.5(f)(7) which, although generally consolidated for Call Report purposes, may be treated as separately capitalized subsidiaries for regulatory capital purposes. (Where deemed appropriate, the FDIC may also consider deducting investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries and mortgage banking subsidiaries, based on the general characteristics or functional nature of the subsidiaries.)

The third exception relates to the treatment of subsidiaries of insured banks that are domestic depository institutions such as commercial banks, savings banks, or savings associations. These subsidiaries are not consolidated on a line-by-line basis with the insured bank parent in the bank parent's Consolidated Reports of Condition and Income. Rather, the instructions for these reports provide that bank investments in such depository institution subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method. Since the FDIC believes that the minimum capital requirements should apply to a bank's depository activities in their entirety, regardless of the form that the organization's corporate structure takes, it will be necessary, for the purpose of calculating the bank's Tier 1 leverage and total risk-based capital ratios, to adjust a bank parent's Consolidated Report of Condition to consolidate its domestic depository institution subsidiaries on a line-by-line basis. The financial statements of the subsidiary that are used for this consolidation must be prepared in the same manner as the Consolidated Report of Condition.

The FDIC will, in determining the capital adequacy of a bank which is a member of a bank holding company or chain banking group, consider the degree of leverage and risks undertaken by the parent company or other affiliates. Where the level of risk in a holding company system is no more than normal and the consolidated company is adequately capitalized at all appropriate levels, the FDIC generally will not require additional capital in subsidiary banks under its supervision over and above that which would be required for the subsidiary bank on its own merit. In cases where a holding company or other affiliated banks (or other companies) evidence more than a normal degree of risk (either by virtue of the quality of their assets, the nature of the activities conducted, or other factors) or where the affiliated organizations are inadequately capitalized, the FDIC will consider the potential impact of the additional risk or excess leverage upon an individual bank to determine if such factors will likely result in excessive requirements for dividends, management fees, or other support to the holding company or affiliated organizations which would be detrimental to the bank. Where the excessive risk or leverage in such organizations is determined to be potentially detrimental to the bank's condition or its ability to maintain adequate capital, the FDIC may initiate appropriate supervisory action to limit the bank's ability to support its weaker affiliates and/or require higher than minimum capital ratios in the bank.

VI. Applicability of Part 325 to Savings Associations

Section 325.3(c) indicates that, where the FDIC is required to evaluate the adequacy of any depository institution's (including any savings association's) capital structure in conjunction with an application filed by the institution, the FDIC will not approve the application if the depository institution does not meet the minimum leverage capital requirement set forth in § 325.3(b).

Also, § 325.4(b) states that, under certain conditions specified in section 8(t) of the Federal Deposit Insurance Act, the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against a savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. Section 325.4(c) further specifies that any insured depository institution with a Tier 1 leverage ratio (as defined in part 325) of less than 2 percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act.

In addition, the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum core capital leverage, tangible capital and risk-based capital requirements for savings associations (12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the core capital treatment for investments in subsidiaries and for certain intangible assets.

In determining whether a savings association's application should be approved pursuant to § 325.3(c), or whether an unsafe or unsound practice or condition exists pursuant to §§ 325.4(b) and 325.4(c), the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325. However, the FDIC

will also consider the extent to which a savings association is in compliance with (a) the minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements approved by the OTS, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of February 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-5343 Filed 3-8-91; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under part 611 on January 30, 1991 (56 FR 3397). The final regulations amend 12 CFR part 611 to establish a procedure under which a small Farm Credit association may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority pursuant to § 7.10 of the Farm Credit Act of 1971, as amended. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 11, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4444, or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4402 TDD (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: March 6, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5685 Filed 3-8-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Monetary Offices

31 CFR Part 100

[T.D. BEP-1]

Exchange of Paper Currency and Coin

AGENCY: Monetary Offices, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations in 31 CFR part 100 to change the responsibility for the exchange of mutilated paper currency from the Commissioner, Financial Management Service (FMS) (formerly the Bureau of Government Financial Operations), Department of the Treasury, to the Director, Bureau of Engraving and Printing (BEP), Department of the Treasury. Treasury Order number 135-01 transferred the functions relating to the redemption and destruction of currency from FMS to BEP.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, Manager, Administrative Services Division, Bureau of Engraving and Printing, Washington, DC 20228; telephone (202) 447-0162.

SUPPLEMENTARY INFORMATION: By virtue of the Department of the Treasury Order number 135-01, dated October 17, 1983 and amended November 7, 1988, the Currency Operations Division of the Bureau of Government Financial Operations was transferred to the Bureau of Engraving and Printing, together with its functions relating to the redemption and destruction of currency. With the transfer of the Currency Operations Division to BEP, the component was subsequently renamed the Office of Currency Standards (OCS).

The OCS has two primary missions:

(1) It administers, evaluates and coordinates programs involving the cancellation, verification, and destruction of unfit currency with the Federal Reserve System; and

(2) It provides a service to the general public by receiving and processing, for redemption, U.S. currency that represents a claim against the Department of the Treasury.

With respect to the latter mission, the OCS adjudicates and redeems lawfully held paper currency of the United States which has been mutilated. Mutilated currency is currency which has been damaged or its condition is such that its value is questionable. This office redeems mutilated currency at face value if clearly more than one-half of the original whole note remains.

Title 31 U.S.C. 5118(b) and Department of the Treasury Circular 55 Revised, gives the Director, BEP, overall responsibility for the operation of the redemption of mutilated currency, and his/her judgment shall be final. No relief will be granted for lawfully held paper currency of the United States which has been totally destroyed. During calendar year 1989, the OCS received for adjudication from Federal Reserve banks, foreign countries, other financial institutions and the general public 30,235 mutilated currency claims. These claims were valued at $37,116,745.

The changes made by this Treasury decision in subparts B and D of 31 CFR part 100 involve:

(1) Deleting reference to the Commissioner of the Bureau of Government Financial Operations wherever it appears and replacing it with the Director of the Bureau of Engraving and Printing;

(2) Deleting the address of the Bureau of Government Financial Operations and replacing it with the address of the Bureau of Engraving and Printing; and

(3) Updating the addresses of the Federal Reserve banks and branches.

Executive Order 12291

Because this rule relates to agency organization and management, it is not subject to E.O. 12291 pursuant to section 1(a)(3) thereof.

Administrative Procedures Act

Because this Treasury decision relates to agency management and is procedural in nature, notice and public procedure, and a delayed effective date are inapplicable pursuant to 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply because no additional requirement to collect information is proposed. There is no collection of information associated with this final rule.

Drafting Information

The principal authors of this Treasury decision are Edward J. Sheehan and Horace A. Fields, Administrative Services Division, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 100

Currency, Federal reserve system.

Authority and Issuance

31 CFR part 100 is amended as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

1. The authority citation for part 100 continues to read as follows:

Authority: Sec. 1, 49 Stat. 938; 31 U.S.C. 773a.

§ 100.5 [Amended]

2. Section 100.5(a) introductory text is amended by removing the words "Commissioner, Bureau of Government Financial Operations" and by replacing them with "Director, Bureau of Engraving and Printing" and by removing the word "Commissioner's" in the last sentence and by replacing it with "Director's".

§ 100.7 [Amended]

3. Section 100.7(d) is amended by removing the words "The Commissioner of the Bureau of Government Financial Operations" and by replacing it with "The Director of the Bureau of Engraving and Printing".

§ 100.9 [Amended]

4. Section 100.9 is amended by removing the words "Government Financial Operations, room 132, Treasury Annex No. 1, DCS/BEPA, Washington, DC 20226," and replacing them with "Engraving and Printing, OCS, room 344A, Post Office Box 37048, Washington, DC 20013".

5. Section 100.17 is amended by revising the locations for the following Federal Reserve banks and branches to read as follows:

§ 100.17 Location of Federal Reserve banks and branches.

* * * * *

Philadelphia—Ten Independence Mall (P.O. Box 66), Philadelphia, PA 19105

* * * * *

Charlotte Branch—530 East Trade Street (P.O. Box 30248), Charlotte, NC 28230

* * * * *

Birmingham Branch—1801 Fifth Avenue, North (P.O. Box 830447), Birmingham, AL 35283–0447

Jacksonville Branch—800 Water Street (P.O. Box 929), Jacksonville, FL 32231–0044

* * * * *

Oklahoma City Branch—226 Dean A. McGee Street (P.O. Box 25129), Oklahoma City, OK 73125

Omaha Branch—2201 Farnam Street (P.O. Box 3958), Omaha, NB 68103

* * * * *

Los Angeles Branch—950 South Grand Avenue (Terminal Annex, P.O. Box 2077), Los Angeles, CA 90051

* * * * *

Signed:

L. Paul Blackmer, Jr.,

Acting Director.

Approved:

Catalina V. Villalpando,

Treasurer of the United States.

Approved:

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–5634 Filed 3–8–91; 8:45 am]

BILLING CODE 4840–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

[DoD Directive 1440.1]

The DoD Civilian Equal Employment Opportunity (EEO) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to reflect revisions to make mandatory all of the equal employment opportunity Special Emphasis Programs (SEPs). Presently, this part requires only the Hispanic Employment Program, the Federal Women's Program, and the Handicapped Individuals as SEPs. This amendment will expand the DoD concept to include the Asian/Pacific Islander Employment, the American Indian/Alaskan Native Employment Program, and the Black Employment Program. This amendment will also codify what the Military Services and the majority of the Defense Agencies have already done. It also updates the availability of DoD issuances that are mentioned in this part.

DATES: Effective date: March 11, 1991. Written comments must be received on or before April 1, 1991.

ADDRESSES: Forward comments to Director, Equal Employment Opportunity, Room 3A272, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Mr. C. Haughton, telephone (202) 695–0105.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 191

Aged, Civil rights, Equal employment opportunity, Government employees, Handicapped, Religious discrimination, Sex discrimination.

Accordingly, 32 CFR part 191 is amended as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.2 [Amended]

2. Footnote 1 § 191.2(c) is revised to read as follows: Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

§ 191.1 [Amended]

3. Paragraph 191.1(c) is amended by removing the words "as well as, at the discretion of responsible officials, SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program)" and adding the words "the Asian/Pacific Islander Employment Program (AEP), the American Indian/Alaskan Native Employment Program (AIEP), and the Black Employment Program (BEP)."

Section 191.5 is amended by revising paragraphs (a)(9) and (b)(5) as follows:

§ 191.5 Responsibilities.

* * * * *

(a) * * *

(9) Establish DoD SEPs for the FWP, HEP, HIP, AEP, AIEP, and BEP.

* * * * *

(b) * * *

(5) Establish DoD SEPs, for the FWP, HEP, HIP, AEP, AIEP, and BEP at Headquarters level and at all field activities levels unless exemptions are granted to field activities. Authority to grant exceptions to field activities of DoD Components is delegated to the Component Heads who, in turn, may redelegate this authority.

* * * * *

Dated: March 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5665 Filed 3–8–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-084; FRL-3865-5]

Approval and Promulgation of Implementation Plans Metropolitan-Davidson County; Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Metropolitan-Davidson County portion of Tennessee's State Implementation Plan (SIP). These revisions were submitted to EPA on February 16, 1990, in response to the May 1988, SIP call to areas in Tennessee which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone. The revisions being approved today correct some of the deficiencies within the Metropolitan-Davidson County portion of the Tennessee SIP, and are contained within the Metropolitan Health Department Division of Air Pollution Control's Regulation No. 7. Details regarding each revision being approved today are discussed in the Supplementary Information section of this notice.

Additionally, EPA expects Metropolitan-Davidson County to correct the remaining deficiencies identified in the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County. These remaining deficiencies are also identified in the Supplementary Information section of this notice.

EFFECTIVE DATES: This action will be effective May 10, 1991, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Vickie Boothe of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Bureau of Environment, Division of Air Pollution Control, 701 Broadway, Nashville, Tennessee 37219-5403.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, 311-23rd Avenue, North Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Vickie Boothe of the EPA Region IV Air Programs Branch at (404) 347-2864 or FTS 257-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Tennessee that areas of the State have failed to attain the NAAQS for ozone. Since the Clean Air Act attainment date of December 31, 1987, had passed, the Tennessee SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Tennessee respond to the SIP call in two phases, the response for Phase I was due approximately one year following issuance of the SIP call and Phase II was to be completed following issuance of final EPA policy program requirements for ozone and CO nonattainment areas and/or reauthorization of the Clean Air Act (CAA). One of the Phase I requirements called for correction of EPA identified deviations in the volatile organic compound (VOC) regulations within the Tennessee SIP.

On February 14, 1990, the Tennessee Air Pollution Control Board adopted revisions to the Metropolitan-Davidson County portion of the Tennessee SIP's VOC regulations. On February 16, 1990, the Tennessee Air Pollution Control Board submitted to EPA, the adopted amendments to the Metropolitan-Davidson County VOC regulations. Tennessee requested that the revisions be adopted as part of the federally-approved SIP. EPA is today approving the following revisions.

I. In section 7-1: "Definitions", several definitions were revised to be consistent with current Agency policy. The changes are as follows:

(1) The definition for "coating" has been replaced by one that defines coatings as a decorative, functional, or protective thin layer applied to a surface. This definition is numbered as 7-1(c).

(2) The definition of "Coating line" has been revised to include one or more apparatus or operations which include a coating applicator, flash-off area, and/or oven wherein a surface coating is applied, dried, or cured. This definition is numbered as 7-1(e).

(3) The definition of "Stationary Source" has been replaced with one that means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. This definition is numbered as 7-1(gg).

(4) The definition of a "volatile organic compound" (VOC) has been replaced with one that eliminates the use of a vapor pressure cutoff and lists all exempt VOC compounds. It is numbered 7-1(11).

II. In section 7-2: "Prohibited Act", Paragraph (b) has been revised to require that an alternative plan shall only become effective after approval by the United States Environmental Protection Agency.

III. Section 7-3: "Petition For Alternative Controls" has been revised as follows:

If the owner or operator of any stationary source of volatile organic compound can demonstrate that compliance with the provisions of this regulation would be technologically infeasible, he may petition the Director to allow the use of alternative operational (such as improved transfer efficiency, bubbling or cross-line averaging) and/or equipment controls, which results in the same or greater net reduction on VOC emissions as provided by this Regulation. Equivalency calculations for coating are required to be performed in units of lbs. VOC/gallon solids rather than lbs. VOC/gallon coating when bubbling, cross-line averaging, or achieving compliance with add-on control equipment. Compliance with the emission limit under this Section is on a twenty-four (24) hour average. An alternative operational and/or equipment control shall only become effective after approval by the United States Environmental Protection Agency. These alternative operational and/or equipment controls shall be a condition on any permit issued for said stationary source. Such a permit or order may contain an alternate test method and/or averaging time.

IV. Section 7-22: "Compliance Schedules" has been deleted as a housekeeping measure because it contained time tables with dates that have passed.

V. Since section 7-22 has been deleted, all references to this section have been removed from individual regulations. Additionally, since alternative compliance plans must be submitted to EPA as SIP revisions, the

phrase, "or an equivalent method approved by the "Director", has been deleted from the following regulations:

Section 7–5 "Emission Standards For Coil Coating"
Section 7–6 "Emission Standards For Paper Coating"
Section 7–7 "Emission Standards For Fabric and Vinyl Coating"
Section 7–8 "Emission Standards For Metal Furniture Coating"
Section 7–9 "Emission Standards For Surface Coating of Large Appliances"
Section 7–10 "Bulk Gasoline Terminals"
Section 7–14 "Solvent Metal Cleaning"
Section 7–16 "Emission Standards for Surface Coating of Miscellaneous Metal Parts and Products"
Section 7–17 "Manufacture of Pneumatic Rubber Tires"
Section 7–18 "Graphic Arts—Rotogravure and Flexography"
Section 7–19 "Perchloroethylene Dry Cleaning"
Section 7–20 "Emission Standards for Surface Coating of Aerospace Assembly and Component"

VI. The term "vapor control" has been added to section 7–13 (e)(2) and (e)(3) to clarify what is meant by "an equivalent system" for the "Gasoline Dispensing Facility, Stage I" regulation.

VII. In section 7–23 "Special Provisions For New Volatile Organic Compound Sources and Modifications" the term "facilities" has been replaced with the term "stationary sources" in paragraphs (2)(b) and (2)(c). These paragraphs define facility applicability based on potential emissions for the application of LAER and BACT.

VIII. Section 7–24 "Test Methods and Procedures" has been revised to require that VOC emissions be determined using the appropriate test methods contained in 40 CFR, part 60, appendix A, "Reference Methods". This regulation revision also requires that alternative test methods be submitted to EPA for approval.

IX. EPA's May 1988 SIP call cited the lack of recordkeeping as a deficiency in Tennessee's SIP. To address this deficiency, section 7–25, "Record Keeping and Reporting Requirements" has been submitted as follows:

(a) The following data must be maintained on site and made available for inspection upon request:
(1) Coating formulation and analytical data,
(2) Coating consumption data,
(3) Capture and control equipment performance data,
(4) Spray applicator transfer efficiency data,
(5) Process information needed to demonstrate compliance with any applicable section of this Regulation.

Additionally, EPA expects Metropolitan-Davidson County to correct the deficiencies identified in the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County. The following deviations need to be corrected:

(1) Section 7–2 defines the RACT applicability level as 1000 tons/year.

(2) In section 7–3, Petition for Alternative Controls, the words "as applied" should be added to the term "VOC/gallon solids" as a clarification.

(3) The term "vapor-tight" should be defined in section 7–13.

(4) "Once-in/always-in" is missing from the applicability section of the individual rules.

(5) Section 7–25, "Recordkeeping and Reporting Requirements": Because the existing SIP does not contain any recordkeeping provisions, EPA is approving section 7–25, "Recordkeeping and Reporting Requirements". However, the Tennessee Department of Health and Environment (TDHE) was notified that to be fully consistent with EPA guidance, additional requirements must be included that would contain: applicable units of compliance (e.g., lbs/gallons); applicable time periods for data entries; and a clear, separate provision that requires records to be kept. TDHE has agreed to submit the additional recordkeeping provisions as a revision to the SIP as expeditiously as practical.

These deficiencies must be corrected before EPA can fully approve the State's ozone SIP. The SIP call letters cited above originally required that final rules to correct these deficiencies be submitted to EPA by September 30, 1989. If Metropolitan-Davidson County fails to correct these deficiencies by 9 months from this notice date, unless a different date is required consistent with the Clean Air Act Amendments, EPA may disapprove the Nashville-Davidson County's portion of the State's ozone SIP and may propose to promulgate Federal rules which would correct these deficiencies.

Final Action

EPA is today approving the revisions to the Metropolitan-Davidson County portion of the Tennessee SIP (Regulation No. 7—Regulation for Control of Volatile Organic Compounds) listed above.

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.)

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).)

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implemention plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1990.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(103) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(103) A revision to the Metropolitan-Davidson County portion of Tennessee's SIP, Regulation No. 7—Regulation for Control of Volatile Organic Compounds was submitted on February 16, 1990.

(i) Incorporation by reference.

(A) Regulation No. 7—Regulation for the Control of Volatile Organic Compounds, except Section 7–22, effective February 14, 1990.

(ii) Other material.

(A) Letter of February 16, 1990 from the Tennessee Department of Health and Environment.

3. Section 52.2225 is added to read as follows:

§ 52.2225 VOC rule deficiency correction.

(a) The revisions to sections 7–1, 7–2, 7–3, 7–5, 7–6, 7–7, 7–8, 7–9, 7–10, 7–13, 7–14, 7–16, 7–17, 7–18, 7–19, 7–20, 7–22, 7–23, 7–24, and 7–25 of the Tennessee Regulations are approved. The State submitted these regulations to EPA for approval on February 16, 1990. These sections were intended to correct deficiencies cited in a letter calling for the State to revise its SIP for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County.

Deficiencies in the following aspects of the Tennessee Regulations, however, have not been corrected:

(1) Section 7–2 defines the RACT applicability level as 1000 tons/year.

(2) In Section 7–3, Petition for Alternative Controls, the words "as applied" should be added to the term "VOC/gallon solids" as a clarification.

(3) The term "vapor-tight" should be defined in section 7–13.

(4) "Once-in/always-in" is missing from the applicability section of the individual rules.

(5) Section 7–25, "Recordkeeping and Reporting Requirements" should be revised to include additional requirements that would contain: units of compliance consistent with the performance requirements; applicable time periods for data entries; and a clear, separate provision that requires records to be kept.

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guidance relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 91–5671 Filed 3–8–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5420, 5450, 5460, and 9230

[AA–230–00–4311–02; Circular No. 2633]

RIN 1004–AB43

Sales of Forest Products; General; Preparation for Sale; Award of Contract; Sales Administration; Trespass

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rule amends provisions of the existing regulations in 43 CFR part 5400—Sales of Forest Products; General, part 5420—Preparation for Sale, part 5450—Award of Contract, part 5460—Sales Administration, and part 9230—Trespass. The final rule provides for more effective control of the trespass of timber or other vegetative resources. It provides minimum standards for management and protection of timber and other vegetative resources, and for penalties, which may be supplemented by State law, for trespass. The final rule provides guidance concerning the sale of timber products and other vegetative resources. Further explanation of contract and permit content, requirements, stipulations, and penalties are addressed. In addition, definitions are added for several terms used in the rule.

EFFECTIVE DATE: April 10, 1991.

ADDRESSES: Inquiries and suggestions should be sent to: Director (230), Bureau of Land Management, room 901, Premier Building, 1725 I Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rulemaking on November 28, 1989 (54 FR 48917). One comment letter was received from an industry association and two from Federal agencies. All were considered in the decisionmaking process on the final rule.

One comment from an office of the Bureau of Land Management (BLM) suggested adding a section listing specifically the acts that would be treated as trespass and prohibited, and a section spelling out the penalties for trespass. It has been determined that it would be appropriate to add these sections. However, in order to allow the public an opportunity to review them, they will be published in a separate proposed rule.

One comment generally supported BLM's efforts to strengthen its trespass regulations, but offered a number of suggestions.

One suggestion was that since BLM and Forest Service timber are generally sold in the same market, liquidated damages for trespass of Federal timber should be the same. However, considering the increasing problem of timber trespass, there is a need for adequate penalties for unauthorized cutting as a deterrent to such cutting. The Forest Service regulations do not contain adequate penalties, especially in cases where criminal intent cannot be proved.

One comment suggested that the penalty for nonwillful trespass should be equal to fair market value, deposits, and administrative costs. It was further stated that if the trespass could be prevented through better sale layout—delineation of sale boundaries—or through better instructions by the contract administrator, then the BLM must recognize and accept some liability. The BLM makes every effort to ensure that sale layout is done in such a manner that timber sold under the contract is clearly designated, and also that the contract has provisions for its modification in cases where it is necessary to cut timber that was not designated in the original layout or where unavoidable damage to reserved timber occurs in the normal course of logging. The purchaser also has the responsibility to adhere to the contract and to seek further clarification if he is

in doubt as to whether timber is designated or not. There have been very few cases where a trespass has been committed because of poor sale layout or because of lack of clear instructions to the purchaser. Without some penalty for nonwillful trespass, an unscrupulous operator could "nonwillfully" obtain additional timber and, if he got caught, would only have to pay the value of the timber taken. In effect, he would be getting a contract modification for his benefit and convenience, without following the modification procedure. The suggestion was not adopted in the final rule.

Another comment stated that the Forest Service regulations provide that, for willful trespass, liquidated damages are set at double the stumpage value plus whatever deposits to reclamation and other funds would be required under a contract for the timber that was the subject of the trepass. It was suggested that BLM bring its proposal into line with the regulations of the Forest Service. However, the BLM has set its damages at a level that is consistent with State law in many of the States in which public lands lie.

The BLM needs a substantial penalty for willful trespass as a deterrent against such trespass. The provision in this rule is similar to the current regulations in States that provide for treble damages for willful trespass. This provision will allow for more severe penalties in States that do not have adequate penalties at the present time. The suggestion in the comment was not adopted.

Another comment stated that all trespass would require some type of appraisal in order to establish fair market value. It suggested that this regulation should articulate how such appraisal will be made. It also suggested that where timber trespass occurred on a timber sale, that the current contract rates be used as the fair market value. The recommendation that the rule articulate how appraisals will be made was partially adopted by including a definition of fair market value in the final rule. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354. The suggestion that current contract prices be treated as fair market value was not adopted because the contract prices do not always reflect the fair market value at the time of the trespass, especially on 3-year contracts.

Another comment concurred with and supported the amendment adding § 5450.1(c), which makes it clear when a contract award is effective, and requires that terms and conditions both reflect the contractor's ability to perform and provide for mitigation of environmental degradation.

One comment recommended removing the phrase "or reflective of an honest mistake" from the definition of nonwillful in § 5400.0–5. This phrase was included in similar definitions in 43 CFR part 2920 and has resulted in the U.S. Attorney declining to prosecute using criminal remedies. Even those persons who may have committed a willful act by definition could still raise an "honest mistake" defense and cloud the issues. This suggestion was adopted.

One comment recommended revising the definition of public lands to conform to the Federal Land Policy and Management Act, 43 U.S.C. 1702(e): "Any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." This recommendation was adopted in the final rule.

Editorial changes have been made in the definition section for purposes of clarity and accuracy. The definition of "permit" was amended in the final rule by substituting the word "permittee" for the word "purchaser" to fit situations where free use permits are issued. The definition of "purchaser" was amended in the final rule by adding the phrase "or other vegetative resources" at the end of the definition to conform to the policy and regulatory provisions found in §§ 5402.0–6, 5462.1, and elsewhere in the rule.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5420

Forest and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5450

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 9230

Penalties, Public lands.

Under the authorities cited below, parts 5400, 5420, 5450, and 5460 of group 5000, subchapter E, and part 9230 of group 9200, subchapter I, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

Dated: January 24, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 5400—[AMENDED]

1. The authority citation for part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 1181a, 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

2. Section 5400.0–3 is amended by adding paragraph (e) to read as follows:

§ 5400.0–3 [Amended]

* * * * *

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.).

3. Section 5400.0–5 is amended by removing the lettered paragraph designations while retaining the numbered subparagraph designations, reordering the paragraphs in alphabetical order of the terms defined, italicizing the defined terms at the beginning of each definition paragraph, by revising the definitions of "public lands" and "other vegetative resources," and by adding the following paragraphs in alphabetical order, to read as follows:

§ 5400.0–5 Definitions.

Affiliate means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

* * * * *

Commercial use means use intended for resale, barter, or trade, or for profit.

* * * * *

Fair Market value means the price forest products will return when offered for competitive sale on the open market. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354.

* * * * *

Incidental use means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

* * * * *

Nonwillful means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal.

* * * * *

Other vegetative resources means all vegetative material that is not normally measured in board feet, but can be sold or removed from public lands by means of the issuance of a contract or permit.

Permit means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the permittee and the United States.

Personal use means use other than for sale, barter, trade, or obtaining a profit.

Product value means the stumpage value of timber or the fair market value of other vegetative resources.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

Purchaser means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber or other vegetative resources.

* * * * *

Trespass means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal Government, or failure to comply with contract or permit requirements that causes direct injury or damage to timber or other vegetative resources, or undue environmental degradation.

Trespasser means any person, partnership, association, or corporation responsible for committing a trespass.

Willful means a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law.

§ 5401.0–6 [Amended]

4. Section 5401.0–6 is amended by inserting the phrase "or other vegetative resources" after the word "timber" in the fourth (last) sentence of paragraph (a).

5. Section 5402.0–6 is amended by revising paragraph (c)(2) to read as follows:

§ 5402.0–6 Policy.

* * * * *

(c) * * *

(2) The contract is for the disposal of timber or other vegetative resources, for which it is impracticable to obtain competition.

PART 5420—[AMENDED]

6. The authority citation for part 5420 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

§ 5424.0–5 [Removed]

7. Section 5424.0–5 is removed.

8. Section 5424.0–6 is revised to read as follows:

§ 5425.0–6 Policy.

(a) All timber sales shall be made on contract or permit forms approved by the Director, BLM.

(b) Other than for incidental use, the severance and/or removal of any vegetative resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. All contracts or permits shall contain the following:

(1) The name of the purchaser or his/her authorized representative with complete mailing address.

(2) The specific vegetative resources authorized for removal and their respective quantities and values.

(3) The specific location from which the vegetative resources are to be removed.

(4) The term for which the contract or permit is valid.

(5) Contract or permit conditions and stipulations.

(6) Signature of purchaser or authorized representative.

(c) The authorized officer may include additional provisions in the contract or permit to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution or other environmental degradation.

(d) The contract or permit from and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated, all additional provisions shall be made part of the contract or permit.

(e) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions that prohibit:

(1) The export of any unprocessed timber harvested from the area under contract; and

(2) The use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands which is exported or sold for export by the purchaser, an affiliate of the purchaser, or any other parties.

PART 5450—[AMENDED]

9. The authority citation is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

10. Section 5450.1 is amended by adding paragraph (c) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(c) Award of contracts or permits on negotiated sales occurs upon the execution of the contract or permit. Terms and conditions shall reflect the contractor's ability to perform, and shall require prevention or mitigation of environmental degradation associated with the removal of the timber or other vegetative resource.

PART 5460—[AMENDED]

11. The authority citation for part 5460 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

12. Part 5460 is amended by adding new subpart 5642 to read as follows:

Subpart 5462—Contract and Permit Requirements

§ 5462.1 Contract and permit compliance.

(a) The following minimum requirements shall be met in order to assure contract or permit compliance:

(1) Contracts or permits shall be executed by authorized purchasers or their formally designated representatives.

(2) For other than lump sum sales, only the specific timber or other vegetative resource designated for removal, in their respective quantities, shall be removed.

(3) Timber or other vegetative resources shall be removed only from designated locations or areas.

(4) Transportation of timber or other vegetative resources shall be in accordance with contract or permit requirements and shall include appropriate load or product tagging if required.

(5) Contract or permit stipulations and specification shall be adhered to.

(6) Payments shall be made in accordance with subpart 5461 of this title.

(b) All contract and permit provisions and special provisions shall be adhered to unless the contract is modified in accordance with part 5470 of this title.

PART 9230—[AMENDED]

13. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701; et seq.; 18 U.S.C. 1851–1858.

SUBPART 9239—[AMENDED]

§ 9239.0–7 [Amended]

14. Sections 9239.0–7 is amended by inserting after the word "timber" in the first sentence the phrase "or other vegetative resources."

§ 9239.0–8 [Amended]

15. Section 9239.0–8 is amended by inserting in the first sentence between the word "timber" and the comma immediately following it the phrase "or other vegetative resources."

§ 9239.1 [Amended]

16. Section 9239.1 is amended by revising the heading to read: "Timber and other vegetative resources."

17. Section 9239.1–1 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (d)(1), (2), and (3), respectively, by revising the section heading, and by adding new paragraphs (a) through (c) and an introductory text for paragraph (d) to read as follows:

§ 9239.1–1 Unauthorized cutting and/or removal.

(a) All of the definitions in § 5400.0–5 of this title apply to this section.

(b) Authorization by contract or permit for other than incidental use shall be obtained prior to the cutting and/or removal of any vegetative resources. Severance or removal of timber or other vegetative resources without a contract or permit, or the use of an invalid contract or permit, constitutes a trespass and is a violation of regulation subject to criminal penalties.

(c) Failure to comply with any of the requirements and/or stipulations of a contract or permit may, if determined to be detrimental to the public interest by the authorized officer, result in the cancellation of the contract or permit. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance. Cancellation shall be mandatory in cases of:

(1) Intentional falsification of information;

(2) Unauthorized activity; or

(3) Activity by unauthorized person or entity.

(d) Permittees under part 5510 are subject to the following prohibitions:

* * * * *

18. Section 9239.1–2 is amended by redesignating the existing text as paragraph (b), by revising the heading, and adding new paragraph (a) to read as follows:

§ 9239.1–2 Penalty for unauthorized cutting and/or removal.

(a) In accordance with §§ 9239.0–7, 9239.0–8, and 9239.1–1 of this title, violators of the terms and conditions of a contract or permit, or persons who cut or remove timber or other vegetative resources without a contract or permit, are in trespass and may be prosecuted under title 18 of the United States Code or under State criminal law.

* * * * *

19. Section 9239.1–3 is revised to read as follows:

§ 9239.1–3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trespass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

[FR Doc. 91–5635 Filed 3–8–91; 8:45 am]

BILLING CODE 4310–84–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Project Support Program and Professional Services Program Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum Services issues an amendment to its regulations governing awards in excess of the normal $25,000 ceiling amount for the conservation grant program. 45 CFR 1180.20. Section 1180.20(f)(1) authorizes the Director to make awards in excess of $25,000 in exceptional circumstances. This amendment authorizes the Institute to set annually a maximum award level for the Conservation Project Support grants awarded under the exceptional circumstances provision of 1180.20(f)(1).

IMS makes a technical amendment to the regulations for the Professional Services Program to remove the limitation that financial assistance for a project may not be provided for longer than one year. This amendment conforms the regulations to a change in the Museum Services Act made by Public Law 101–512, which eliminates the one-year restriction for these projects.

DATES: These regulations are effective March 11, 1991.

ADDRESSES: Institute of Museum Services, room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director, (202) 786–0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was most recently amended in 1990. Public Law 101–512. The purpose of the Act is

stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act * * * to assist museums in * * * modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage * * *.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Need for the Amendments

Conservation Project Support

The Institute's regulations contain provisions regarding the Institute's conservation grant program, which has been conducted since fiscal year 1984. The conservation grant program is designed to provide matching grants for projects to carry out conservation activities in museums, as more fully set forth in § 1180.20 of the regulations. IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. For fiscal year 1987 and succeeding years, the Institute, with the policy direction of the National Museum Services Board, established an exceptional project category under the program. IMS established this category in order to encourage museums to apply for projects that would benefit a broad category of museums or that would have broad applicability for conservation care beyond the individual museum applicant. 45 CFR 1180.20(f)(1).

Under current regulations, applications to carry out exceptional projects under the IMS conservation grant program are not governed by the normal ceiling of $25,000. An applicant for such a project may request any amount of grant funds. A match of at least one-to-one for the Federal funds must be provided by the applicant museum if it receives an award.

A notice of proposed rulemaking was published in the **Federal Register** on October 11, 1990 (55 FR 41360). Comments were invited for a period of 30 days. IMS received eleven comments.

Eight commenters supported establishing the authority to set maximum awards for the exceptional project category within the Conservation Project Support grant programs on an annual basis. These eight concurred with the position reflected in the proposed rule that setting a maximum amount would allow IMS to distribute scarce funds to a greater number of applicants.

Two commenters stated that establishing a maximum amount would discourage projects that would potentially have a great benefit to a large number of museums and should be able to receive higher amounts. Another commenter thought that it was unnecessary to set limits because of the small number of museums requesting large amounts.

IMS, again with the policy direction of the National Museum Services Board, has carefully considered the comments of commenters who believed that the proposed regulation should not be made final and has concluded, consistent with the preponderance of the comments, that the proposed regulation should become final. The regulation, as set forth below, will provide needed flexibility in the administration of the program, will permit the Institute to set a ceiling on exceptional project grants based on the volume of Conservation Project Support applications, and will provide useful guidance to applicants for exceptional projects, as noted by the commenters who supported the proposed regulation. In addition, it will permit the Institute to ensure that the award of exceptional project grants does not unduly constrain the recognition of the conservation needs of small museums.

At the same time, IMS is not convinced that the proposed regulation would have an adverse effect on the submission of applications for exceptional project grants, as some commenters fear. IMS agrees with the thrust of a number of comments that applicants for exceptional projects seek funding from a variety of sources, so that the establishment of a ceiling on IMS funds should not preclude the implementation of promising larger scale projects.

Moreover, the regulation does not require IMS to set any particular ceiling at all. Under these circumstances, IMS believes that the rule will support an on-going conservation program to meet the needs of individual museums.

IMS has determined to make the proposed regulation final in the form set forth below. The amendment establishes by regulation a process for limiting the amount of IMS funds that can be awarded annually to any one applicant to carry out an exceptional project under the conservation program in accordance with the above-described policy determination of the Board.

IMS, with the policy direction of the Board, has also determined that pursuant to the new rule, for fiscal year 1991 for the Conservation Project Support program, IMS will award exceptional project grants in an amount not to exceed $75,000. This determination has been based upon an assessment of the factors described above as they apply to the current fiscal year.

Professional Services Program

The Institute's regulations contain a prohibition against a project period for activities support under the Professional Services Program (PSP) to extend beyond one year. 1180.77(1) This regulation was established so that the PSP regulations would be compatible with the language of 206(b) of the Museum Services Act which contained the one-year limitation. With the reauthorization of the Institute of Museum Services and its programs in Public Law 101–512, the Museum Services Act no longer contains the one-year restriction. See Public Law 101–512, section 203(b) (1990). The restriction is removed from IMS regulations in order to conform the regulations to the current authorizing statute for the program.

Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the entities affected, because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

This regulation does not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 45.301 Museum Services Program)

Linda Bell,

Acting Director, Institute of Museum Services.

The Institute of Museum Services amends subchapter E of chapter IX of title 45 of the Code of Federal Regulations as set forth below:

PART 1180—[AMENDED]

1. Section 1180.20(f)(1) is revised to read as set forth below.

§ 1180.20 Guidelines and standards for conservation projects.

* * * * *

(f) *Limits for Federal funding.* (1) IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in excess of $25,000 in Federal funds. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

§ 1180.77 [Amended]

2. Section 1180.77 is amended by removing paragraph (l) and redesignating paragraph (m) as paragraph (l).

[FR Doc. 91-5640 Filed 3-8-91; 8:45 am]

BILLING CODE 7036-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-469; RM-7428]

Radio Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C3 for Channel 288A at Tuscaloosa, Alabama, and modifies the license of New South Radio, Inc., for Station WACT-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage area FM service. See 55 FR 45623, October 30, 1990. Coordinates used for Channel 288C3 at Tuscaloosa are 33-20-00 and 87-25-39. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-469, adopted February 26, 1991, and released March 6, 1991. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 288A and adding Channel 288C3 at Tuscaloosa.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Divisioin, Mass Media Bureau.

[FR Doc. 91-5698 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-440; RM 7452]

Radio Broadcasting Services; Central Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C3 for Channel 257A at Central Valley, California, and modifies the license of Quality Broadcasters of California, L.P., for Station KNNN(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. *See* 55 FR 42029, October 17, 1990. Coordinates used for Channel 257C3 at Central Valley are 40-33-46 and 122-27-07. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 90-440, adopted February 26, 1991, and released March 6, 1991. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 257A and adding Channel 257C3 at Central Valley.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5699 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-577; RM-7507]

Radio Broadcasting Services; Georgetown, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 277A for Channel 276A at Georgetown, Kentucky, and modifies the license of Station WTKT(FM) to specify operation on the alternate Class A channel, at the request of Kentucky Radio Limited Partners. See 55 FR 49924, December 3, 1990. Channel 277A can be allotted to Georgetown in compliance with the Commission's minimum distance separation requirements at Station WTKT's currently licensed site, with a site restriction of 10.8 kilometers (6.7 miles) south of the community. The coordinates for Channel 277A at Georgetown are North Latitude 38-06-57 and West Longitude 84-31-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–577, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 276A and adding Channel 277A at Georgetown.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–5702 Filed 3–8–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 386

[FHWA Docket No. 90-5]

RIN 2125-AC36

Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings; Penalties for Failure To Comply With Notices and Orders Issued Under the Authority of 49 U.S.C. 521(b)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This action implements section 213(b) of the Motor Carrier Safety Act of 1984 by adding a penalty schedule to 49 CFR part 386 applicable to failure to comply with notices and orders issued under the authority of section 521(b) of title 49, United States Code. These penalties apply in addition to other civil forfeiture assessments for violations of the Federal Motor Carrier Safety Regulations (FMCSR) charged in Notices of Claim or Notices of Investigation. This action also makes some conforming amendments to the Rules of Practice for Motor Carrier and Hazardous Materials Proceedings contained in part 386 to permit the use of these rules in adjudicating the assessment of the new penalties.

EFFECTIVE DATE: This final rule is effective April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366–0834, or Mr. Sam Rea, Office of Motor Carrier Safety Field Operations, (202) 366–1795, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA issued a notice on March 27, 1990 (55 FR 11,224) proposing to amend part 386 of title 49, Code of Federal Regulations, by adding a penalty schedule for violations of notices and orders authorized in 49 U.S.C. 521(b) and by making other conforming amendments to the Rules of Practice for Motor Carrier and Hazardous Materials Proceedings.

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, October 30, 1984, 98 Stat. 2832) (MCSA) amended section 521(b) of title 49, United States Code, by substantially changing the civil and criminal penalties that may be charged for violations of motor carrier safety regulations issued under the authority of MCSA and 49 U.S.C. 3102. The section was further amended in the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–184) to provide for penalties for violations of regulations issued under that authority. The March 27, 1990 notice of proposed rulemaking enumerated the five categories of civil penalties for safety violations with corresponding maximum amounts for each category now authorized by section 521(b). That section also established criminal penalties for knowing and willful violations of the same regulations.

Paragraph (7) of section 521(b), also added in the 1984 MCSA, authorized the issuance of notices and orders, and specifically directed the Secretary to establish additional penalties for their violation:

> "The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection."

Notices and Orders

In the March 27 notice of proposed rulemaking, the FHWA identified the following four types of notices or orders authorized or required by section 521(b):

- Notice to Abate
- Notice to Post
- Final Orders
- Out-of-Service Orders

Each of these notices and orders were discussed separately in the NPRM together with the penalties proposed.

The FHWA further proposed to provide for procedural due process in the assessment and collection of these penalties by using the existing Rules of Practice for Motor Carrier and Hazardous Materials Proceedings in part 386 for that purpose. Amendments to part 386 are necessary to accommodate this process and were accordingly proposed in the NPRM.

Comments

The FHWA received a total of eleven responses to the NPRM, but six were from associative entities representing a fair cross-section of the motor carrier industry. They included the American Trucking Associations (ATA), the American Bus Association (ABA), the National Private Truck Council (NPTC), the International Brotherhood of Teamsters (IBT), the Transportation Lawyers Association (TLA), and the Regular Common Carrier Conference (which endorsed the comments of the TLA). Also commenting were three trucking companies and two individuals with long industry experience. The comments were generally supportive of the FHWA's efforts to enhance enforcement of the safety regulations, but the two individual commenters and two of the trucking companies expressed concern that too much emphasis is placed on punishment rather than on positive encouragement and education to bring about voluntary compliance.

The FHWA is aware that a satisfactory level of compliance with the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations (HMR) depends to a very large extent on the voluntary cooperation of carriers and drivers in the industry. The FHWA also recognizes that in enacting the Motor Carrier Safety Act of 1984 (MCSA), Congress was sending a strong signal that it was not satisfied with reliance on voluntary compliance. This position has been made even more apparent in subsequent oversight hearings and legislative reports.

Voluntary compliance and stepped up enforcement may very well be sufficient to improve the safety practice of those carriers who violate the safety regulations through misunderstanding, shortsightedness, negligence or simple convenience. There are still carriers and drivers, however, who will not comply voluntarily and who continue to engage in unsafe practices even after they have been prosecuted for safety violations, i.e., those who treat penalties as a cost of doing business without regard for safety consequences, or those who simply ignore the regulations because they believe the chances of getting caught are negligible and the consequences tolerable. In issuing this rule, the FHWA is carrying out the express intent of Congress in the MCSA to compel compliance by these recalcitrant and persistent violators of the safety regulations.

These penalties will be an effective supplement to FHWA's motor carrier safety enforcement policy, which is to impose progressively higher penalties against repeat violators leading to operational shut down in appropriate cases.

a. Notice to Abate

Summary of comments. The area of most concern to the commenters is the Notice to Abate and the effect of failure to comply therewith. Some believe the FHWA may have exceeded its authority by fixing penalties for accumulated noncompliance at levels higher than the maximum set by Congress in section 213 of the MCSA (49 U.S.C. 521[b]). For instance, the American Bus Association agrees with FHWA's position that it has the power to set a penalty where none has been established by Congress, but the ABA contends that penalties for failing to abate violations of the FMCSR are limited to levels fixed by Congress in the MCSA for the violations of the FMCSR themselves. Similarly, the TLA suggests that penalties for failing to abate violations must be "capped" at the maximum allowable for the underlying violation. The TLA also believes that to fix an abatement penalty at three times the statutory fine (e.g., that proposed for paperwork violations) for the violations left unabated is punitive rather than designed to "induce compliance," as required by section 521(b)(7). The TLA further points out the need for specificity in abatement notices, without which due process problems inevitably arise. The TLA and the NPTC also believe the rule should contain a provision for consideration of good faith efforts to abate.

FHWA Response. The FHWA reiterates its position expressed in the NPRM that in section 521(b)(7), Congress authorized the establishment of a penalty schedule for violations of notices and orders issued under section 521(b). The FHWA continues to believe that the requirement for fixing a reasonable time for abatement contemplated that there would be an additional penalty imposed under section 521(b) for failing to comply. The requirement to comply with a notice or order is separate, apart and in addition to the requirement to comply with the safety regulations themselves. Consequently, the failure to comply with such a notice or order in itself constitutes a violation, which is distinct from violations of the FMCSR, and for which no specific penalty is presently prescribed in section 521(b).

Nevertheless, the FHWA recognizes the problems inherent in both the comprehension of a distinct schedule of penalties for failing to abate violations for which another statutory schedule of penalties applies and in the level of enforcement effort required to follow up on abatement notices. Therefore, in this final rule, the notice to abate will be treated in two separate categories, the more serious of which will overlap to some extent into the area of Out-of-Service Orders.

Abatement of safety violations may require several things on the part of the offending carrier. In routine cases of noncompliance, abatement will merely require that the carrier cease violating the regulations. In other instances, the noncompliance may be more ingrained and some practices may have to be curtailed to root out the cause of the violations. For example, an audit of a carrier's records discloses an inordinate amount of hours of service violations by drivers on particular runs. Investigation reveals that it is nearly impossible for drivers to complete that run within the allowable driving time or on-duty time. As the carrier shows no intention to make any changes in the run, abatement of the violations may require a direction to the carrier to cease scheduling drivers on that run. In this instance, the abatement notice is more akin to an out-of-service order, and the abatement violation, failure to cease the scheduling of drivers as directed, is clearly distinct from the underlying hours of service violations.

Conversely, abatement of safety violations may require affirmative steps to be taken by the carrier to assure compliance with the regulations. For example, roadside inspection reports may indicate that a carrier's equipment is being poorly maintained, and a subsequent audit reveals that the carrier has no effective system for assuring that routine maintenance is performed. An abatement notice may direct the carrier to retain a mechanic or to designate someone with responsibility for scheduling and verifying maintenance operations. It may also require reports to be prepared and additional records to be maintained, which can be reviewed at a later date to determine whether there was compliance with the abatement notice. Failure to take the steps as directed in the abatement notice would result in a violation of that notice.

Notice of claim abatement. In routine cases, therefore, claim letters (notices of claim) will contain abatement notices directing the respondent named in the notice to abate the violations for which penalties have been assessed in the claim. The notice of claim may defer the payment of part of an assessed penalty or even refrain from any assessment of a penalty on the condition that the violations are timely abated. The abatement notice in the claim letter will provide a reasonable time for abatement and advise that failure to abate as directed will require immediate payment of the deferred portion of the payment or will be considered an aggravating factor in any future claim for the same or similar violations.

Notice of investigation abatement. In other cases, where more will be required to assure compliance than mere avoidance of cited violations, a proceeding will be initiated by Notice of Investigation (NOI). This proceeding will assess penalties for cited violations and order specific actions within prescribed time frames to be taken by the carrier to avoid future noncompliance. The NOI will provide the respondent carrier with the opportunity to contest both the penalties assessed and the terms of the included compliance order (notice of abatement). It is contemplated that many such proceedings will result in the negotiation of consent orders. Compare 49 U.S.C. 506 (1983). Such negotiations should provide ample opportunity for consideration of good faith efforts and how they might affect the level of penalty.

b. Penalties

Summary of comments. Several commenters believe, as noted above, that the penalties for violations of abatement notices were limited to the maximum amount fixed by Congress on the underlying violations. The International Brotherhood of Teamsters,

on the other hand, thinks the FHWA made a good case for progressively higher penalties, but sees no logic in placing a cap on such penalties. The IBT recognizes the problem of using scarce resources to perform the follow-up reviews, and finds it unlikely that FHWA would be back during the time that penalties for failure to comply with abatement notices were still accumulating. Therefore, the cap would be meaningless because the maximum would almost always be reached before a follow-up review was conducted. The IBT also questions FHWA's will to impose the high monetary penalties that would naturally attach to failures to abate in those areas where no maximum is proposed.

The American Trucking Associations believes the penalties proposed for violations of out-of-service orders are not in line with those proposed by a committee of the Commercial Motor Vehicle Safety Alliance (and subsequently adopted by CVSA at its October, 1990 meeting) in its efforts to devise uniform sanctions for motor carrier safety violations for use by States operating under the Motor Carrier Safety Assistance Program MCSAP). In the interest of uniformity, therefore, the ATA suggested that FHWA's penalties be adjusted accordingly.

FHWA Response. As noted above, the FHWA interprets section 521(b)(7) as authorizing a new category of penalties separate and apart from those provided in paragraph (2) of section 521(b), but agrees with the commenters that the imposition of progressively higher penalties for failing to abate already cited violations is not practical. Consequently, the proposal for gradually increasing per diem penalties for violations of recordkeeping requirements is being dropped from the final rule in favor of the alternative discussed above. In other words, failure to comply with a notice to abate may result in a higher payment or may negate any mitigating factors which ordinarily would cause the penalties to be set at lower than the maximum levels on subsequent violations. The order (compliance or consent) resulting from the NOI proceeding, which directs certain actions to be curtailed to abate violations, will set the specific penalty for violation of each term of the order. These violations are considered "serious patterns of safety violations" and hence the penalties assessed will be in the same range as statutorily prescribed.

Citation and assessment of penalties for violations of safety regulations, coupled with direction to correct the violations by taking actions specified in the notice, eliminates the argument of isolated instances in the face of continued transgressions. Therefore, penalties will be in the ranges set for patterns of safety violations provided in section 521(b)(2)(A), i.e., up to $1,000 per day to a maximum of $10,000. This is consistent with those commenters who suggested that the penalties for failing to abate bear some relationship to the penalties set by Congress in the 1984 act.

Accordingly, the final rule makes no distinctions among failing to abate the various types of violations (e.g., patterns of safety violations, substantial health and safety violations, and commercial drivers license violations). The final rule also contains a specific reference to the consideration of good faith efforts in the assessment of penalties for failure to abate.

With respect to the penalties for violations of out-of-service orders, the FHWA believes its proposal was fairly consistent with the penalties adopted by the CVSA; however, some adjustments are made in the final rule in the interest of uniformity. It must be understood that the penalty schedule adopted by the CVSA is merely a recommendation to the member states and is, at present, a long way from being universally accepted. The "uniform sanctions" adopted by the CVSA, moreover, apply almost exclusively to roadside enforcement, where, in many jurisdictions, it is only the driver against whom fines may be imposed. The penalties adopted by FHWA in this final rule contemplate enforcement against carriers as well, through evidence obtained during investigations or audits at a carrier's place of business, for requiring or permitting drivers to operate after they or their vehicles have been placed out-of-service. Furthermore, there is no corresponding violation in the CVSA scheme of things to a violation of an administrative shut down order, which under the FHWA proposal, carries the heaviest penalty.

The FHWA intends to demonstrate in this rule its full agreement with the CVSA that violations of out-of-service orders on the roadside constitute imminent hazards warranting heavy penalties against those responsible for willfully exposing the public to such grave risks to highway safety. The FHWA will continue to work with the CVSA and the individual States through the Motor Carrier Safety Assistance Program to adopt and vigorously enforce these penalties.

c. Other Comments

The International Brotherhood of Teamsters offers some interesting comments on the relative levels of penalties assessed against drivers and carriers for violations of out-of-service orders, indicating that the NPRM did not adequately account for motivation, culpability and practicality. The IBT agrees that a 10:1 ratio in the level of penalties for carriers as opposed to drivers for violation of driver out-of-service orders is appropriate, and recommends that the same ratio apply to violations of vehicle out-of-service orders. In the latter case, the IBT believes the proposed penalty of $2,000 is too high for a driver and too low for a carrier. Similarly, the IBT finds fault with FHWA's reasoning that false certification of repairs was the same as no certification. The IBT correctly observes that if FHWA could establish false certification, then the appropriate presumption should be that the repairs were not made and the out-of-service order was willfully violated, jeopardizing both the unwitting driver and the public.

The ATA makes a somewhat different observation about certifications, believing that it is often the failure of the driver to deliver the out-of-service inspection report to the employing carrier that is the cause of no certification of repairs being returned. Both the IBT and the ATA observe problems in the way the proposal dealt with owner-operators. The ATA observes that the problem of failing to account for out-of-service inspection reports was particularly acute for carriers utilizing owner-operators, while the IBT finds fault in the part of the proposed penalty schedule that treats owner-operators the same as drivers. The Teamsters recommend that FHWA make an effort to address the problem of defining the scope of the term "independent owner-operator," citing a recent National Transportation Safety Board report finding that the term is not so easily defined as it might seem.

In the area of definitions, the TLA and the NPTC recommend that FHWA better define the term "immediate destination" as it is used in connection with permissible activity by a carrier after it has been ordered to shut down all or part of its operations.

Finally, the TLA makes two other points which need clarification in the final rule. First, the time within which to comply with a notice to abate should not begin to run until contested violations have been resolved. Second, the revision of the reply procedure in § 386.14 appears to have reduced a respondent's options with respect to seeking to negotiate a settlement of the claim while preserving the right to a hearing.

FHWA Response. The FHWA agrees with the IBT comments about the relative level of penalties for violations of out-of-service orders and, as noted in the response to the ATA comments under "Penalties" above, the levels have been adjusted accordingly in the final rule. The FHWA also agrees with the IBT's observation about the effect of falsification of repair certification, and that has been treated as presumption of violation of an out-of-service order in the final rule. With respect to the treatment of owner-operators, the final rule has made an adjustment which distinguishes between owner-operators who are under lease to carrier and therefore treated as "employees" in the Federal Motor Carrier Safety Regulations, and those operating under their own authority or in their own interests. The final rule also contains a definition of "immediate destination" as used in section 386(b)(2) referring to what is required to comply with an order to cease all or part of a carrier's operations. The proposed conforming amendments to the procedural rules in part 386 have also been revised to clarify the points raised by the TLA regarding abatement of contested violations and a respondent's option to negotiate a settlement without losing the right to a hearing.

d. Remaining Issues

The only comments received on the penalties proposed for failing to comply with Notices to Post and Final Orders are favorable and they are being included in the final rule as proposed in the NPRM.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Civil forfeiture, Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties.

Issued on: March 1, 1991.

T.D. Larson,

Administrator.

The FHWA hereby amends 49 CFR chapter III, part 386, as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for part 386 is revised to read as follows:

Authority: Title XII of Public Law 99–570, 100 Stat. 3207–170 (49 U.S.C. App. 2701 *et seq.*); Title II of Public Law 98–554, 98 Stat. 2829 (49 U.S.C. App. 2501 *et seq.*); Public Law 97–449; 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Public Law 93–633, 88 Stat. 2156 (49 U.S.C. App. 1801 *et seq.*); Public Law 97–261, 96 Stat. 1121 (49 U.S.C. 10927, note); Public Law 96–296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

2. Section 386.2 is amended by revising the definition of "Associate Administrator" and by adding in alphabetical order, three new definitions, as follows:

§ 386.2 Definitions.

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

* * * * *

Associate Administrator means the Associate Administrator for Motor Carriers of the Federal Highway Administration or his/her authorized delegate.

* * * * *

Compliance Order means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

Consent Order means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

* * * * *

3. Section 386.11 is amended by revising paragraphs (b) introductory text, (b)(2), (c) heading and introductory text, and (c)(3) and by adding paragraph (c)(4) to read as follows:

§ 386.11 Commencement of proceedings.

* * * * *

(b) *Civil forfeitures.* These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

* * * * *

(2) In addition to the information required by paragraph (b)(1) of this section, the letter may contain such other matters as the FHWA deems appropriate, including a notice to abate.

* * * * *

(c) *Notice of investigation.* This is a notice to respondent that FHWA has discovered violations of the Federal Motor Carrier Safety regulations or Hazardous Materials Regulations under circumstances which may require a compliance order and/or monetary penalty. The proposed form of the compliance order will be included in the notice. The Associate Administrator may issue a Notice of Investigation in his or her own discretion or upon a complaint filed pursuant to § 386.12.

* * * * *

(3) A Claim Letter may be combined with a Notice of Investigation in a single proceeding. In such proceeding, the 30-day reply period in paragraph (c)(1) of this section shall apply.

(4) A notice to abate contained in a Claim Letter or Notice of Investigation shall specify what must be done by the respondent, a reasonable time within which abatement must be achieved, and that failure to abate subjects the respondent to additional penalties as prescribed in subpart G of this part.

4. Section 386.14 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(3), (c), and (e) and by adding new a paragraph (f) to read as follows:

§ 386.14 Replies and request for hearing: Civil forfeiture proceedings.

(a) *Time for reply.* The respondent must reply within 15 days after a Claim Letter is served, or 30 days after a Notice of Investigation is received.

(b) * * *

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent wishes to negotiate the terms of payment or settlement of the amount claimed, or the terms and conditions of the order; and

* * * * *

(c) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed, or if no hearing is requested under paragraph (b)(2) of this section, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation.

Evidence must be served in the form specified in § 386.49.

* * * * *

(e) *Failure to reply or request a hearing.* If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Associate Administrator may, on motion of any party, issue a final order in the proceeding.

(f) *Non-compliance with final order.* Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

§ 386.15 [Removed and Reserved]

5. Section 386.15 is removed and reserved.

6. Section 386.16 is amended by revising paragraphs (c)(1) introductory text, (c)(1)(v), and by adding paragraph (c)(1)(vi), and by removing the word "and" after the semicolon in paragraph (c)(1)(iv) to read as follows:

§ 386.16 Action on petitions or replies.

* * * * *

(c) *Settlement of civil forfeitures.* (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Associate Administrator. Such settlement agreement must contain the following:

* * * * *

(v) A statement that the agreement is not binding on the agency until executed by the Associate Administrator; and

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

* * * * *

§§ 386.21 and 386.22 [Redesignated as §§ 386.22 and 386.23]

7. Subpart C of part 386 is amended by revising the subpart heading; by redesignating §§ 386.21 and 386.22 as §§ 386.22 and 386.23, respectively; by adding a new § 386.21; and by revising paragraphs (a) introductory text and (b) in newly designated § 386.23 as follows:

Subpart C—Compliance and Consent Orders

§ 386.21 Compliance order.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Associate Administrator and shall contain the following:

(1) A statement of jurisdictional facts;

(2) Findings of facts, or reference thereto in an accompanying decision, as determined by a hearing officer or by the Associate Administrator upon respondent's failure to reply to the notice, which establish the violations charged;

(3) A specific direction to the respondent to comply with the regulations violated within time limits provided;

(4) Other directions to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;

(5) A statement of the consequences for failure to meet the terms of the order;

(6) Provision that the Notice of Investigation and the final decision of the hearing officer or Associate Administrator may be used to construe the terms of the order; and

(7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 3102, the Motor Carrier Safety Act of 1984 or 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986; or as provided in 5 U.S.C. 701 *et seq.*, for violations of regulations issued under the authority of 49 U.S.C. App. 1804 (hazardous materials proceedings) or 49 U.S.C. 10947 note (financial responsibility proceedings).

(c) *Notice of Imminent Hazard.* A compliance order may also contain notice that further violations of the same regulations may constitute an imminent hazard subjecting respondent to an order under subpart F of this part.

§ 386.23 Content of consent order.

(a) Every agreement filed with the Associate Administrator under § 386.22 must contain:

* * * * *

(b) A consent order may also contain any of the provisions enumerated in § 386.21—Compliance Order.

Subpart F—Injunctions and Imminent Hazards

8. Section 386.72 is amended by adding a sentence at the end of paragraph (b)(2) and by adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 386.72 Imminent hazard.

* * * * *

(b) * * *

(2) * * * An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(3) For purposes of this section the term "immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(4) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer or driver to penalties prescribed in subpart G of this part.

9. Part 386 is amended by adding a new subpart G, to read as follows:

Subpart G—Penalties

Sec. 386.81 General.
Sec. 386.82 Civil penalties for violations of notices and orders.

Subpart G—Penalties

§ 386.81 General.

(a) The maximum amounts of civil penalties that can be imposed for regulatory violations subject to the civil forfeiture proceedings in this Part are set in the statutes authorizing the regulations. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and notices under the administrative procedures herein, additional information may be developed regarding those factors that may affect the final amount of the claim.

(b) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

§ 386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

(1) Notice to abate—§ 386.11 (b)(2) and (c)(1)(iv);

(2) Notice to post—§ 386.11(b)(3);

(3) Final order—§ 386.14(f); and

(4) Out-of-service order—§ 386.72(b)(3).

(b) A schedule of these additional penalties is provided in the appendix A to this part. All the penalties are maximums, and discretion will be retained to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

(c) Claims for penalties provided in this section and in the appendix A to this part shall be made through the civil forfeiture proceedings contained in this part. The issues to be decided in such proceedings will be limited to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part.

10. Part 386 is amended by adding an appendix to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

I. Notice to Abate

a. *Violation*—failure to cease violations of the regulations in the time prescribed in the notice.

(The time within which to comply with a notice to abate shall not begin to run with respect to contested violations, i.e., where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

Penalty—reinstatement of any deferred assessment or payment of a penalty or portion thereof.

b. *Violation*—failure to comply with specific actions prescribed in a notice of investigation, compliance order or consent order, other than cessation of violations of the regulations, which were determined to be essential to abatement of future violations.

Penalty—$1,000 per violation per day.

Maximum—$10,000.

II. Notice to Post

Violation—Failure to post notice of violation (i.e., notice of investigation) as prescribed.

Penalty—$500 (A separate violation may be charged each time a failure to post as ordered is discovered.)

III. Final Order

Violation—Failure to comply with final agency order, i.e., failure to pay the penalty assessed therein after notice and opportunity for hearing within time prescribed in the order.

Penalty—Automatic waiver of any reduction in the original claim found to be valid, and immediate restoration to the full amount assessed in the Claim Letter or Notice of Investigation.

IV. Out-of-Service Order

a. *Violation*—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $1,000 per violation.

(For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. *Violation*—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $10,000 per violation.

(This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. *Violation*—Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—$1,000 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. *Violation*—Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty—Up to $10,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. *Violation*—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $500 per violation.

f. *Violation*—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. *Violation*—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—Up to $10,000 per day the operation continues after the effective date and time of the order to cease.

[FR Doc. 91-5594 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 30]

RIN 2127-AD18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the humidity test procedures for replaceable bulb and integral beam headlamps specified in paragraph S8.7 of Motor Vehicle Safety Standard No. 108. The requirements remain unchanged, except that a photometric test is no longer required following completion of the humidity test. The purpose of the rule is to improve the repeatability of the humidity test. It accomplishes this by specifying the test fixture to be used, the position of the lamp in the test chamber, and the velocity of the air flow during the humidity test. This completes rulemaking pursuant to grants of petitions for rulemaking submitted by Hella K.G., Robert Bosch, and Koito Mfg. Co.

DATE: The effective date of the amendment is September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment (49 CFR 571.108) to permit headlamps other than sealed beam units (48 FR 24690). One of the tests specified for headlamps with replaceable bulbs concerned resistance to humidity (now paragraph S8.7 of Standard No. 108). Shortly after the issuance of those amendments, some parties expressed concerns about that test. This rulemaking action responds to those concerns.

Hella Petition

On July 11, 1983, Hella KG of the Federal Republic of Germany petitioned for reconsideration of the amendments. Because the agency did not receive the petition until more than 30 days following publication of the amendment in the **Federal Register**, NHTSA treated it as a petition for rulemaking pursuant to 49 CFR part 552, in accordance with the provision in its regulations on petitions for reconsideration regarding timeliness, 49 CFR 553.35(a). The portion of the petition relevant to this rulemaking action concerned the appropriateness of the humidity test procedures for vented headlamps. Specifically, Hella viewed the test as inappropriate, and stated that modified dust and moisture requirements should be substituted for it. While the agency did not agree, it was concerned about the effect of the test on vented headlamps. NHTSA believed that venting of headlamps affected the performance of lamps with plastic lenses in Standard No. 108's internal heat test, and thus might be desirable for some headlamp system designs. The agency wished to be able to distinguish inferior venting systems from superior ones. Therefore, NHTSA granted this aspect of the Hella petition, insofar as it related to a closer study of tests for ventilated headlamp systems, and initiated research on this subject.

Bosch Petition

On October 21, 1985, Robert Bosch GmbH, a headlamp manufacturer in Stuttgart, Germany, petitioned for a modification in the humidity test for replaceable bulb headlamps. In its view, the test did not fully account for actual operating conditions typical of vented headlamps. As a result of the heat generated in the test, the air in the interior of the lamp expands, with pressure compensation occurring through the ventilation openings. When the lamp cools, air enters the headlamp interior carrying moisture which is deposited in the interior of the headlamp. If there is no flow of air within the humidity test box, the 1-hour soak period is insufficient "to establish a well-balanced proportion between the humidity inside the headlamp and the outside conditions". Accordingly, Bosch argued that for judging compliance of vented headlamps "it is necessary that there is a flow of air inside the test box during the soak period". It believed that a flow of between 3 and 6 feet per second (2 to 4 m.p.h.) would be sufficient, when directed to the headlamp from the front.

NHTSA granted both the Hella and Bosch petitions on March 18, 1987 (52 FR 8482). Shortly thereafter, on April 30, 1987, Koito Manufacturing Co. Ltd., a headlamp manufacturer in Japan, filed its own supporting petition for rulemaking to amend the humidity test. This petition was granted on July 14, 1989.

Koito Petition

Koito submitted test data on humidity and dust tests for many designs of vented headlamps. It found that if vents to eliminate water accumulation are too large, dust intrudes into the headlamps. Conversely, if the vents are too small, the lamps do not pass the humidity test. From the Koito test data, it appeared that headlamps could be designed to pass a humidity test with axial flow of air over the headlamp of between 2 m.p.h. and 4 m.p.h., the values recommended by Bosch, although without supporting data at that time. Koito's data indicate that by modifying the existing humidity test procedure to specify air flow velocity, the repeatability of the humidity test is improved.

Proposed Changes in Test Procedures

As NHTSA stated in March 1987, it had initiated its own test program on humidity testing, and submitted a copy of its test work to Docket 81-11; Notice 22. It had verified that moisture in lamps affects photometric performance. This test work led to further test programs to eliminate instances of inconsistent test results. On the basis of these tests, NHTSA developed the changes that it proposed in the humidity test in a notice published on November 27, 1989 (54 FR 48776).

The first change proposed was to the initial high-humidity "soak period". Currently, a 5-day high-humidity conditioning period is specified for headlamps before the low-humidity (dry-box) test is conducted. The high-humidity test consists of 20 on-off cycles during each of which the headlamp is energized for 1 hour and de-energized for 5 hours. NHTSA's research has demonstrated that headlamps cool off within 2 hours, so 3 hours of unproductive "off time" can be eliminated from each cycle without affecting the test results. Accordingly, it proposed that the high-humidity soak period consist of 24 cycles of 3 hours each, with the headlamps activated for 1 hour and deactivated for 2 hours. The specification of 24 consecutive cycles allows the test to start and end at the same time of day.

The agency had also tentatively concluded that repeatability would be improved by specification of a special

test fixture for the humidity test. This fixture is simple and inexpensive. It would consist of a horizontal flat steel plate, at least ¼ inch thick, to which 3 threaded steel rods of ¼ inch diameter are mounted (at variable locations, depending on the headlamp). The headlamp would be affixed to the fixture by clamps. The clamps would be located behind the headlamp and out of the air stream. The plate would be as wide as the headlamp, and long enough to extend from the forwardmost edge of the headlamp past the rear of the headlamp sufficiently far to allow mounting to the three vertical mounting rods. Steel rods would be necessary to assure adequate strength since the headlamp may be cantilever mounted. Threaded rods would be necessary to screw into the mounting plate and allow easy attachment of horizontal clamps by thumb screw to the ¼-inch mounting rods.

However, Standard No. 108 presently requires that a photometric test be conducted following the humidity test, in addition to a visual inspection for water. In some cases, headlamps might have aim stability problems if attached to this fixture during a photometric test. If a choice must be made, the agency noted that it would prefer to drop the photometric test because it tentatively concluded that a special fixture is critical to running a repeatable air flow test to evaluate headlamp venting, and that a sufficient criterion of failure would be presence of moisture in the headlamp.

In the proposed test procedure, detailed requirements were specified for air flow uniformity, air velocity, the position of the lamp in the air flow test chamber, and humidity tolerance. The test and fixture would assure that undue turbulence is not present in the air flow test. The air flow uniformity should be plus or minus 10 percent of the average of velocities measured over the test grid 4 inches from the duct outlet over a 4-inch square grid at the plane of the front edge of the lamp. The velocities would be measured at 6 discrete points around the periphery of the lens, and the average velocity should be 330 ft/min +0–20 ft/min, which is an equivalent of 3.75 m.p.h. The fixtured lamp should be centered in the test chamber with at least 3 inches clearance on all sides between the lamp (exclusive of the fixture), and any part of the chamber, and located with the forwardmost edge of the lamp at least 4 inches from the air entry point. To enhance repeatability, the tolerances on humidity after the soak period would be reduced from the present 20 to 40 percent, to 30 to 40 percent. A test report showing fixtures and details of the set-up for the humidity test was placed under Notice 22 in Docket No. 81–11. The existing requirements for passing the humidity test remained unchanged in the proposal.

Comments to the Proposal

Six comments were received in response to the proposal. Three were from motor vehicle manufacturers, Ford Motor Company, General Motors Corporation, and Chrysler Corporation. The others were vehicle lighting equipment manufacturers, Koito, Hella, and Ichikoh. The commenters raised issues with respect to six topics.

A. Photometric Tests Following the Humidity and Air Flow Tests

Section S7.4(i)(6) currently specifies the performance requirements to be met by a humidity test conducted in accordance with S8.7. Following completion of the test, the inside of the headlamp is to show no evidence of delamination or moisture, fogging or condensation visible without magnification, and the headlamp must then meet the photometric requirements that apply to its headlamp type. Although retention of the photometric test was generally supported by the vehicle manufacturers (albeit with qualifications such as the need to ensure compatibility of the test stand for photometric testing), Koito commented that the photometric test was unnecessary. NHTSA has reevaluated the requirement, and concurs with Koito's comment. The agency has observed the practical problem of conducting a photometric test when test point readings are constantly changing as droplets of moisture run down the lens and moisture evaporates from the lens and reflector. These effects cause the procedure to be non-repeatable since the coalescing and evaporation alter the readings. Given these effects, and the fact that a lamp will meet the humidity test requirement if there is no visible moisture in it, there is no need to demonstrate also its subsequent photometric performance. Additional loss of repeatability occurs when the lamp, attached to the humidity test fixture, is aimed using a mechanical or spot aimer attached to the lamp. The aimer causes torque to be applied to the lamp, causing it to deflect, with resulting misaim when the aimer is removed. Additionally, the lamp may deflect, causing further misaim, when it is mounted on a goniometer and positioned to measure test points because the once-vertical support rods are no longer vertical and may deflect.

On these last two issues, commenters concurred that the humidity test fixture may not be compatible with mounting the headlamp on a goniometer where exact positioning and stability of the headlamp is essential to proper photometric testing. Also, test results would differ between photometry tests done immediately after the humidity test, and those conducted after a sequence in which the headlamp was removed from the humidity test fixture, mounted on another fixture, aimed, and photometered, because of the motion, time, and additional effects of air flow during this sequence of events. Given the great likelihood of such variability, this is not a viable option even though suggested by some commenters.

Ford suggested that NHTSA develop a new fixture, suitable for both tests, or, alternatively, increase the time between the humidity air flow test and photometric test. However, such development would considerably delay implementing the revision that the industry has sought. Ford's suggested alternative, as noted previously, would increase the likelihood of a less repeatable procedure.

Therefore, NHTSA is amending Standard No. 108 to remove photometric compliance as a requirement for passage of the humidity test, leaving the sole criterion whether or not moisture is present.

B. Test Mounting Fixture

Under the proposal, the sole material specified for the mounting fixture was steel. Both GM and Chrysler considered this to be too restrictive. NHTSA concurs since aluminum could provide the requisite rigidity. Therefore, the final rule allows the optional use of aluminum. If aluminum is used, a mounting rod with a diameter larger than the ¼ inch may be required. The final rule requires it to be ½ inch.

Koito requested a clarification on how the headlamp is attached to the test fixture. In its test, NHTSA used thumb screw (chemistry laboratory type) rod clamps less than 2 inches in length in any direction. However, NHTSA does not believe that a particular method of attachment should be required. The choice of the method of attachment is left to the manufacturer or test laboratory.

C. Humidity Exposure Test

NHTSA proposed that the headlamp be subjected to 24 consecutive 3-hour test cycles, a reduction from the present requirement of 20 consecutive 6-hour cycles. GM requested a reduction to 8 consecutive 3-hour cycles, saying that it

had run a series of tests using 5 and 20 cycles and finding consistent results between the two. If moisture was present at the end of 5 cycles, it was also present at the end of 20, and vice versa. Ichikoh believed that 20 cycles would be sufficient, saying that more humidity is absorbed in a 24-cycle regime than in a 20-cycle one. Chrysler concurred with NHTSA's proposed 24-cycle program. NHTSA believes that the performance of headlamps is directly related to the design of the headlamp's venting system, and that its proposal meets the requirements for safety. NHTSA has not conducted tests to either GM's or Ichikoh's different cycles and thus has no data to correlate with data from performing the 24-cycle plan. The agency is adopting the requirement for 24 consecutive 3-hour cycles as proposed because it is unable to determine whether other cycles recommended by commenters have the same consequences.

Under proposed S8.7(b), the relative humidity during the test would be not less than 90 percent. Hella argued that it would be more realistic to specify the range in terms of a nominal value with a two-sided tolerance: 90 +/−2 percent, which would be appropriate for most test chambers. NHTSA chose 90 percent as the minimum required for motor vehicle safety, and is adopting it as proposed, rather than the 88 to 92 percent range recommended by Hella.

D. Air Flow Exposure Test

Under the original and proposed rule, the headlamp is not energized when tested. Hella commented that vent function would be aided by switching the headlamp on and off during the air flow test. NHTSA declines to adopt this suggestion. The lamp must be designed so that it does not become fogged in the first place, or, if fogged, that the vents clear the lamp when it is unlit. Activating the lamp facilities passing the test and thus does not represent a worst case scenario.

Currently, the range of relative humidity of the test chamber is 20 to 40 percent. Under the proposal, the range would be 30 to 40 percent. GM asked that the current requirement be maintained, as it was not aware of any basis for tightening the tolerance. The basis for NHTSA's proposal is a desire to eliminate differences in test results observed on the same headlamp in repeated testing. Reducing the humidity tolerance from 20 to 10 percent should result in more consistent test results. Therefore, it is adopting the range as proposed.

In proposed S8.7(e), the air flow velocity is 310 to 330 feet per minute measured with the test headlamp in place in the chamber. GM would eliminate any specification, commenting that empty chamber air velocity measurements alone are appropriate. Ford concurs with this comment. Ichikoh argued that the proposed air flow tolerance was too strict.

In response to Ford and GM, NHTSA has found that the effects of the size of a cross section of the chamber and the size of the headlamp will cause changes in air flow from the flow measured in an empty chamber. While these changes may not be noticeable in very large chambers (such as GM and Ford may have), they will exist in smaller ones, and for repeatability of the test, it is necessary to measure the flow with the headlamp in place. However, NHTSA is willing to provide a measure of relief by adopting an air flow specification of 300 to 330 feet per minute. This will reduce the necessity for recalibration of air flow for lamps of similar size and shape, thereby reducing time and expense.

According to the proposal, when the mounted headlamp assembly is placed in the air flow chamber, "the orientation of the assembly with respect to the air flow shall be identical to that of its position on any vehicle for which the headlamp is intended." Ford raised an objection, stating that the precise adjustment of the lamp cannot be made on the humidity test fixture, and that it would be impracticable to position the lamp in the chamber identically to its position on the vehicle. Ford recommended the term "design operating position" as a substitute. The agency has considered this comment. In the final rule, the headlamp assembly will be "oriented in its design operating position," the phrase used by the SAE in its standard on lamp testing, J575 JUL83. Although the essential intent of the language proposed and of the language adopted is the same, *i.e.*, to orient the lamp as it would normally flow through the air when mounted on its vehicle, the SAE phraseology is familiar to the industry, and NHTSA accedes to Ford's request.

E. Use of Two Chambers

The humidity test requires a humidifying chamber and an air flow chamber. Hella argued that one chamber would suffice. For reasons of practicality and repeatability, the agency has decided not to adopt Hella's suggestion. Standard size temperature humidity chambers are not available in the United States that allow enough length for the axial air flow test. Only specially built chambers can be used for both tests, but in general test laboratories do not have them. If a single chamber is used, the headlamp would have to be removed from the chamber and reinstalled in order to duplicate the routine when two chambers are used. If a choice is allowed between use of one and two chambers, the repeatability of the humidity test could be affected.

Under the proposal, within three minutes of the completion of the humidity test, the headlamp assembly is to be removed and wrapped in a thermal blanket. Ford suggested that the removal time be reduced to two minutes, and the use of a thermal blanket eliminated. The agency has not adopted the suggestion for the reduction of time. The two test chambers may not be located closely enough to effect a transfer within two minutes (as NHTSA found in one test laboratory in trying out Ford's suggestion). NHTSA has eliminated the use of a thermal blanket, and substituted the use of an insulated box with foam packing material.

F. Retention of Existing Test

Chrysler believes that the agency should retain the existing humidity test if it determines that the air flow requirement during humidity testing and the concluding photometric tests are incompatible, because of the objectivity of the photometric requirements. Since the agency is deleting the requirement for photometric tests, the issue of compatibility does not arise.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures. NHTSA has considered the economic impacts of this rule and has made a determination that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. The rule modifies in minor respects an existing test procedure for an optional type of headlamp. The components of the special test fixture are a steel or aluminum plate, three rods, and clamps. Test laboratories are generally equipped with steel plates and clamps. The cost of procuring three steel rods and boring holes in a plate should be minimal. These minimal costs could be offset by the slight reduction in costs associated with reducing the humidity soak test period from 5 days to 3 days, and the deletion of the post-humidity test photometric test. Once the test fixture is assembled, it will have an indefinite life, with no further costs incurred. Therefore, preparation of a full regulatory evaluation is not required.

National Environmental Policy Act. NHTSA has analyzed this rule for the purpose of the National Environmental Policy Act. The rule will have no effect on the human environment since it retains an existing test procedure.

Regulatory Flexibility Act. The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. The parties affected by the rule, i.e., manufacturers of motor vehicles and headlamps, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

Executive Order 12612 (Federalism). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been established that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571 [AMENDED]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Amended]

2. Section S7.4(i)(6) is amended by removing the comma and text following the word "magnification" and inserting a period in lieu thereof.

§ 571.108 [Amended]

3. Section S8.7 is revised to read as follows:

S8.7 *Humidity.* (a) The test fixture consists of a horizontal steel plate to which three threaded steel or aluminum rods of ½ inch diameter are screwed vertically behind the headlamp. The headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 2 inches laterally of a vent inlet or outlet.

(b) The mounted headlamp assembly is oriented in its design operating position, and is placed in a controlled environment at a temperature of 100+7−0 degrees F (38+4−0 degrees C) with a relative humidity of not less than 90 percent. All drain holes, breathing devices, and other openings are in their normal operation positions for all phases of the humidity test. The headlamp shall be subjected to 24 consecutive 3-hour test cycles. In each cycle, it shall be energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal, it shall flash at 90 flashes per minute with a 75+/−2 percent current "on-time."

(c) Within 3 minutes after the completion of the 24th cycle, the air flow test will begin. The following shall occur: the mounted assembly shall be removed, placed in an insulating box and covered with foam material so that there is no visible air space around the assembly; the box shall be closed, taken to the air flow test chamber, and placed within it. Inside the chamber, the assembly with respect to the air flow, shall be oriented in its design operating position. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 3 inches clearance on all sides, and at least 4 inches to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 3 inches are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 73+7−0 degrees F (23+4−0 degrees C) with a relative humidity of 30+10−0 percent. The headlamp is not energized.

(d) Before the test specified in paragraph (e) of this section, the uniformity of the air flow in the empty test chamber at a plane 4 inches downstream of the air entry duct shall have been measured over a 4-inch square grid. The uniformity of air flow at each grid point is +/−10 percent of the average air flow specified in paragraph (e) of this section.

(e) The mounted assembly in the chamber shall be exposed, for one hour, to an average air flow of 330+0−30 ft/min. as measured with an air velocity measuring probe having an accuracy of +/−3 percent in the 330 ft/min range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: At the center of the lens, construct a horizontal plane. The first two points are located in the plane, 1 inch outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, one inch above the top edge of the lens, and one inch below the bottom edge of the lens.

(f) After one hour, the headlamp is removed and inspected for moisture.

Issued on: March 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-5623 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

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 929

[Docket No. AO-341-A5; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Reopening of the Period to File Written Exceptions to Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the period to file written exceptions to the recommended decision.

SUMMARY: Notice is hereby given that the time period for filing written exceptions to the recommended decision on proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is reopened until March 15, 1991.

ADDRESSES: Interested persons are invited to submit written exceptions in triplicate to the Hearing Clerk, U.S. Department of Agriculture, room 1079-S, Washington, DC 20050-9200. All written exceptions will be available for public inspection at the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-8139.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the January 4, 1990, issue of the **Federal Register** (55 FR 295). Recommended Decision—Issued on January 15, 1991, and published in the January 18, 1991, issue of the **Federal Register** (56 FR 1938).

A Recommended Decision and Opportunity to File Written Exceptions to proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The deadline for the submission of written exceptions to the recommended decision was February 19, 1991.

The U.S. Department of Agriculture (USDA) has received a request that the USDA provide more time for interested persons to analyze the recommended decision and file exceptions.

Reopening the period in which written exceptions may be filed will provide interested persons more time to review the recommended decision and submit written exceptions thereto. Accordingly, the period in which to file written exceptions is reopened until March 15, 1991. This notice is issued pursuant to the Act and the applicable rules of practice governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recording requirements.

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Dated: March 5, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-5658 Filed 3-8-91; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations at 7 CFR part 1421 with respect to the price support program which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made to section 205 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). The amendment proposed by this rule specifies the CCC price support loan standards for 1991 and subsequent crop oilseeds, except soybeans.

DATES: Comments must be received on or before March 26, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Commodity Operations Division (CMO), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Agricultural Marketing Specialist, CMO, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447-6500.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined that these program provisions will result in an annual effect on the economy of less than $100 million.

The title and number of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies is 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the oilseed CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local

officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices, provide interim financing and assistance to producers in the orderly marketing of eligible commodities. Pursuant to a separate proposed rule, the terms and conditions of the 1991–1995 price support program for oilseeds have been set forth except for issues involving quality standards for minor oilseeds.

Accordingly, this proposed rule would implement CCC price support loan standards for the 1991–1995 crops of minor oilseeds.

This proposed rule would amend § 1421.5(b) to specify that: (1) the determination of class, subclass, grade, grading factors, and other quality factors, (a) with respect to flaxseed and sunflower seed shall be based upon the Official United States Standards for Grain, (b) with respect to canola, mustard seed, rapeseed, and safflower shall be based on standards implemented by this proposed rule; (2) when a quantity of oilseed is determined by weight, quantities of farm-stored oilseeds shall be in whole units of 100 pounds of the respective oilseed, except soybeans.

This proposed rule would amend § 1421.9 to (1) add the entries required on warehouse receipts tendered for price support with respect to oilseeds, except soybeans; and (2) show that if canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed are dried or blended to reduce the moisture content, the quantity shall reflect a minimum shrinkage of 1.1 times the percentage difference between the moisture content of the commodity received and 8.0 percent.

This proposed rule would amend § 1421.18 to add the grade and grading requirements with respect to oilseeds, except soybeans. The schedule of CCC loan premiums and discounts related to the grade and grading factors will be available soon in State and county Agricultural Stabilization and Conservation Service offices.

This proposed rule would amend § 1421.22 to provide that if (1) canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed does not meet the general eligibility requirements and grade requirements as set forth in § 1421.5 and § 1421.18, such commodities shall be deemed ineligible for price support, and (2) the producer refuses to repay the loan indebtedness and CCC must foreclose by accepting delivery of the commodity, the settlement value shall be the lower of (i) the market price on the date of delivery, as determined by CCC, or (ii) the applicable basic support rate.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 which is proposed to be revised elsewhere in this issue would be further amended as follows:

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, and 1445e, 15 U.S.C. 714b and 714c.

2. Section 1421.5 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(4)(x) to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(i) With respect to barley, corn, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seed, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of canola, mustard seed, rapeseed, and safflower seed, shall be based on standards established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC. The standards which are used in administering the price support program for the oilseeds in this subparagraph are available in State and county ASCS offices.

* * * * *

(4) * * *

(x) Quantities of farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be in whole units of 100 pounds of the respective commodity. However, for the determination of test weight:

(A) A bushel of canola shall be 50 pounds of canola free of dockage.

(B) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage.

(C) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage.

(D) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage.

(E) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage.

(F) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of dockage.

* * * * *

3. Section 1421.9 is amended by revising paragraph (f)(2)(x) and adding paragraphs (f)(2)(xi) through (xv), and revising paragraphs (g)(2)(i) and (g)(2)(iii) and adding paragraph (g)(2)(iv) to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(f) * * *

(2) * * *

(x) Canola:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign Material;

(G) Garlic bulbs;

(H) Glucosinolate;

(I) Percentage of:

(*1*) Heat damage;

(*2*) Distinctly green seeds;

(*3*) Total damage;

(*4*) Stones;

(*5*) Ergot;

(*6*) Sclerotinia bodies;

(*7*) Insect excreta;

(*8*) Total conspicuous admixtures;

(*9*) Inconspicuous admixture; and

(*10*) Erucic acid.

(xi) Flaxseed:

(A) Gross weight and net weight in hundredweight;

(B) Grade;

(C) Test Weight;

(D) Oil Content;

(E) Moisture;

(F) Dockage;

(G) Foreign material;

(H) Heat damage;

(I) Total damage; and

(J) Any other grading factor when such factor (not test weight) determines the grade.

(xii) Mustard Seed:

(A) Gross weight and net weight in hundredweight;

(B) Subclass;

(C) Test Weight;

(D) Moisture;

(E) Dockage;

(F) Percentage of:

(*1*) Subclass purity;

(*2*) Heat damage;

(*3*) Distinctly green seeds;

(*4*) Total damage;

(*5*) Within the subclass yellow mustard, for foreign material other than

dockage including, cockle, yellow wild mustard, and rapeseed;

(6) Within the subclass brown or oriental mustard, for foreign material other than dockage including, cockle, wild mustard and rapeseed;

(7) Other weed seed;

(8) Other foreign material;

(9) Sclerotinia bodies;

(10) Ergot;

(11) Stones;

(G) Number of:

(1) Rodent pellets;

(2) Bird droppings;

(3) Other animal filth;

(4) Pieces of glass; and

(5) Fertilizer pellets.

(xiii) Rapeseed:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign material;

(G) Percentage of:

(1) Heat damage;

(2) Distinctly green seeds;

(3) Total damage;

(4) Stones;

(5) Ergot;

(6) Sclerotinia bodies;

(7) Insect excreta;

(8) Total conspicuous admixtures;

(9) Inconspicuous admixtures; and

(10) Erucic acid.

(xiv) Safflower Seed:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign material;

(G) Percentage of:

(1) Heat damage;

(2) Total damage;

(3) Other grains;

(4) Free fatty acid; and

(H) WIJS Iodine value.

(xv) Sunflower seed:

(A) Gross weight and net weight in hundredweight;

(B) Grade;

(C) Test weight;

(D) Oil Content;

(E) Moisture;

(F) Dockage;

(G) Foreign material;

(H) Percentage of:

(1) Dehulled seed;

(2) Heat damage;

(3) Total damage;

(I) Any other grading factor when such factor (not test weight) determines the grade.

* * * * *

(g) * * *

(2) * * *

(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

* * * * *

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(1) Barley: 14.5 percent.

(2) Corn: 15.5 percent.

(3) Oats: 14.0 percent.

(4) Rye: 14.0 percent.

(5) Grain sorghum: 14.0 percent.

(6) Soybeans: 14.0 percent.

(7) Wheat: 13.5 percent.

(8) Rice: 14.0 percent.

(B) For canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed, 1.1 times the percentage difference between the moisture content of the commodity received and 8.0 percent.

* * * * *

4. Section 1421.18 is amended by adding paragraphs ((b)(10) through (b)(15) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(10)(i) Canola must contain not less than 38 percent oil content;

(ii) The canola must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The canola must not contain less than 50 pounds per bushel;

(iv) The canola must not grade "Musty"; "Sour"; "Heating";

(v) The canola must not exceed the following percentages:

(A) For heat damage; 0.5 percent;

(B) For distinctly green seeds; 6.0 percent;

(C) For total damage; 10.0 percent;

(D) For mixtures of foreign material:

(1) For stones; 0.05 percent;

(2) For ergot; 0.05 percent;

(3) For sclerotinia bodies; 0.2 percent;

(4) For insect excreta; 0.2 percent;

(5) For total conspicuous admixtures; 1.5 percent;

(6) For inconspicuous admixture; 5.0 percent;

(E) For erucic acid; 2.0 percent;

(vi) The canola gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material;

(vii) The glucosinolate content in canola must not exceed 30 micro moles per gram; and

(viii) The canola must not contain in excess of 30.0 garlic bulbs per 1000 grams.

(11)(i) Flaxseed must grade No. 1 or better except that: (ii) The flaxseed must contain not less than 38 percent oil content;

(iii) The flaxseed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iv) The flaxseed must not grade "Frosted"; Green"; "Shriveled"; "Underdeveloped"; "Moldy"; "Sprouted"; Stones; and

(v) The flaxseed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

(12)(i) Mustard seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(ii) Mustard seed must not grade "Musty"; "Sour"; "COFO";

(iii) The mustard seed must not contain less than 54 pounds per bushel;

(iv) The mustard seed subclass must not be less than 99.8 percent in purity;

(v) The mustard seed must not exceed the following percentages:

(A) For heat damage; 0.1 percent;

(B) For distinctly green seeds; 1.5 percent;

(C) For total damage; 1.5 percent;

(D) Within the subclass yellow mustard, for foreign material other than dockage including cockle, yellow wild mustard, and rapeseed; 0.1 percent;

(E) Within the subclass brown or oriental mustard, for foreign material other than dockage including cockle, wild mustard, and rapeseed; 0.1 percent;

(F) For other weed seed; 0.3 percent;

(G) For other foreign material; 0.1 percent;

(H) For sclerotinia bodies; 0.1 percent;

(I) For ergot; 0.05 percent;

(J) For stones; 0.05 percent;

(vi) The mustard seed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material;

(vii) The mustard seed must not contain more than two rodent pellets, bird droppings or an equivalent quantity of other animal filth or broken glass per 1,000 grams cut from the sample as a whole (including the dockage); and

(viii) The mustard seed must not contain more than two fertilizer pellets in a dockage free sample.

(13)(i) Rapeseed must contain not less than 38 percent oil content;

(ii) The rapeseed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The rapeseed must not contain less than 50 pounds per bushel;

(iv) The rapeseed must not grade "Musty"; "Sour"; "Heating";

(v) The rapeseed must not exceed the following percentages:

(A) For heat damage; 0.5 percent;

(B) For distinctly green seeds; 6.0 percent;

(C) For total damage; 10.0 percent;

(D) For stones; 0.05 percent;

(E) For ergot; 0.05 percent;

(F) For sclerotinia bodies; 0.2 percent;

(G) For insect excreta; 0.2 percent;

(H) For total conspicuous admixtures; 1.5 percent;

(I) For inconspicuous admixtures; 5.0 percent;

(vi) The rapeseed must not contain less than 45 percent erucic acid; and

(vii) The rapeseed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

(14)(i) Safflower seed must contain not less than 38 percent oil content;

(ii) The safflower must contain not less than 40 pounds per bushel;

(iii) The safflower seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iv) The safflower seed must not grade "Treated"; "Sour"; "Musty"; "COFO"; "Toxic seeds"; "Stones";

(v) The safflower seed must not exceed the following percentages:

(A) For heat damage; 0.1 percent;

(B) For total damage; 3.0 percent;

(C) For other grain; 3.0 percent;

(D) For free fatty acid; 4.0 percent;

(E) For dockage; 6.0 percent;

(vi) The safflower gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material; and

(vi) The safflower seed must not contain less than 140 or more than 148 WIJS iodine value.

(15)(i) Sunflower seed must grade No. 1 or better except that:

(ii) The sunflower seed must contain not less than 35 percent oil content;

(iii) The sunflower seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iv) The sunflower seed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

5. Section 1421.22 is amended by adding paragraph (c)(5) to read as follows:

§ 1421.22 Settlement.

* * * * *

(c) * * *

(5)(i)With respect to canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed, if the grade and quality of such commodities do not meet the general eligiblity requirements and grade requirements as set forth in § 1421.5 and § 1421.18, such commodities shall be deemed ineligible for price support.

(ii) If the producer refuses to repay the loan indebtedness and CCC must foreclose by accepting delivery of the commodity, the settlement value shall be the lower of the market price on the date of delivery, as determined by CCC, or the applicable basic support rate.

Signed at Washington, DC on March 1, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-5628 Filed 3-8-91; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations at 7 CFR part 1421 with respect to the price support program for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made to sections 101B, 105B, 107B, 205, and 404 by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Generally, the amendments proposed by this rule specify the manner in which producers may participate in CCC price support programs for wheat, feed grains, rice, oilseeds (including soybeans) and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts.

DATES: Comments must be received on or before March 26, 1991 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, Telephone (202) 447-8223 .

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because these program provisions 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 governments, 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.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this notice applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the

wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560–0087.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices, provide interim financing and assistance to producers in the orderly marketing of eligible commodities. This proposed rule would amend other regulations found at 7 CFR part 1421 to provide rules for administering CCC price support programs. The major revisions which are proposed or made are as follows:

This proposed rule would amend § 1421.4(i) to allow persons with an interest in storing, processing, or merchandising any commodity to act as an agent for a producer if that person is delegated authority which is restricted specifically to repaying outstanding loan amounts plus interest and charges, and the delegation is on file at the county office.

This proposed rule would amend § 1421.5 to clarify that ground ear corn may not be pledged as collateral for CCC price support loans. Producers may continue to obtain loans on ear corn that has not been ground.

This proposed rule would amend § 1421.5 with respect to marketing cooperatives to provide that commodities for which the beneficial interest has always been in the producer-member are eligible for price support from CCC through the marketing cooperative provided all other eligibility requirements are met.

This proposed rule would amend § 1421.5(c) to provide that a producer shall be considered to have divested beneficial interest in a commodity if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except when such payment is made in accordance with part 1425 of this title for approved cooperative marketing associations.

This proposed rule would amend § 1421.5(e) to provide that producers who either redeem loan collateral with cash at a repayment rate that is less than the loan rate, or who obtain a loan deficiency payment must provide acceptable production evidence or the storage location of such commodity to CCC so that CCC may verify production through random spot checks. Section 1421.5(f) is proposed to be added to provide that in the case of loan deficiency payments, production evidence or storage location must be provided to CCC within 12 months after the final loan availability date for the crop year after the crop year in which the applicable commodity was produced. If the producers fails to provide acceptable production evidence or storage location within 12 months after the final loan availability date for the commodity, § 1421.5(g) would provide that the producer will be required to refund the market gain or loan deficiency payment and charges, plus interest.

Section 1421.5(i) is proposed to be added to provide that CCC shall limit the total quantity on loans, purchase agreements, and loan deficiency payments, based on a subsequent increase in the quantity of eligible commodity during the loan availability period, to 120 percent of the original quantity. Producers may obtain separate loans for quantities in excess of 120 percent of the original loan quantity if the excess is otherwise eligible.

Formerly price support loans matured on demand but not later than the last day of the ninth calendar month after the month in which the loan was requested. This proposed rule would amend § 1421.6(a), for all commodities except peanuts, to provide that loans mature on demand, but not later than the last day of the ninth calendar month after the month the note and security agreement is filed in accordance with § 1421.5 and approved by CCC. Accordingly, except for peanuts loans, the maturity date for all loans, including loans on repledged collateral, will be determined only after the loan is approved.

This proposed rule would amend § 1421.6 to provide that 1991 and subsequent year wheat, corn, grain sorghum, barley, and oat loans may be extended by CCC beyond the specified maturity date only to afford producers an opportunity to participate in the farmer-owned reserve program. Additionally, § 1421.6 is amended to provide that if a producer fails to settle any loan within 30 days after the maturity date of the loan, or such other time period established by CCC, a claim will be estblished for the outstanding loan amount and charges plus accrued interest. Delivery of the commodity will still be accepted after a claim has been established, but the settlement value of the delivered commodity will be applied to the claim in accordance with part 1403 of this title.

This proposed rule would amend § 1421.7(d) to provide that warehouse-stored loans and purchases are made at the basic county loan rate for the county in which the commodity is stored, adjusted for weed control law discounts, if applicable, and the schedule of premiums and discounts established on the basis of quality factors set forth on warehouse receipts. Additional loan disbursements, commonly referred to as "transportation assistance", would no longer be made by CCC.

This proposed rule would amend § 1421.8(a) to clarify that commercial warehouses are not eligible farm storage, and that eligible farm storage facilities must be under control of the producer. If commodities to be pledged as collateral for a loan are stored in leased space, a copy of the lease must be provided to CCC.

The lease must authorize the producer and any person having an interest in the commodity, including CCC to enter the leased premises to inspect and examine the commodity, and permit a reasonable time for removal of the commodity upon termination of the lease. County offices may also require the lessor to execute a lien waiver that fully protects CCC's interest.

Section 1421.10(c) would be added to provide that for commodities delivered to CCC in settlement of a loan, CCC will pay warehouse charges for receiving the commodity, or "in charges", provided the producer has either already paid the charges or agrees that CCC will pay the charges to the receiving warehouse to the producer's account.

Section 108B of the 1949 Act, as amended by section 1105 of the Budget Act of 1990, provides that CCC shall deduct a non-refundable marketing assessment from peanut loans equal to one half of one percent of the average support rate for peanuts multiplied times the quantity of peanuts for which the loan is made. This proposed rule would amend § 1421.12(d) to provide for the

marketing assessment to be deducted from peanut loans.

Section 1421.12(e) is proposed to be added to provide that an assessment equal to one-half of one percent of the loan principal amount shall be deducted by CCC from the proceeds for each soybean loan. Section 1421.12(f) would be added to provide that additional fees representing amounts voted on by producers for marketing and promotional fees may be deducted from price support proceeds by CCC upon request and agreement of the applicable governing body. CCC will determine the manner in which such additional fees will be deducted from loan proceeds and the time that the fees will be paid to the governing body.

In the past, CCC assumed the loss if all or part of the commodities pledged as collateral for farm-stored CCC price support loans were destroyed by specified acts of nature, and the producer's negligence did not cause the loss, either directly or indirectly. This proposed rule would amend § 1421.15 to provide that CCC shall not assume any loss in quantity or quality of loan collateral.

Section 1421.17(c) would be amended to provide that when collateral for an outstanding farm-stored loan is transferred to warehouse storage, the loan quantity for the warehouse-stored loan cannot exceed 120 percent of the farm-stored loan quantity if the transfer is completed during the loan availability period and cannot exceed 110 percent of the farm-stored loan quantity if the transfer is completed after the loan availability period.

This proposed rule would add § 1421.17(c)(iii) to provide that for loans extended in accordance with §§ 1421.200 through 1421.216, are transferred from farm storage to warehouse storage, the quantity for warehouse storage shall be limited to the quantity approved on the reserve agreement.

This proposed rule would amend § 1421.17(g) to provide definitions for unauthorized removal and unauthorized disposition of farm-stored loan collateral, an explanation of what will not be considered inadvertent acts, and the actions that CCC will take when commodities are removed or disposed of without authorization. § 1421.17(h) would be clarified to provide that producers who have been refused farm-stored loans because of unauthorized removal or unauthorized disposition offenses may apply for warehouse-stored loans.

Section 1421.18(b) would be amended for barley pledged as collateral for price support loans or offered under purchase agreements to remove the quality designation of "bleached" from the grading standards, and to remove the quality designation of "light", and to add the quality designation of "ergoty" to the grading standards that will make rye ineligible for CCC price support. This proposed rule would also amend § 1421.18(b), for wheat, by providing that wheat having 32 or more insect damaged kernels per 100 grams is ineligible for price support and that wheat must not be "unclassed".

This proposed rule would remove § 1421.19(e) which previously authorized producers to acquire commodities that were otherwise ineligible for price support and surrender such commodities to CCC in lieu of delivering the commodity pledged as collateral for a farm-stored loan.

Section 1421.24 would be amended to remove provisions authorizing producers to request a determination of protein content for farm-stored wheat in order that the basic farm-stored rate be adjusted to reflect the protein content. Basic farm-stored wheat loan rates will no longer be adjusted to reflect protein content. Settlement of matured farm-stored wheat loans will continue to be based on the protein content of wheat at the time of delivery.

The quantity of rice eligible for loan deficiency payment is equal to the quantity of rice eligible for loan. Section 101B of the 1949 Act provides:

(2) *Computation*—A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of rice the producer is eligible to place under loan (or obtain a purchase agreement) but for which the producer forgoes obtaining the loan or agreement in return for payments under this subsection.

Accordingly, this proposed rule would add § 1421.25 (a) to provide for making loan deficiency payments on rice.

For feeds grains, recourse loans are mandated for high moisture commodities. Section 404 of the 1990 Act provides:

(a) *Recourse Loans*—Notwithstanding any other provision of law, effective for the 1991 through 1995 crops of feed grains, the Secretary of Agriculture shall make available recourse loans as determined by the Secretary, as provided in this section, to producers on a farm who—

(1) normally harvest all or a portion of their crop of feed grains in a high moisture state (hereafter defined as a feed grain having a moisture content in excess of Commodity Credit Corporation standards for loans made by the Secretary under paragraphs (1) and (6) of section 105B of the Agricultural Act of 1949 (as added by section 401 of this Act).

Accordingly, § 1421.31 would authorize recourse loans for high moisture barley, corn, and grain sorghum, and provides conditions for making recourse loans.

This proposed rule would also implement a price support program for producers of oilseeds.

Sections 205 of the 1990 Act provides:

(a) *Definition of Oilseeds*—As used in this section, the term "oilseeds" means soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and such other oilseeds as the Secretary may determine.

(b) *In General*—The Secretary shall support the price of oilseeds through nonrecourse loans to producers on a farm for oilseeds produced on the farm in each of the 1991 through 1995 marketing years as provided in this section.

Accordingly, § 1421.1 would be amended to provide that price support loans and loan deficiency payments will be available on oilseeds. Purchase agreements will not be available on oilseeds. This proposed rule would also amend § 1421.3(d) to define oilseeds.

The respective final availability dates by which producers must execute note and security agreements, loan deficiency payment applications, or purchase agreements for wheat, feed grains, peanuts, rice, and soybeans are included in § 1421.5. This proposed rule would amend § 1421.5(a) to establish the final dates by which producers must execute note and security agreements, and loan deficiency payment applications for oilseeds. For canola, flaxseed, and rapeseed the date is March 31 of the year following the year in which the applicable crop is normally harvested. For mustard seed, safflower, and sunflower seed the date is May 31 of the year following the year in which the applicable crop is normally harvested.

Section 205 of the 1990 Act provides:

(d) *Marketing Loan Provisions*—The Secretary shall permit a producer to repay a loan made under this section for a crop—

(A) At a level that is the lesser of—

(i) The loan level determined for the crop; or

(ii) The prevailing world market price for the applicable oilseed (adjusted to United States quality and location), as determined by the Secretary; or

(B) such other level (not in excess of the loan level determined for the crop) that the Secretary determines will—

(i) minimize potential loan forfeitures;

(ii) minimize the accumulation of oilseed stocks by the Federal Government;

(iii) minimize the cost incurred by the Federal Government in storing oilseeds; and

(iv) allow oilseeds produced in the United States to be marketed freely and competitively, both domestically and internationally.

(e) *Loan Deficiency Payment*—

(1) *In General*—The Secretary shall, for each of the 1991 through 1995 crops of oilseeds, make payments available to producers who, although eligible to obtain a loan under subsection (b), agree to forgo obtaining the loan in return for payments under this subsection.

Accordingly, loans for oilseeds may be repaid at a level that does not exceed the loan rate. Discretionary authority may be exercised in order to establish the repayment rate for oilseeds. This proposed rule would add § 1421.25(b) to provide the provisions which would be used to determine oilseed loan repayment levels, the timing of oilseed repayment rate announcements, and provisions for locking in an oilseed loan repayment rate. Oilseed producers who, although eligible to obtain a loan, agree to forgo obtaining an oilseed loan may request a loan deficiency payment on the applicable oilseed. This proposed rule would add § 1421.29 to provide that CCC will announce whether loan deficiency payments will be made available to producers for a specific crop for a crop year. Producers are entitled to receive loan deficiency payment on the entire quantity of a commodity that is eligible to be pledged as collateral for a price support loan. In order to verify production, § 1421.29(e) would provide that CCC will advance producers 90 percent of the loan deficiency payment when the payment is requested. If acceptable evidence of production is provided to CCC by the final loan availability date for the applicable commodity, the loan deficiency payment will be based on 100 percent of the net quantity specified on acceptable evidence of production.

Section 205 of the 1949 Act, as amended by the Budget Act of 1990, provides that producers who obtain oilseed loan or, in lieu of obtaining an oilseed loan, obtain a loan deficiency payment on an oilseed, must pay a non-refundable loan origination fee to CCC. The loan origination fee shall be equal to 2 percent of the loan amount. In the case of loan deficiency payments, the producer must pay an amount equal to the loan origination fee the producer would have been required to pay if the producer had obtained a loan. This proposed rule would amend § 1421.12(c) to provide for the nonrefundable loan origination fee to be deducted from the applicable loan proceeds or the loan deficiency amount.

Standards for class, grade, grading factors, and other quality factors are currently not available, in all cases, for oilseeds other than soybeans. This proposed rule would amend § 1421.5 to provide that CCC shall establish and announce such standards to be used for oilseeds other than soybeans for CCC price support purposes.

Warehouse-stored oilseeds will have requirements comparable to those for other warehouse-stored commodities. Because official grading standards are not currently available for all minor oilseeds, § 1421.9(f) would be amended to provide that CCC will determine and announce factors to be used to determine the quality of warehouse-stored oilseeds, except soybeans.

This proposed rule would add §§ 1421.320 through 1421.325 to provide the terms and condition under which CCC shall make payments in the form of commodity certificates, to producers who enter into a Rice Marketing Agreement with CCC. Payments are made when CCC determines that the adjusted world price for a class of rice is below the then-current loan repayment rate for that class of rice. Section 1421.322 would provide that only rice that is or would have been eligible for loan is eligible for rice marketing certificate payments.

List of Subjects in 7 CFR Part 1421

Grains, loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised and a new § 1421.33 is added and reserved and the subpart consisting of §§ 1421.320 through 1421.325 is revised as follows:

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.
1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible producers.
1421.5 General eligibility requirements.
1421.6 Maturity and expiration dates.
1421.7 Adjustment of basic support rates.
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1421.9 Warehouse receipts.
1421.10 Warehouse charges.
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1421.12 Fees, charges, and interest.
1421.13 Insurance on farm-stored loans.
1421.14 Offsets.
1421.15 Loss or damage to the commodity.
1421.16 Personal liability of the producers.
1421.17 Farm-stored commodities.
1421.18 Warehouse-stored loans.
1421.19 Liquidation of Loans.
1421.20 Release of the commodity pledged as collateral for a loan.
1421.21 Purchase agreements.
1421.22 Settlement.
1421.23 Foreclosure.
1421.24 Protein determinations.
1421.25 Market price repayments.
1421.26 Transfer of farm-stored loan to warehouse-stored association loan.
1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.
1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.
1421.29 Loan deficiency payments.
1421.30 Death, incompetency, or disappearance.
1421.31 Recourse loans.
1421.32 Handling payments and collections not exceeding $9.99.
1421.33 [Reserved]

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Subpart—Rice Marketing Certificate Program

Sec.
1421.320 General provisions.
1421.321 Eligible persons.
1421.322 Eligible rice.
1421.323 Rice marketing certificate agreement.
1421.324 Commodity certificates.
1421.325 Payment rate.

* * * * *

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of barley, corn, grain sorghum, oats, peanuts, rice, rye, soybeans, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement, loan deficiency payment application, and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts,

such loans shall be made in accordance with part 1446 of this title.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c) (1) Price support loans and purchase agreements shall be available as provided in this Part with regard to barley, corn, grain sorghum, oats, rye, and wheat produced in the United States.

(2) Price support loans, loan deficiency payments, and purchase agreements shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this title, which are produced in the United States and which are also of a type specified in part 729 of this title.

(4) Price support loans and loan deficiency payments shall be available as provided in this Part with respect to oilseeds produced in the United States.

(d) Price support loans, loan deficiency payments, and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 719 and 1413 of this title shall also be applicable.

Basic support rate means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Loan deficiency quantity means the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity means the quantity on which the price support loan was disbursed shown on the note and security agreement.

Purchase quantity means the eligible quantity designated on Form CCC–614, Purchase Agreement for purchase by CCC.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

§ 1421.4 Eligible producers.

(a) *Producer.* An eligible producer of a crop of a commodity shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1413, and 1446 of this title.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan, loan deficiency payment, or purchase agreement documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.* (1) Two or more producers may obtain a single joint loan

with respect to commodities which are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC–665 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e) *Denial of farm-stored loans.* (1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) *Warehouse-stored loans to warehousemen.* Except as provided in § 1421.746, warehouse-stored loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with part 1425 of this title may obtain price support on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart and on applicable price support and loan deficiency payment forms, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of part 1446 of this title. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler in accordance with part 729 of this title.

(i) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS–211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1421.5 General eligibility requirements.

(a) *Requesting price support and loan deficiency payments.* A producer must, unless otherwise authorized by CCC, request price support and a loan deficiency payment at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located. In order to receive price support or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement, loan deficiency payment application, or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; canola; flaxseed; oats; rapeseed; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn; grain sorghum; mustard seed; rice; safflower; soybeans; and sunflower seed.

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer and must be eligible, in existence, and in approved storage at the time of disbursement of loan, loan deficiency payment, or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Wheat must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality, and quantity for peanuts:

(i) With respect to barley, corn, grain sorghum, oats, soybeans, rice, rye, and wheat, shall be based upon the Official Grain Standards of the United States and the Official Rice Standards of the

United States as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of oilseeds, except soybeans, shall be based on standards established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage:

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material;

(viii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage;

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage; and

(x) For oilseeds, the basis for the determination of quantity by weight shall be determined and announced by CCC.

(5) With respect to farm-stored loans, purchase agreements, and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c) *Beneficial interest.* (1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC for a loan, loan deficiency payment, or purchase. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan, loan deficiency payment, or purchase agreement shall be eligible to receive price support whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this Part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if, under the contract or option the producer retains control, risk of loss and title to the commodity subject to such agreement and retains control of the production of the commodity, and if the purchaser or intended purchaser does not pay to the producer any advance payment amount for the purchase, any promise of purchase, or any incentive payment amount determined by CCC to provide such purchaser or intended purchaser a beneficial interest in the commodity except as provided in part 1425 of this title. Commodities obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this title, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative or its member cooperatives, except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this title.

(d) *Redeemed loan collateral.* (1) A producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan, except with respect to:

(i) Commodities which have been acquired in accordance with part 1470 of this title,

(ii) Commodities which have been redeemed at a rate which is less than the original price support level in accordance with § 1421.25, and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) With respect to loans transferred in accordance with § 1421.17 (c) and (d), the subsequent loan shall have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment level in accordance with § 1421.25 or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC, or

(2) The storage location of the collateral which has not been otherwise disposed of and allow CCC access to such collateral.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC within 12 months from the final loan availability date for crop year after the crop year for such commodity. Production evidence shall include but is not limited to:

(1) Evidence of sales,

(2) Load summary sheets, and

(3) Warehouse receipts from approved or unapproved warehouses.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement, purchase quantity for a purchase agreement disbursement, or loan deficiency quantity for a loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible commodity by the final loan

availability date to 120 percent of the original quantity of such loan, purchase agreement, or loan deficiency payment application. A producer may obtain a separate loan, loan deficiency payment, or purchase agreement before the final loan availability date for quantities in excess of 120 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts and loan collateral transferred in accordance with § 1421.17 (c) and (d), no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b) *Purchase agreements.*

(1) With respect to all eligible commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date of the purchase agreement by providing the producer notice of such acceleration at least 15 days in advance of the accelerated expiration date.

(c) 1991 and subsequent year wheat, corn, grain sorghum, barley and oat loans may only be extended by CCC beyond the maturity date specified in paragraph (a) of this section as CCC determines necessary for allowing producers an opportunity to participate in the farmer owned reserve program conducted in accordance with §§ 1421.200 through 1421.216. In such cases only, CCC may extend a price support loan:

(1) For wheat to the last day in February following the year in which the crop is normally harvested, and (2)

(2) For corn, grain sorghum, barley, and oats, to May 31 following the year in which the crop is normally harvested.

(d) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with Part 1403 of this title, and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of such collateral in accordance with § 1421.22,

(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic support rates.

(a) *General.* Basic support rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) Weed control laws. If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. XX issued to XX is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) XXXX

(c) *Basic support rates for farm-stored loans.*

(1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d) *Basic support rates for warehouse-stored loans and purchases.*

(1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be disbursed on the basis of the basic county support rate for the county where the commodity is stored adjusted for:

(i) Weed control law discounts; and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the support rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements. If the commodity which is to be pledged as collateral for a price support loan is stored on leased space:

(1) A copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize

the producer and any person having an interest in the commodity, including CCC, to enter the premises to inspect and examine the commodity and shall permit a reasonable time to such persons to remove the commodity from the premises upon the termination of the lease, and

(2) The county office may require from the lessor, a lien waiver that fully protects the interest of CCC.

(b) *Warehouse Storage.* Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved cooperative as defined in part 1425 of this chapter and licensed to store the commodity under the United States Warehouse Act.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer agrees to redeem the loan collateral pursuant to the lower loan repayment provisions contained in § 1421.25 or, requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC with respect to a loan, loan deficiency payment, or purchase agreement must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: Provided, however, That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) *Where warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman' s commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) *Insurance.* Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f) *Entries.* (1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, or the U.S. Warehouse Act for warehouses licensed under U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The date the commodity was deposited or received;

(vi) The date to which storage has been paid or the storage start date;

(vii) Whether the commodity was received by rail, truck or barge;

(viii) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(ix) The signature of the warehouse operator or the authorized agent; and

(x) For warehouses operating under a merged warehouse code agreement (KCFL–614), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:

(i) Barley:

(A) Gross weight in pounds and net bushels;

(B) Class and subclass;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ii) Corn:

(A) Kind of Corn;

(B) Gross weight in pounds, and net bushels;

(C) Class;

(D) Grade (including special grades);

(E) Test weight;

(F) Moisture;

(G) Broken corn and foreign material; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(iii) Oats:

(A) Net weight and bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture; and

(E) Any other grading factor when such factor (not test weight) determines the grade.

(iv) Peanuts: Any information required of a warehouseman in accordance with part 1446 of this title.

(v) Rice:

(A) Grade;

(B) Net weight and net hundredweight;

(C) Class;

(D) Grading factors, including color, smut, and heat damage;

(E) Milling yield;

(F) Moisture; and

(G) If the rice is stored commingled.

(vi) Rye:

(A) Gross weight and net bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture;

(E) Dockage; and

(F) Any other grading factor when such factor (not test weight) determines the grade.

(vii) Grain sorghum:

(A) Gross weight in pounds and net weight in hundredweight;

(B) Class;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(viii) Soybeans:

(A) Net weight and bushels;
(B) Gross weight and bushels;
(C) Grade (including special grades);
(D) Test weight;
(E) Moisture;
(F) Percentage of foreign material; and
(G) Any other grading factor when such factor (not test weight) determines the grade.

(ix) Wheat:
(A) Gross weight and net bushels;
(B) Class and Subclass;
(C) Grade;
(D) Test weight;
(E) Moisture;
(F) Dockage;
(G) Protein content; and
(H) Any other grading factor when such factor (not test weight) determines the grade.

(x) For oilseeds, except soybeans, the factors that shall be used to determine the quality of the commodity as determined and announced by CCC.

(g) *Warehouse receipts showing "Infested". excess moisture, or both.* If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iii) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending. Such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(A) Barley: 14.5 percent;
(B) Corn: 15.5 percent;
(C) Grain sorghum: 14.0 percent;
(D) Oats: 14.0 percent;
(E) Oilseeds, except soybeans, the maximum acceptable moisture level will be determined and announced by CCC;
(F) Rice: 14.0 percent;
(G) Rye: 14.0 percent;
(H) Soybeans: 14.0 percent; and
(I) Wheat: 13.5 percent;

(h) *Liens.* (1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail and/or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) *Approved handling and storage rates.* CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no 'case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) *Storage costs.* The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) *Receiving charges.* For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or incharges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges:

(1) have been paid, CCC shall issue such payment to the producer, or

(2) have not been paid. the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be for the account of CCC.

(b) If there are any liens or encumbrances on the commodity, waiver that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) *Loan service fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this title. All or a portion of such interest may be waived with respect to a quantity of commodity which has been redeemed in accordance with § 1421.25 at a level which is less than the

principal amount of the loan plus charges and interest.

(c) For each crop of oilseeds, the producer must pay a nonrefundable loan origination fee to CCC which shall be deducted from the loan proceeds and shall be at a rate equal to two percent of the loan level for the crop multiplied by the quantity of such crop for which the loan is made. In addition, for each crop of oilseeds on which a loan deficiency payment is made in accordance with § 1421.29, the producer must pay a nonrefundable amount equal to the loan origination fee in accordance with this subsection, that such producer would have been required to pay for the quantity on which the payment is made had such quantity been pledged as collateral for a price support loan. CCC shall deduct such amount from the loan deficiency payment amount.

(d) For each crop of peanuts, the producer must pay a nonrefundable marketing assessment to CCC which shall be deducted from the loan proceeds and shall equal one-half of one percent of the average support rate multiplied times the quantity of peanuts for which the loan is made.

(e) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301), shall remit to CCC an assessment which shall be deducted from the loan proceeds for a crop of soybeans, and shall be at a rate equal to one-half of one percent of the principal amount of the loan.

(f) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 Insurance on farm-stored loans.

CCC does not require the producer to insure the commodity placed under a farm-stored loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the commodity involved in the loss.

§ 1421.14 Offsets.

(a) *Facility and drying equipment loans.* If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in part 13 and part 1403 of this title, to such indebtedness.

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm-stored loan or identity preserved warehouse-stored loan, or for any loss in quality of the commodity pledged as collateral for a modified commingled warehouse-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1421.16 Personal liability of the producers.

(a) *Fraud related to loans, purchase agreements, and loan deficiency payments, and unauthorized disposition or removal of loan collateral.* (1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan, purchase agreement, or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan, purchase agreement, or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan, purchase agreement, or loan deficiency payment;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts, and

(E) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25.

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of such collateral delivered to or removed by CCC shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2)(i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the value of the commodity shall be the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) *Fraud relating to purchases.* (1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest on such amounts. The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the

commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

(c) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess and charges, plus interest.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(f) *Joint loans.* In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity which shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (hereinafter called the "loan percentage"), as established by the State committee which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the note and security agreement shall cover all of the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity; and

(iii) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors which relate to the preservation or safety of the loan collateral.

(b) *Commingling eligible and ineligible commodity.* If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer before commingling has received prior approval from the county office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county office at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) *Transfer from farm-stored loans to warehouse-stored loans.* Upon request by the producer before transfer, the county committee may approve the transfer of a commodity or part thereof which is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period. In the case of emergency transfers, the producer must make the request in writing describing the emergency.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed:

(i) 120 percent of the loan quantity for the farm-stored loan for transfers completed before the final loan availability date; or

(ii) 110 percent of the loan quantity for the farm-stored loan for transfers completed after the final loan availability date.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(3) For loans extended in accordance with §§ 1421.200 through 1421.216, CCC shall limit the quantity for a warehouse-stored loan to the quantity approved on

the farmer owned reserve agreement loan.

(d) *Transfer from warehouse-stored loan to farm-stored loan.* Upon request by the producer before the transfer, the county committee may authorize the transfer of a warehouse-stored loan or part thereof to a farm-stored loan. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. Such farm-stored loans shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the warehouse-stored loan which was transferred.

(e) *Producer certification.* The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC-666 is eligible to be pledged as collateral and is otherwise available for loan purposes.

(f) *Producer incorrect certification.*

(1) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have 15 days to settle the loan; however, the producer may request reconsideration of the call and provide information regarding the circumstances leading to the incorrect certification. The county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(D) The producer repays the overdisbursement and charges, plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(i) The circumstances are of a highly meritorious nature,

(ii) The producer acted in good faith,

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(iv) The producer repays the overdisbursement and charges, plus interest for the shortage.

(3) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence or farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny loan deficiency payments without acceptable production evidence or farm-stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(4) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(g) *Unauthorized removal and unauthorized disposition.* Producers obtaining a loan for a crop of a commodity shall agree not to move or dispose of the commodity pledged as collateral for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1421.20.

(1) Unauthorized removal is the movement of any loan collateral from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written consent from the county committee in accordance with § 1421.20. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with paragraph (f)(1) of this section, and

(B) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsequent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in paragraph (g)(3) of this section shall be applicable.

(3) If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any other amount and applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. In such cases:

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) In agreeing to the note and security agreement, the producer agrees that the conversion of the collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20 will cause serious and substantial damages to CCC, including damages to

CCC's price support programs and the incurring of substantial administrative and other costs. The producer and CCC agree that it will be difficult if not impossible, to prove the amount of such damages. Accordingly, in such case, the producer shall pay to CCC liquidated damages computed by multiplying the loan principal which represents the quantity so disposed at the rate of 6.5 percent per annum for the period specified in this subparagraph (3).

(iii) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(4) If liquidated damages are assessed in accordance with paragraph (g)(3) of this section, the county committee:

(i) On the first offense:

(A) May waive some or all of such liquidated damages if the county committee determines that:

(*1*) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(*2*) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(*3*) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense,

(A) Shall not waive liquidated damages, and

(B) Shall not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages or require repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of loan collateral off the farm.

(B) Movement of loan collateral from one storage structure to another on the farm, and

(3) Feeding of loan collateral.

(h) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(i) Producers who have been refused a farm-stored loan may apply for a warehouse-stored loan.

§ 1421.18 Warehouse-stored loans.

(a) *Quantity for loan.* The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity of an eligible commodity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) *Grade requirements.*

(1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(ii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Ergoty.

(C) Smutty.

(3)(i) Corn must grade No. 3 or better; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better;

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; "Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; "Ergoty"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Grain sorghum must grade No. 4 and

(ii) The grain sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat must not grade "Ergoty", or "Treated"; and

(iv) The wheat must not grade "Infested," have 32 or more insect damaged kernels per 100 grams, or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(v) The wheat must not be "unclassed."

§ 1421.19 Liquidation of loans.

(a) *General.* If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan, or other eligible commodities of the same class and kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:

(1) 110 percent of the loan quantity; or

(2) A sufficient quantity having a settlement value equal to the loan amount and charges plus interest.

(b) *Delivery by the producer.* If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title.

(c) *Commodity going out of condition.* If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a) of this section. Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) *Obtaining release—farm-stored loan.* A producer shall not move or dispose any commodity which is pledged as collateral for a loan until prior written approval for such removal or disposition has been provided by the county committee in accordance with this section. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan which is outstanding and charges plus interest, or

(2) if CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer before removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25 (a)(1)(i) or (b)(1)(i).

(b) *Release of farm-stored note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

(c) *Obtaining release, warehouse-stored loans.* (1) The producer may arrange with the county office for the release of all or part of the commodity which is pledged as collateral for a warehouse-stored loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25 Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.4(i), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.

(d) *Release of warehouse-stored note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same quantity of such commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is the last day of the ninth calendar month following the month in which the loan application is approved CCC will not accept delivery of any quantity in excess of 110 percent of the quantity stated in the purchase agreement.

Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

(b) *Delivery period.* (1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.

(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 15 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this section, in the case of an eligible farm-stored commodity covered by an approved purchase agreement the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

§ 1421.22 Settlement.

(a) *General.* The settlement of loans and purchase agreements shall be made by CCC on the basis of the quality and quantity of the commodity delivered to CCC by the producer.

(b) *Commodities stored in approved warehouses.* Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c) *Commodities stored in facilities other than approved warehouses.* (1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities except peanuts, which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

§ 1421.23 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the amount of the note, interest, and charges) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may similarly be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(b) *When CCC takes title to commodity.* Upon maturity and nonpayment of the producer's note, title to the unredeemed collateral securing the note shall, at CCC's election, immediately vest in CCC without a sale thereof. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, i.e., the unpaid amount of the note and charges plus interest.

(c) *Commodity sold at less than amount due on loan.* If a farm-stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC and charges plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer under any other agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) *Protein content determinations for warehouse-stored wheat.* With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse,

producers must obtain official protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) *Protein content determinations for farm-stored wheat.* With respect to farmstored wheat, the basic support rate shall not be adjusted to reflect the protein content.

§ 1421.25 Market price repayments.

(a) Rice market repayments.

(1) A producer may repay a loan for a crop of rice at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for a crop; or

(ii) The higher of:

(A) The loan level determined for such crop multiplied by 70 percent for the 1991 and subsequent years crops; or

(B) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be dete'"mined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2,4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2,4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2,4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (a)(2) of this section. Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price" (AWP)), which is determined in accordance with paragraph (a)(5) of this section, shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a)(2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount which is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to fob. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the market value of such broken kernels. The market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels.

(iii) The price determined in accordance with (a)(5)(ii) of this section shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated domestic market values of all sizes of broken kernels by the estimated national average quantity of broken kernels produced min milling 100 pounds of rice;

(B) deducting from such price an estimated cost of milling rough rice; and

(C) deducting from such price an estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section shall be adjusted to a whole kernel loan rate basis by deducting the estimated domestic market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The AWP for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. Eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more or less frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be announced the next workday, on or after 3 p.m. Eastern time. The announced prices will be effective upon announcement and will remain effective until the next world price is announced.

(7) As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the loan level and charges, plus interest, and the loan repayment amount.

(b) *Oilseeds market repayments.* For 1991 through 1995 crops of oilseeds, a producer may repay a loan at a level that is the lesser of:

(1) The loan level and charges, plus interest determined for such crop; or

(2) Such other level determined by CCC, not to be in excess of the loan level for such crop that will minimize potential loan forfeitures, accumulation of oilseed stocks by CCC, and the cost incurred by CCC in storing oilseeds, and to allow oilseeds produced in the United States to be marketed freely and competitively.

(c)(1) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(2) of this subsection, allow producers to repay a loan at the adjusted world price of the oilseed.

(2) The adjusted world price (AWP) for soybeans will be determined as follows:

(i) The prevailing world price for soybeans will be established at least

weekly based upon the prior week's Thursday fob. quotes in U. S. dollars for soybeans in the major export markets, as determined by CCC, weighted against the total value of soybeans shipped from these markets using the prior 4-week average of weekly shipments.

(ii) If no price quotations are available for the prior Thursday, the prevailing world price will be based upon the most recent price information available.

(iii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality as appropriate.

(iv) The AWP for soybeans will be determined at least weekly and will be announced by CCC as soon as possible after 3 pm. Eastern time each Thursday. In the event that Thursday is not a workday, the determination will be announced the next workday after 3 p.m. Eastern time.

(3) The adjusted world price (AWP) for flaxseed will be determined as follows:

(i) The prevailing world price for flaxseed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC converted to U.S. dollars per metric ton. If price quotations are not available for one or more days in the 30 day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality as appropriate.

(iii) The adjusted world price for flaxseed will be determined at least monthly and will be announced by CCC as soon as possible after 3 pm. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the price determination will be announced the next workday after 3 p.m. Eastern time.

(4) The adjusted world price (AWP) for sunflower seed will be determined as follows:

(i) The prevailing world price for sunflower seed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC, for the month prior to the announcement. If no price quotations are available during the period, the prevailing world price will be based upon the previous monthly average available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality, as appropriate.

(iii) The AWP for sunflower seed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the AWP will be announced the following workday after 3 p.m. Eastern time.

(5) The adjusted world price (AWP) for canola will be determined as follows:

(i) The prevailing world price for canola will be established at least monthly based on a monthly average of the major f.o.b. export markets, as determined by CCC. If price quotations are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotation during the period will be used.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for canola will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the AWP will be announced the following workday after 3 p.m.

(6) The adjusted world price (AWP) for rapeseed will be determined as follows:

(i) The prevailing world price for rapeseed will be established at least monthly based upon a representative average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based on the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs and quality as appropriate.

(iii) The AWP for rapeseed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the price determination will be announced the following workday after 3 p.m. Eastern time.

(7) The adjusted world price for mustard seed will be determined as follows:

(i) The prevailing world price for mustard seed will be established at least monthly based upon a monthly average of available market prices, as determined by CCC, such as contract prices and f.o.b. spot market prices. If no price quotations are available for one or more days in the 30-day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for mustard seed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the determination will be announced the next workday after 3 p.m. Eastern time.

(8) The adjusted world price for safflower seed will be determined as follows:

(i) The prevailing world price for safflower seed will be established at least monthly based upon a representative average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based upon the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for safflower seed will be determined at least monthly and will be announced by the CCC as soon as possible after 3 p.m. Eastern time the third Thursday of the month. In the event that Thursday is not a workday, the AWP will be announced the next workday after 3 p.m. Eastern time.

(d) CCC may allow producers with rice or oilseed loans to request to lock in a loan repayment rate which has been announced by CCC in accordance with paragraphs (a) and (b) of this section, for not more than 30 days from the date of such request. In such cases:

(1) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity for a loan at the announced price entered on the form,

(2) If such request is approved by CCC, the rate specified on such form shall be in effect for such producer for not more than 30 days from the date such request is made for such loan, and

(3) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with paragraphs (a)(1)(i) or (b)(1)(i) of this section, as applicable for the crop.

(e) CCC shall determine and publicly announce the repayment levels for each crop of a commodity as follows:

(1) On a weekly basis for rice and oilseeds, except soybeans, and

(2) On a daily basis for soybeans.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a producer is limited in accordance with the regulations at part 1497 of this title.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) *General.* Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at the sales price determined and announced by CCC.

(3) For crushing (either domestic or export), at the additional support level.

(b) *Purchases on or before January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) *Purchases after January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a) *Required records.*—(1) *Inspected peanuts.* Each producer-handler shall maintain records as required in 7 CFR part 1446 for all additional peanuts which are purchased and sold for which an ASCS–1007, Inspection Certificate and Sales Memorandum, is issued.

(2) *Peanuts which are not inspected.* The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b) *Supervision of farm-stored peanuts.*—(1) *Pledged as collateral for a loan.* The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) *Additional peanuts purchased for use as seed and not inspected.* The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) *Additional peanuts on which ASCS–1007 is issued.* The producer-handler shall be subject to all provisions in Part 1446 relating to the disposition of additional peanuts.

(c) *Costs of supervision.* The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) *Penalties.* The producer-handler is subject to penalties as provided in § 1446.59 with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with this part;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1497 of this chapter.

(f) CCC will make 90 percent of the loan deficiency payment in accordance with paragraph (d) of this section. Notwithstanding any provisions in this section, a loan deficiency payment may be based on 100 percent of the net quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided on or before the final loan availability date for such commodity. If such production evidence is provided after the final loan availability date, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, loan deficiency payment, or a purchase agreement, payment shall, upon proper application to the county office which made the loan, loan deficiency payment, or purchase agreement, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1421.31 Recourse loans.

(a) CCC may make recourse loans including loans on high moisture corn, grain sorghum, and barley, available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(b) CCC shall make recourse loans available to eligible producers of high moisture barley, corn, and grain sorghum. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1421.33 [Reserved]

Subpart—Rice Marketing Certificate Program

Authority: 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program.

(b) If, beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for a class of rice determined in accordance with § 1421.25(a)(1)(ii) of this title is below the current loan repayment rate for that class of rice determined in accordance with § 1421.25 of this part, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved in accordance with § 1425 of this title to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1991 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is eligible to be pledged as collateral for price support loan as provided in this title, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with part 1470 of this title.

§ 1421.325 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment level as specified in the rice Marketing Certificate Agreement in accordance with § 1421.25 of this title.

Signed at Washington, DC on March 1, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–5624 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PART 1

[EE–4–91]

RIN 1545–AP53

Combat Zone Compensation of Members of the Armed Forces

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to whether compensation received for active service in the Armed Forces of the United States in a combat zone is excludable from the recipient's gross income under section 112 of the Internal Revenue Code. The proposed regulations reflect various statutory changes enacted since the publication of existing regulations on this exclusion. These proposed regulations provide guidance to personnel departments of the Armed Forces and help service members determine their income tax liability for compensation received for service in a combat zone.

DATES: Written comments and requests for a public hearing must be received by May 10,1991.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–4–91), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Gregory J. Stull at (202) 566–4747 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under section 112 of the Internal Revenue Code of 1986 (Code), which provides an exclusion from gross income for compensation paid to members of the Armed Forces of the United States for service in a combat zone ("combat zone compensation exclusion"). These proposed regulations reflect the statutory changes made by sections 2(a) and 6(b) of Public Law 93–597, 88 Stat. 1950, and section 3(b) of Public Law 94–569, 90 Stat. 2699 (both amending §§ 112 and 2201 of the Code), and section 905 of Public Law 98–94, 97 Stat. 614, 636 (amending 37 U.S.C. 310). Many of these changes expanded the combat zone compensation exclusion by eliminating certain limits on its availability. These proposed regulations provide updated guidance on the exclusion so that members of the Armed Forces may fully understand its expanded benefits.

Explanation of Provisions

Section 112 of the Code excludes from gross income certain compensation received by members of the Armed Forces of the United States for active duty in a "combat zone." This exclusion applies to compensation received for the period of active service in the combat zone. It also applies to compensation received for the period in which the service member is hospitalized as a result of wounds, disease, or injury incurred while serving in the combat zone.

An area in which the Armed Forces of the United States are engaging or have engaged in combat is a "combat zone" for purposes of section 112 only if the President of the United States designates the area as a combat zone by Executive Order. Under § 1.112–1(j) of the existing regulations, members of the Armed Forces who perform military service in an area outside a combat zone specified by Executive Order are also deemed to serve in the combat zone for purposes of the exclusion under section 112 if their service is in direct support of the military operations in the combat zone and qualifies them for special pay authorized under section 310 of title 37 of the United States Code (37 U.S.C. 310).

Before October 1, 1983, special pay under 37 U.S.C. 310 was referred to as "hostile fire pay" because it could be authorized only if service members were subject to hostile fire or explosion of hostile mines. Effective October 1, 1983, 37 U.S.C. 310 was amended to add 37 U.S.C. 310(a)(4), which provides that special pay can also be authorized for certain service members who are on duty in a foreign area in which they are subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. The Department of Defense refers to special pay under 37 U.S.C. 310 (whether due to either hostile fire or imminent danger) as special pay for duty subject to hostile fire or imminent danger.

The existing Income Tax Regulations under section 112 of the Code do not reflect the amendment of 37 U.S.C. 310 providing for imminent danger pay. Paragraphs (e) and (f) of § 1.112–1 of the proposed regulations (updating paragraphs (j) and (k) of the existing regulations) clarify that special pay received under the imminent danger provision of 37 U.S.C. 310(a)(4) is treated in the same manner for purposes of section 112 as special pay received under the hostile fire provisions of 37 U.S.C. 310(a) (1) through (3). As a result, members of the Armed Forces who perform military service outside a combat zone are nevertheless deemed to serve in the combat zone during the period in which they perform service qualifying them for pay under any provision of 37 U.S.C. 310, including the imminent danger provision of 37 U.S.C. 310(a)(4), if the service is in direct support of military operations in the combat zone. The proposed regulations provide an example illustrating this provision.

Prior to July 1, 1973, the combat zone compensation exclusion only applied to compensation received for service in a combat zone "during an induction period" (generally, any period during which individuals could be inducted into the Armed Forces for training and service). This limitation was removed from section 112 by section 2(a) of Public Law 93–597. The proposed regulations reflect the elimination of the phrase "during the induction period" throughout § 1.112–1.

Section 1.112–1(a)(4) of the proposed regulations clarifies that the exclusion under section 112 applies only to combat zone compensation received from the Armed Forces of the United States, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government who are in missing status as a result of the Vietnam conflict). Payments by other employers (whether private enterprises or governmental entities) cannot be excluded from income under section 112.

In addition to these changes, these regulations contain other proposed amendments to the existing regulations that are designed to make the regulations clearer and better organized.

Effective date

The regulations are proposed to be effective January 16, 1991.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Gregory J. Stull of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Deductions, Exemptions, Income taxes, Taxable income.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.112–1 is revised to read as follows:

§ 1.112–1 Combat zone compensation of members of the Armed Forces.

(a) *Combat zone compensation exclusion*—(1) *Amount excluded.* In addition to the exemptions and credits otherwise applicable, section 112 excludes from gross income the following compensation of members of the Armed Forces:

(i) *Enlisted personnel.* Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which the member served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone.

(ii) *Commissioned officers.* Compensation not exceeding the "monthly dollar limit" received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which the officer served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone. The "monthly dollar limit" is the monthly amount excludable from the officer's income under section 112(b) as amended. Beginning in 1966, the monthly dollar limit for periods of active service after 1965 became $500. As of March 11, 1991, the monthly dollar limit continues to be $500.

(2) *Time Limits on exclusion during hospitalization.* Compensation received for service for any month of hospitalization that begins more than 2 years after the date specified by the President in an Executive Order as the date of the termination of combatant activities in the combat zone cannot be excluded under section 112. Furthermore, compensation received while hospitalized after January 1978 for wounds, disease, or injury incurred in the Vietnam combat zone designated by Executive Order 11216 cannot be excluded under section 112.

(3) *Special terms.* A commissioned warrant officer is not a "commissioned officer" under section 112(b) and is entitled to the exclusion allowed to enlisted personnel under section 112(a). The term "compensation", for the purpose of section 112, does not include pensions and retirement pay. The term "Armed Forces of the United States" is defined (and members of the Armed Forces are described) in section 7701(a)(15).

(4) *Military compensation only.* Only compensation paid by the Armed Forces of the United States to members of the Armed Forces can be excluded under section 112. Compensation paid by other employers (whether private enterprises or governmental entities) to members of the Armed Forces cannot be excluded under section 112 even if the payment is made to supplement the member's military compensation or is labeled by the employer as compensation for active service in the Armed Forces of the United States. Compensation paid to civilian employees of the federal government, including civilian employees of the Armed Forces, cannot be excluded under section 112, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government in missing status due to the Vietnam conflict).

(b) *Service in combat zone*—(1) *Active Service.* The exclusion under section 112 applies only if active service is performed in a combat zone. A member of the Armed Forces is in active service if the member is actually serving in the Armed Forces of the United States. Periods during which a member of the Armed Forces is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service. A member of the Armed Forces in active service in a combat zone who becomes a prisoner of war or missing in action in the combat zone is deemed, for the purpose of section 112, to continue in active service in the combat zone for the period for which the member is treated as a prisoner of war or as missing in action for military pay purposes.

(2) *Combat zone status.* Except as provided in paragraphs (e) and (f) of this § 1.112–1, service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive Order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have been engaged in combat, and only if it is performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in that zone and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in that zone.

(3) *Partial month service.* If a member of the Armed Forces serves in a combat zone for any part of a month, the member is entitled to the exclusion for that month to the same extent as if the member has served in that zone for the entire month. If a member of the Armed Forces is hospitalized for a part of a month as a result of wounds, disease, or injury incurred while serving in that zone, the member is entitled to the exclusion for the entire month.

(4) *Payment time and place.* The time and pace of payment are irrelevant in considering whether compensation is excludable under section 112. Thus, compensation can be excluded under section 112 whether or not it is received outside a combat zone or while the recipient is hospitalized or in a year different from that in which the service was rendered for which the compensation is paid. Compensation received by a member of the Armed Forces for services rendered while in active service can be excluded under section 112 even though payment is received subsequent to discharge or release from active service. Compensation credited to a deceased member's account for a period subsequent to the established date of the member's death and received by the member's estate can be excluded from the gross income of the estate under section 112 to the same extent that it would have been excluded from the gross income of the member had the member lived and received the compensation.

(c) *Hospitalization*—(1) *Presumption of combat zone injury.* If an individual is hospitalized for wound, disease, or injury while serving in a combat zone, the wound, disease, or injury will be presumed to have been incurred while serving in a combat zone, unless the contrary clearly appears. In certain cases, however, a wound, disease, or injury may have been incurred while serving in a combat zone even though the individual was not hospitalized for it while so serving. In exceptional cases, a wound, disease, or injury will not have been incurred while serving in a combat zone even though the individual was hospitalized for it while so serving.

(2) *Length of hospitalization.* An individual is hospitalized only until the date the individual is discharged from the hospital.

(3) *Examples of combat zone injury.*

Example (1). An individual is hospitalized for a disease in the combat zone where the individual has been serving for three weeks. The incubation period of the disease is two to four weeks. The disease is incurred while serving in the combat zone.

Example (2). The facts are the same as in *Example 1* except that the incubation period of the disease is one year. The disease is not incurred while serving in the combat zone.

Example (3). A member of the Air Force, stationed outside the combat zone, is shot while participating in aerial combat over the combat zone, but is not hospitalized until returning to the home base. The injury is incurred while serving in a combat zone.

Example (4). An individual is hospitalized for a disease three weeks after having departed from a combat zone. The incubation period of the disease is two to four weeks. The disease is incurred while serving in a combat zone.

(d) *Married members.* The exclusion under section 112 applies without regard to the marital status of the recipient of the compensation. If both spouses meet the requirements of the statute, then each spouse is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community property State, any exclusion from gross income under section 112 operates before apportionment of the gross income of the spouses under community property law. For example, a husband and wife are domiciled in a community property State and the member spouse is entitled, as a commissioned officer, to the benefit of the exclusion under section 112(b) of $500 for each month. The member receives $7,899 as compensation for active service for 3 months in a combat zone. Of that amount, $1,500 is excluded from gross income under section 112(b) and $6,399 is taken into account in determining the gross income of both spouses.

(e) *Service in area outside combat zone*—(1) *Combat zone treatment.* For purposes of section 112, a member of the Armed Forces who performs military service in an area outside the area designated by Executive Order as a combat zone is deemed to serve in that combat zone while the member's service is in direct support of military operations in that zone and qualifies the member for the special pay for duty subject to hostile fire or imminent danger authorized under section 310 of title 37 of the United States Code, as amended (37 U.S.C. 310) ("hostile fire/imminent danger pay").

(2) *Examples of combat zone treatment.* The examples below are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example (1). B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. B performs military service in Nearby Country in direct support of the military operations in the combat zone from June 1 through June 8 that qualifies B for hostile fire/imminent danger pay. B does not return to the combat zone during June. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

Example (2). B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. On June 1, B is wounded while performing military service in Nearby Country in direct support of the military operations in the combat zone that qualifies B for hostile fire/imminent danger pay. On June 2, B is transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. B is deemed to have incurred the wounds while serving in the combat zone on June 1. Accordingly, B is entitled to the exclusion under section 112 for June through October.

Example (3). B is stationed in Nearby Country for the entire month of June as a member of a ground crew servicing combat aircraft operating in the combat zone. B's service in Nearby Country during June does not qualify B for hostile fire/imminent danger pay. Accordingly, B is not deemed to serve in the combat zone during June and is not entitled to the exclusion under section 112 for that month.

Example (4). B is assigned to an air unit stationed in Nearby Country for the entire month of June. In June, members of air units of the Armed Forces stationed in Nearby Country fly combat and supply missions into and over Destination Country in direct support of military operations in the combat zone. B flies combat missions over Destination Country from Nearby Country from June 1 through June 8. B's service qualifies B for hostile fire/imminent danger pay. Accordingly, B is deemed to serve in the combat zone during June and is entitled to the exclusion under section 112. The result would be the same if B were to fly supply missions into Destination Country from Nearby Country in direct support of operations in the combat zone qualifying B for hostile fire/imminent danger pay.

Example (5). Assigned to an air unit stationed in Nearby Country, B was killed in June when B's plane crashed on returning to the airbase in Nearby Country. B was performing military service in direct support of the military operations in the combat zone at the time of B's death. B's service also qualified B for hostile fire/imminent danger pay. B is deemed to have died while serving in the combat zone or to have died as a result of wounds, disease or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds). The result would be the same if B's mission had been a supply mission instead of a combat mission.

Example (6). In June, B was killed as a result of an off-duty automobile accident while leaving the airbase in Nearby Country shortly after returning from a mission over Destination Country. At the time of B's death, B was not performing military duty qualifying B for hostile fire/imminent danger pay. B is not deemed to have died while serving in the combat zone or to have died as the result of wounds, disease or injury incurred while serving in the combat zone. Accordingly, B does not qualify for the benefits of section 692(a), section 692(b), or section 2201.

Example (7). B performs military service in Nearby Country from June 1 through June 8 in direct support of the military operations in the combat zone. Nearby Country is designated as an area in which members of the Armed Forces qualify for hostile fire/imminent danger pay due to imminent danger, even though members in Nearby Country are not subject to hostile fire. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

(f) *Nonqualifying presence in combat zone*—(1) *Inapplicability of exclusion.* The following members of the Armed Forces are not deemed to serve in a combat zone within the meaning of section 112(a)(1) or section 112(b)(1) or to be hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone within the meaning of section 112(a)(2) or section 112(b)(2)—

(i) Members present in a combat zone while on leave from a duty station located outisde a combat zone;

(ii) Members who pass over or through a combat zone during the course of a trip between two points both of which lie outside a combat zone; or

(iii) Members present in a combat zone solely for their own personal convenience.

(2) *Exceptions for temporary duty or special pay.* Paragraph (f)(1) of this § 1.112–1 does not apply to members of the Armed Forces who—

(i) Are assigned on official temporary duty to a combat zone (including official temporary duty to the airspace of a combat zone); or

(ii) Qualify for hostile fire/imminent danger pay.

(3) *Examples of nonqualifying presence and its exceptions.* The examples below are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example (1). B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. On June 1, B voluntarily visits a city within the combat zone while on leave. B is not deemed to serve in a combat zone since B is present in a combat zone while on leave

from a duty station located outside a combat zone.

Example (2). B is a member of the Armed Forces assigned to a unit stationed in Neaby Country. During June, B takes authorized leave and elects to spend the leave period by visiting a city in the combat zone. While on leave in the combat zone, B is subject to hostile fire qualifying B for hostile fire/imminent danger pay. Although B is present in the combat zone while on leave from a duty station outside the combat zone, B qualifies for the exclusion under section 112 because B qualifies for hostile fire/imminent danger pay while in the combat zone.

Example (3). B is a member of the Armed Forces assigned to a ground unit stationed in the combat zone. During June, B takes authorized leave and elects to spend the leave period in the combat zone. B is not on leave from a duty station located outside a combat zone, nor is B present in a combat zone solely for B's own personal convenience. Accordingly, B's combat zone tax benefits continue while B is on leave in the combat zone.

Example (4). B is assigned as a navigator to an air unit stationed in Nearby Country. On June 4, during the course of a flight between B's home base in Nearby Country and another base in Destination Country, the aircraft on which B serves as a navigator flies over the combat zone. B is not on official temporary duty to the airspace of the combat zone and does not qualify for hostile fire/imminent danger pay as a result of the flight. Accordingly, B is not deemed to serve in a combat zone since B passes over the combat zone during the course of a trip between two points both of which lie outside the combat zone without either being on official temporary duty to the combat zone or qualifying for hostile fire/imminent danger pay.

Example (5). B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. B enters the combat zone on a 3-day pass. B is not on official temporary duty and does not qualify for hostile fire/imminent danger pay while present in the combat zone. Accordingly, B is not deemed to serve in a combat zone since B is present in the combat zone solely for B's own personal convenience.

Example (6). B, stationed in Nearby Country, is a military courier assigned on official temporary duty to deliver military pouches in the combat zone and in Destination Country. On June 1, B arrives in the combat zone from Nearby Country, and on June 2, B departs for Destination Country. Although B passes through the combat zone during the course of a trip between two points outside the combat zone, B is nevertheless deemed to serve in a combat zone while in the combat zone because B is assigned to the combat zone on official temporary duty.

Example (7). B is a member of an Armed Forces ground unit stationed in Nearby Country. On June 1, B took authorized leave and elected to spend the leave period by visiting a city in the combat zone. On June 2, while on leave in the combat zone, B was wounded by hostile fire qualifying B for hostile fire/imminent danger pay. On June 3, B was transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. Although B was present in the combat zone while on leave from a duty station outside the combat zone, B is deemed to have incurred the wounds while serving in the combat zone on June 2, because B qualified for hostile fire/imminent danger pay while in the combat zone. Accordingly, B is entitled to the exclusion under section 112 for June through October.

Example (8). The facts are the same as in *Example (7)* except that B dies on September 1 as a result of the wounds incurred in the combat zone. B is deemed to have died as a result of wounds, disease or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-5584 Filed 3-8-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 155

[DoD Directive 5220.6]

Defense Industrial Personnel Security Clearance Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This document updates policy, criteria, and procedures of the Defense Industrial Personnel Security Clearance Review Program.

DATES: Comments are requested by April 10, 1991.

ADDRESSES: Send comments to: Directorate for Industrial Security Clearance Review, P.O. Box 3656, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Leon J. Schachter, telephone, (703) 696-4598.

SUPPLEMENTARY INFORMATION: The reissuance incorporates adjudication policies set forth in DoD 5200.2-R, "DoD Personnel Security Program", January 1987 (32 CFR part 154), reinstates reversal authority for Appeal Board, amends reimbursement procedures; provides for adverse action upon issuance of Administrative Judge decision rather than upon appellate decisions; provides for open hearings; and various other changes such as role of Director. All comments will be available for examination upon request. The prior publication of this rule may be found on 32 CFR part 155. This action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost or prices for consumers, industries, state or local governments; or adversely effect competition, employment, investment, or innovation. The rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 155

Administrative practice and procedure, Business and industry, Classified information.

Accordingly, 32 CFR part 155 is revised to read as follows:

PART 155—DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE PROGRAM

Sec.
155.1 Purpose.
155.2 Applicability and scope.
155.3 Definitions.
155.4 Policy.
155.5 Responsibilities.
155.6 Procedures.

Appendix A to Part 155—Additional Procedural Guidance

Authority: E.O. 10865, 3 CFR, 1959—1963 Comp., p. 398.

§ 155.1 Purpose.

This part updates the policy, criteria, and procedures of the Defense Industrial Personnel Security Clearance Review Program implementing E.O. 10865.

§ 155.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Inspector General of the Department of Defense (IG, DoD); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) By mutual agreement, also extends to other Federal Agencies that include:

(1) Department of Agriculture.
(2) Department of Commerce.
(3) Department of Interior.
(4) Department of Justice.
(5) Department of Labor.
(6) Department of State.
(7) Department of Transportation.
(8) Department of Treasury.
(9) Environmental Protection Agency.

(10) Federal Emergency Management Agency.
(11) Federal Reserve System.
(12) General Accounting Office.
(13) General Services Administration.
(14) National Aeronautics and Space Administration.
(15) National Science Foundation.
(16) Small Business Administration.
(17) United States Arms Control and Disarmament Agency.
(18) United States International Trade Commission.
(19) United States Trade Representative.
(20) United States Information Agency.

(c) Applies to cases that the Defense Industrial Security Clearance Office (DISCO) forwards to the Directorate for Industrial Security Clearance Review (DISCR) for action under this part to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(d) Provides a program that may be extended to other security cases at the direction of the Deputy Under Secretary of Defense for Security Policy (DUSD(SP)).

(e) Does not apply to cases in which:

(1) A security clearance is withdrawn because the applicant no longer has a need for access to classified information;

(2) An interim security clearance is withdrawn by the DISCO during an investigation; or

(3) A security clearance is withdrawn for administrative reasons that are without prejudice as to a later determination of whether the grant or continuance of the applicant's security clearance would be clearly consistent with the national interest.

(f) Does not apply to cases for access to sensitive compartmented information or a special access program.

§ 155.3 Definitions.

(a) *Applicant.* Any U.S. citizen who holds or requires a security clearance or any immigrant alien who holds or requires a limited access authorization for access to classified information needed in connection with his or her employment in the private sector; any U.S. citizen who is a direct-hire employee or selectee for a position with the North Atlantic Treaty Organization (NATO) and who holds or requires NATO certificates of security clearance or security assurances for access to U.S. or foreign classified information; or any U.S. citizen nominated by the Red Cross or United Service Organizations (USO) for assignment with the Military Services overseas. The term "applicant" does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such Agencies in response to a request from NATO.

(b) *Clearance Decision.* A decision made in accordance with this part concerning whether it is clearly consistent with the national interest to grant an applicant a security clearance for access to Confidential, Secret or Top Secret information. A favorable clearance decision establishes eligibility of the applicant to be granted a security clearance for access at the level governed by the documented need for such access, and the type of investigation specified for that level in 32 CFR part 154. An unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance.

§ 155.4 Policy.

It is DoD policy that:

(a) All proceedings provided for by this part shall be conducted in a fair and impartial manner.

(b) A clearance decision reflects the basis for an ultimate finding as to whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(c) Except as otherwise provided for by E.O. 10865 or this part, a final unfavorable clearance decision shall not be made without first providing the applicant with:

(1) Notice of specific reasons for the proposed action.

(2) An opportunity to respond to the reasons.

(3) Notice of the right to a hearing and the opportunity to cross-examine persons providing information adverse to the applicant.

(4) Opportunity to be represented by counsel or personal representative.

(5) Written notice of final clearance decisions.

(6) Notice of appeal procedures.

(d) Actions pursuant to this part shall cease upon termination of the applicant's need for access to classified information except in those cases in which:

(1) A hearing has already commenced;

(2) A clearance decision has been issued; or

(3) The applicant's security clearance was suspended and the applicant provided a written request that the case continue.

§ 155.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall:

(1) Establish investigative policy and adjudicative standards and oversee their application.

(2) Coordinate with the GC, DoD, on policy affecting clearance determinations.

(3) Issue clarifying guidance and instructions as needed.

(4) Designate the DUSD(SP), as appropriate, to implement paragraphs (a) (1) through (3) of this section.

(b) The General Counsel, Department of Defense (GC, DoD) shall:

(1) Establish guidance and provide oversight as to legal sufficiency of procedures and standards established by this Directive.

(2) Establish the organization and composition of the DISCR.

(3) Designate a civilian attorney to be the Director, DISCR.

(4) Issue clarifying guidance and instructions as needed.

(5) Administer the program established by this Directive.

(6) Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Designate attorneys to be Department Counsels assigned to the DISCR to represent the Government's interest in cases and related matters within the applicability and scope of this part.

(8) Designate attorneys to be Administrative Judges assigned to the DISCR.

(9) Designate attorneys to be Administrative Judge members of the DISCR Appeal Board.

(10) Provide for supervision of attorneys and other personnel assigned or attached to the DISCR.

(11) Develop and implement policy established or coordinated with the GC, DoD, in accordance with this part.

(12) Establish and maintain qualitative and quantitative standards for all work by DISCR employees arising within the applicability and scope of this part.

(13) Ensure that the Administrative Judges and Appeal Board members have the requisite independence to render fair and impartial decisions consistent with DoD policy.

(14) Provide training, clarify policy, or initiate personnel actions, as appropriate, to ensure that all DISCR decisions are made in accordance with policy, procedures, and standards established by this part.

(15) Provide for maintenance and control of all DISCR records.

(16) Take actions as provided for in § 155.6(b) and the additional procedural guidance in the Appendix to this part.

(17) Establish and maintain procedures for timely assignment and completion of cases.

(18) Issue guidance and instructions, as needed, to fulfill the foregoing responsibilities.

(19) Designate the Director, DISCR, to implement paragraphs (b) (5) through (18) of this section under general guidance of the GC, DOD.

(c) The Heads of DoD Components shall provide (from resources available to the designated DoD Component) financing, personnel, personnel spaces, office facilities, and related administrative support required by the DISCR.

(d) The Director, Defense Investigative Service (DIS), shall ensure that cases within the scope and applicability of this part are referred promptly to the DISCR, as required, and that clearance decisions by the DISCR are acted upon without delay.

§ 155.6 Procedures.

(a) Applicants shall be investigated in accordance with the standards in 32 CFR part 154.

(b) An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DISCR to reach a clearance decision and to otherwise comply with the procedures authorized by this part. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant and material information or otherwise cooperate at any stage in the investigation or adjudicative process may prevent the DISCR from making a clearance decision. If an applicant fails or refuses to:

(1) Provide relevant and material information or to authorize others to provide such information,

(2) Proceed in a timely or orderly fashion in accordance with this part, or

(3) Follow directions of an Administrative Judge or the Appeal Board, the Director, DISCR, or designee, may revoke any security clearance held by the applicant and discontinue case processing. Requests for resumption of case processing and reinstatement of a security clearance may be approved by the Director, DISCR, only upon a showing of good cause. If the request is denied, in whole or in part, the decision is final and bars reapplication for a security clearance for 1 year from the date of the revocation.

(c) Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in § 154.7 including as appropriate:

(1) Nature and seriousness of the conduct and surrounding circumstances.

(2) Frequency and recency of the conduct.

(3) Age of the applicant.

(4) Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

(5) Absence or presence of rehabilitation.

(6) Probability that the circumstances or conduct will continue or recur in the future.

(d) Whenever there is a reasonable basis for concluding that an applicant's continued access to classified information poses an imminent threat to the national interest, any security clearance held by the applicant may be suspended by the DUSD (SP), with the concurrence of the GC, DoD, pending a final clearance decision. This suspension may be rescinded by the same authorities upon presentation of additional information that conclusively demonstrates that an imminent threat to the national interest no longer exists.

(e) Nothing contained in this part shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another Department or Agency to deny or revoke a security clearance when the security of the nation so requires. Such a determination shall be conclusive. This authority may be exercised only when it has been determined that the hearing procedures and other provisions of this part cannot be invoked consistent with the national security.

(f) Additional procedural guidance is set forth in the Appendix A to this part.

Appendix A to Part 155—Additional Procedural Guidance

1. When the DISCO cannot affirmatively find that it is clearly consistent with the national interest to grant or continue a security clearance for an applicant, the case shall be promptly referred to the DISCR.

2. Upon referral, the DISCR shall make a prompt determination whether to grant or continue a security clearance, issue a statement of reasons (SOR) as to why it is not clearly consistent with the national interest to do so, or take interim actions, including but not limited to:

a. Direct further investigation.

b. Propound written interrogatories to the applicant or other persons with relevant information.

c. Require the applicant to undergo a medical evaluation by a DoD Psychiatric Consultant.

d. Interview the applicant.

3. An unfavorable clearance decision shall not be made unless the applicant has been provided with a written SOR that shall be as detailed and comprehensive as the national security permits. A letter of instruction with the SOR shall explain that the applicant or Department Counsel may request a hearing. It shall also explain the adverse consequences for failure to respond to the SOR within the prescribed timeframe.

4. The applicant must submit a detailed written answer to the SOR under oath or affirmation that shall admit or deny each listed allegation. A general denial or other similar answer is insufficient. To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer. The answer must be received by the DISCR within 20 days from receipt of the SOR. Requests for an extension of time to file an answer may be submitted to the Director, DISCR, or designee, who in turn may grant the extension only upon a showing of good cause.

5. If the applicant does not file a timely and responsive answer to the SOR, the Director, DISCR, or designee, may discontinue processing the case, deny issuance of the requested security clearance, and direct the DISCO to revoke any security clearance held by the applicant.

6. Should review of the applicant's answer to the SOR indicate that allegations are unfounded, or evidence is insufficient for further processing, the Chief Department Counsel shall take such action as appropriate under the circumstances, including but not limited to withdrawal of the SOR and transmittal to the Director for notification of DISCO for appropriate action.

7. If a hearing is requested by the applicant or Department Counsel, the case will be assigned to an Administrative Judge for a clearance decision based on the hearing record. Following issuance of a notice of hearing by the Administrative Judge, or designee, the applicant shall appear in person with or without counsel or a personal representative at a time and place designated by the notice of hearing. The applicant shall be notified at least 15 days in advance of the time and place of the hearing, which generally shall be held at a location in the United States within a metropolitan area near the applicant's place of employment or residence. A continuance may be granted by the Administrative Judge only for good cause. Hearings may be held outside of the United States in NATO cases, or in other cases upon a finding of good cause by the Director, DISCR, or designee.

8. If the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing within 20 days of receipt of the applicant's answer, the case will be assigned to an Administrative Judge for a clearance decision based on the written record. Department Counsel shall provide the applicant with a copy of all relevant and material information that could be adduced

at a hearing. The applicant shall have 30 days from receipt of the information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.

9. The Administrative Judge may require a prehearing conference.

10. The Administrative Judge may rule on questions pertaining to procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner.

11. Discovery by the applicant is limited to non-privileged documents and material subject to control by the DISCR. Discovery by Department Counsel after issuance of an SOR may be granted by the Administrative Judge only upon a showing of good cause.

12. A hearing shall be open except when the applicant requests that it be closed, or when the Administrative Judge determines that there is a need to protect classified information or there is other good cause for keeping the proceeding closed.

13. Department Counsel and the applicant shall serve each other with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge.

14. Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.

15. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted or proven by Department Counsel, and has the ultimate burden of persuasion as to his or her security worthiness.

16. Witnesses shall be subject to cross-examination.

17. The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause.

18. The Administrative Judge hearing the case shall notify the applicant and all witnesses testifying that 18 U.S.C. 1001 is applicable.

19. The Federal Rules of Evidence shall serve as a guide. Relevant and material evidence may be received subject to rebuttal, and technical rules of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record.

20. Official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Agency head concerned, to safeguard classified information within industry pursuant to E.O. 10865. An ROI may be received with an authenticating witness provided it is otherwise permitted by the Federal Rules of Evidence.

21. Records that cannot be inspected by the applicant because they are classified may be received and considered by the Administrative Judge, provided the GC, DoD:

a. Made a preliminary determination that such evidence appears to be relevant and material; and

b. Determined that failure to receive and consider such evidence would be substantially harmful to the national security.

22. A written or oral statement adverse to the applicant on a controverted issue may be received and considered by the Administrative Judge without affording an opportunity to cross-examine the person making the statement orally, or in writing when justified by the circumstances, only in either of the following circumstances:

a. If the head of the Department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his or her identity would be substantially harmful to the national interest; or

b. If the GC, DoD, has determined the statement concerned appears to be relevant, material, and reliable; failure to receive and consider the statement would be substantially harmful to the national security; and the person who furnished the information cannot appear to testify due to the following:

(1) Death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or

(2) Some other cause determined by the Secretary of Defense, or when appropriate by the Agency head, to be good and sufficient.

23. Whenever evidence is received under item 21 or 22, above, the applicant shall be furnished with as comprehensive and detailed a summary of the information as the national security permits. The Administrative Judge and Appeal Board may make a clearance decision either favorable or unfavorable to the applicant based on such evidence, but any final determination adverse to the applicant shall be made only by the Secretary of Defense or the Agency head, based on a personal review of the case record.

24. A verbatim transcript shall be made of the hearing. The applicant shall be furnished one copy of the transcript, less the exhibits, without cost.

25. The Administrative Judge shall make a written clearance decision in a timely manner setting forth pertinent findings of fact, policies, and conclusions as to the allegations in the SOR, and whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. The applicant and Department Counsel shall each be provided a copy of the clearance decision. In cases in which evidence is received under items 21 and 22, above, the Administrative Judge's written clearance decision may require deletions in the interest of national security.

26. If the Administrative Judge determines that it is not clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the Director, DISCR, or designee, shall expeditiously notify the DISCO, which shall in turn notify the applicant's employer of the denial or revocation of the applicant's security clearance. The letter forwarding the Administrative Judge's clearance decision to the applicant shall advise the applicant that these actions are being taken, and that the applicant may appeal the Administrative Judge's clearance decision.

27. If the Administrative Judge decides that it is clearly consistent with the national interest for the applicant to be granted, or to retain a security clearance, the DISCO shall be so notified by the Director, DISCR, or designee, when the clearance decision becomes final.

28. The applicant or Department Counsel may appeal the Administrative Judge's clearance decision by filing a written notice of appeal with the Director, DISCR, or designee, within 20 days after the date of the Administrative Judge's clearance decision. A notice of appeal received after 20 days from the date of the clearance decision shall not be accepted by the Director, DISCR, or designee, except for good cause. The notice of appeal merely signifies the intention to file an appeal. A notice of cross appeal may be filed within 10 days of receipt of the notice of appeal.

29. Upon receipt of a notice of appeal, the Appeal Board shall be provided the case record. No new evidence shall be received or considered by the Appeal Board.

30. After filing a timely notice of appeal, a written appeal brief must be received by the Appeal Board within 60 days from the date of the Administrative Judge's clearance decision. The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any alleged error. A written reply brief, if any, must be filed within 30 days from receipt of the appeal brief. A copy of any brief filed must be served upon the applicant or Department Counsel, as appropriate.

31. Requests for a reasonable extension of time for submission of briefs may be submitted to the Chair of the Appeal Board, or designee. A copy of any request for extension of time must be served on the opposing party at the time of submission. The Chair of the Appeal Board, or designee, shall be responsible for controlling the Appeal Board's docket, and has authority to enter default orders in appropriate cases and to vacate such default orders upon a showing of good cause.

32. The Appeal Board shall address the material issues raised by the parties to determine whether harmful error occurred. Its scope of review shall be to determine whether or not:

a. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge;

b. The Administrative Judge adhered to the procedures required by E.O. 10865 and this part;

c. The Administrative Judge's rulings and conclusions are arbitrary, capricious, or contrary to law.

33. The Appeal Board shall issue a written clearance decision addressing the material issues raised on appeal. The Appeal Board shall have authority to:

a. Affirm the decision of the Administrative Judge; or

b. Remand the case to an Administrative Judge to correct identified error. If the case is remanded, the Appeal Board shall specify the action to be taken on remand; or

c. Reverse the decision of the Administrative Judge if correction of identified error mandates such action.

34. A copy of the Appeal Board's written clearance decision shall be provided to both parties. In cases in which evidence was received under items 21 and 22, above, the Appeal Board's clearance decision may require deletions in the interest of national security.

35. Upon remand, the case file shall be assigned to an Administrative Judge for correction of error(s) in accordance with the Appeal Board's clearance decision. The assigned Administrative Judge shall make a new clearance decision in the case after correcting the error(s) identified by the Appeal Board. The Administrative Judge's clearance decision after remand shall be provided to both parties. The clearance decision after remand may be appealed pursuant to items 28–35, above.

36. A clearance decision shall be considered final when:

a. A security clearance is granted or continued pursuant to item 2., above;

b. No timely notice of appeal is filed;

c. No timely appeal brief is filed after a notice of appeal has been filed;

d. The appeal has been withdrawn;

e. When the Appeal Board affirms or reverses an Administrative Judge's determination; or

f. When a decision has been made by the Secretary of Defense or Agency head pursuant to item 23, above.

The Director, DISCR, or designee, shall notify the DISCO of all final clearance decisions.

37. An applicant whose security clearance has been finally denied or revoked by the DISCR is barred from reapplication for one year from the date of the initial unfavorable clearance decision.

38. A reapplication for a security must be made initially by the applicant's employer to the DISCO and is subject to the same processing requirements as those for a new security clearance application. The applicant is thereafter responsible for providing the Director, DISCR, with a copy of any adverse clearance decision together with evidence that circumstances or conditions previously found against the applicant have been rectified or sufficiently mitigated to warrant reconsideration.

39. If the Director, DISCR, determines that reconsideration is warranted, the case shall be subject to all provisions of this part for making a clearance decision.

40. If the Director, DISCR, determines that reconsideration is not warranted, the DISCR shall notify the applicant of this decision. Such a decision is final and bars further reapplication for an additional 1 year period from the date of the decision rejecting the reapplication.

41. Nothing in this part is intended to give an applicant reapplying for a security clearance any greater rights than those applicable to any other applicant under this part.

42. An applicant may petition for reimbursement of loss of earnings resulting from the suspension, revocation, or denial of his security clearance. The petition for reimbursement must include as an attachment the clearance decision granting the security clearance and documentation supporting the reimbursement claim. The Director, DISCR, or designee, may in his or her discretion require additional information from the petitioner.

43. Claims for reimbursement must be filed with the Director, DISCR, or designee, within 1 year after the date the security clearance is granted. Department Counsel generally shall file a response within 60 days after receipt of applicant's petition for reimbursement.

44. Reimbursement is authorized only if the applicant demonstrates by clear and convincing evidence to the Director, DISCR, that all of the following conditions are met:

a. The suspension, denial, or revocation was the primary cause of the claimed pecuniary loss; and

b. The suspension, denial, or revocation was due to gross negligence of the Department of Defense at the time the action was taken, and not in any way by the applicant's failure or refusal to cooperate.

45. The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or denial and the applicant's interim earnings, and further shall be subject to reasonable efforts on the part of the applicant to mitigate any loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failures to act. Reimbursement is not authorized for loss of merit raises and general increases, loss of employment opportunities, counsel's fees, or other costs relating to proceedings pursuant to this Directive.

46. Approval of claims by the Director, DISCR, shall be forwarded to the Agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any further claim against the United States or any Federal Agency, or any of its officers or employees.

47. Clearance decisions issued by Administrative Judges and the Appeal Board shall be indexed and made available in redacted form to the public.

Dated: February 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–4298 Filed 3–8–91; 8:45 am]

BILLING CODE 3810–01–M

32 CFR Part 162

[DoD Instruction 5010.36]

Productivity Enhancing Capital Investment

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Productivity Enhancing Capital Investment (PECI) Program allows Department of Defense (DoD) Military Services and Defense Agencies to compete annually for $175 millions dollars in funds designed to improve quality and productivity and apply proven technological advancements. This part, "Productivity Enhancing Capital Investment", updates PECI Program policy, criteria, responsibilities, procedures, guidance for the PECI process and authorizes publications and maintenance of PECI handbook and revises 32 CFR part 162. Contractors may provide activities with information that support innovative application of technology or productivity investments at Government owned, contractor operated (GOCO) facilities.

DATES: Comments must be received by April 10, 1991.

ADDRESSES: Forward comments to: Defense Productivity Program Office, Two Skyline Place, room 1404, 5203 Leesburg Pike, Falls Church, VA 22041–3466.

FOR FURTHER INFORMATION CONTACT: Lee A. Wexel, (703) 756–2346.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 162

Armed Forces; Government procurement.

Accordingly, title 32, chapter I, subchapter E is proposed to be amended to add part 162 to read as follows:

PART 162—PRODUCTIVITY ENHANCING CAPITAL INVESTMENT

Sec.
162.1 Purpose.
162.2 Applicability and scope.
162.3 Definitions.
162.4 Policy.
162.5 Responsibilities.
162.6 Procedures.
162.7 Information requirements.

Appendix A to Part 162—Reporting Procedures

Authority: 10 U.S.C. 136; E.O. 12637, 3 CFR, 1988 Comp., P. 566.

§ 162.1 Purpose.

(a) This part updates policy, criteria, responsibilities, procedures, and guidance for the Productivity Enhancing Capital Investment (PECI) processes.

(b) This part provides the authority to publish and maintain the Department of Defense (DoD) "Productivity Enhancing Capital Investment (PECI) Handbook," DoD 5010.36–H [1], in the DoD Directive System.

§ 162.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Staff, the Defense Agencies, and the Department of Defense (DoD) Field Activities (hereafter referred to collectively as "DoD Components").

(b) This part encompasses the acquisition of equipment and facilities to improve the productivity, quality, and processes of DoD Components. This includes major facilities, equipment or process modernization, as well as efforts to improve the performance of individual jobs, tasks, procedures, operations, and processes.

(c) This part encompasses productivity enhancing investments at appropriated and industrially funded activities. For industrially funded activities, projects may participate in the PECI program on an exception basis; primarily this includes facilities, multi-function projects, prototypes, demonstrations, and cross-service initiatives. Investment at Government-owned, contractor-operated (GOCO) facilities are limited to those for which the Department of Defense has responsibility to provide equipment or facilities and from which productivity benefits can be recovered within existing contractual provisions.

§ 162.3 Definitions.

(a) *Capital investment.* The acquisition, installation, transportation, and other costs needed to place equipment or facilities in operation meeting DoD capitalization requirements.

(b) *Economic life.* The period of time over which the benefits to be gained from a project may reasonably be expected to accrue to the Department of Defense (see DoD Instruction 7041.3 [2].

(c) *Internal Rate of Return (IRR).* The discount rate that equates the present value of the future cash inflows with the present value costs of an investment.

(d) *Life-cycle savings.* The estimated cumulated budgetary savings expected over the life of the project.

(e) *Net present value of investment.* The difference between the present value benefit and the present value cost at a given discount rate.

(f) *Off-the-shelf.* Equipment that is readily available through government or commercial sources or that can be fabricated through combination or modification of existing equipment.

(g) *Pay back period.* The number of years (to one decimal place) required for the (un-discounted) cumulative cash inflow to have the same value as the investment cost.

(h) *Productivity.* The efficiency with which resources are used to provide a government service or product at specified levels of quality and timeliness.

(i) *Productivity enhancement.* A decrease in the unit cost of products and services delivered with equal or better levels of quality and timeliness. (syn: Productivity Improvement)

(j) *Productivity Enhancing Capital Investment (PECI).* Equipment or facility funding that will improve government service, products, quality, or timeliness. PECI projects are funded using PIF, PEIF, and CSI methods. PIF, PEIF, and CSI funding methods are defined as:

(1) *Component-Sponsored Investment (CSI).* Funding provided by DoD Component programs and included in appropriations in response to DoD Component-initiated budget requests for specific items. To qualify for CSI financing, projects must meet DoD Component requirements.

(2) *Productivity Investment Fund (PIF).* Funding provided through OSD program and budget guidance to finance competitively selected PECIs. To qualify for PIF financing, projects must cost over $150,000 and amortize within 4 years of the operational date.

(3) *Productivity Enhancing Incentive Fund (PEIF).* Funding provided by the DoD Component that is established to provide timely financing for fast pay back PECI opportunities. To qualify for PEIF financing, projects are expected to have a pay back period of 2 years or less and must meet the criteria established in this Instruction.

(k) *PECI, benefits.* Benefits resulting from PECIs are classified as budgetary savings or as cost avoidance:

(1) *Budgetary savings.* Benefits that can be precisely measured, quantified, and placed under management control at time of realization. Budgetary savings can be reflected as specific reductions in the budget, after they have been achieved. Examples include costs for manpower authorizations/funded work year reductions, reduced or eliminated operating costs (utilities, travel, repair), and reduced or eliminated parts and contracts. Budget savings are used in calculating IRR, 5 Year/7 Year/Life Cycle RIO, and RIMS.

(2) *Cost-avoidance.* Benefits from actions that obviate the requirements for an increase in future levels of manpower or costs that would be necessary if present management practices were continued. The effect of cost-avoidance savings is the achievement of a higher level of readiness at level staffing cost or the absorption of a growing work load at the same level of staffing or cost. The effect of cost-avoidance savings may also be stated as value of output, quality, or timeliness. Cost-avoidance benefits are restricted to a 5-year budget estimate period. Cost avoidance is used in calculating the IRR which includes equivalent manpower and manyear dollar values.

(l) *Post Investment Assessment* (PIA). A PIA is conducted by DoD Components to establish accountability and provide information to improve future investment strategies.

(m) *Quality.* The new management philosophy of Total Quality Management that focuses on continuous improvements in customer satisfaction, processes that eliminate waste, and changes that reduce overall unit cost of DoD Component outputs.

(n) *Return on Investment (ROI).* The ratio of total un-discounted net savings to the investment cost. (syn: Savings to Investment Ratio (SIR))

(o) *Return on Investment in Manpower Savings (RIMS).* The ratio of the number of manpower authorizations (or funded manyears) to the investment costs. Equivalent manhours or manyears, as well as a reduction in requirements without authorizations, are not included in this calculation.

§ 162.4 Policy.

It is DoD policy that:

(a) The PECI program shall be an integral part of DoD Component investment planning and of the Defense Planning, Programming, and Budgeting System (PPBS). PECI planning shall include OSD-sponsored Productivity Investment Fund (PIF), Productivity Enhancing Incentive Fund (PEIF), and Component-Sponsored Investments (CSIs). PECI is a major DoD strategy to achieve productivity goals stated in Executive Order 12637.

(b) PECI projects will be selected to improve productivity and quality, or to reduce unit cost of outputs in defense operations. PECI projects shall be evaluated and approved for funding based on recognized principles of economic analysis such as economic life, return on investment (ROI), return

[1] Copies of this document will be available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies of this document are available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

on investment in manpower spaces (RIMS), and internal rate of return (IRR). Each PECI project shall be subject to all restrictions established by public law, DoD policy, and other regulatory constraints.

(c) DoD personnel at all levels shall be encouraged to seek out and identify opportunities for quality and productivity improvements. These efforts shall be supported by using PECI as a means to finance the improvements. DoD Component-sponsored PECI shall provide incentives for program participation at all levels.

(d) Individuals or groups who successfully identify PECI opportunities that result in significant savings or improvments in quality or productivity or who aggressively promote PECI initiatives within their organizations should be recognized through the "DoD Incentive Awards Program", DoD Instruction 5120.16,[3] the Secretary of Defense Productivity Excellence Awards Program, performance appraisal, or other appropriate means. Policy on sharing projected savings as an incentive will be established before proposals are submitted for FY 94 funding.

(e) Funds provided for PIF projects may not be reprogrammed for other purposes outside of PIF without prior approval of the ASD(FM&P). DoD Components shall monitor obligation rates to ensure PIF projects are funded in a timely manner. If project funding cannot be obligated within the specified fiscal year(s), the DoD Component must either reprogram funds to alternate PIF projects approved by the ASD(FM&P) or return funds to the OSD Comptroller if alternate projects are not available. PIF projects shall be monitored periodically to ensure timely implementation and to validate savings through the amortization period. PECIs are subject to audit in accordance with the policies established in DoD Instruction 7600.2 [4].

§ 162.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel (ASD(FM&P)) shall:

(1) Develop policies and programming guidance for the overall DoD PECI program.

(2) Maintain oversight of the PECI program to ensure implementation of this part. This includes total process control and coordination of PIF actions to identify, select and approve, reprogram, and disapprove projects through fiscal year 1993. Starting fiscal year 1994, ASD(FM&P) shall retain central oversight of a decentralized PECI program.

(3) Evaluate program results and training requirements and provide additional guidance, as necessary.

(4) Develop, maintain, and publish a DoD handbook on "Productivity Enhancing Capital Investment".

(5) Coordinate PECI efforts with the DoD Components on matters that affect their particular areas of responsibility.

(6) In coordination with the Office of the Defense Comptroller, recommend for approval to the Secretary of Defense or Deputy Secretary of Defense funding for PIF proposals.

(7) Use the Defense Productivity Program Office (DPPO) to:

(i) Provide technical guidance and support for PECI efforts;

(ii) Monitor and evaluate DoD Component PECI efforts; and

(iii) Review all PECI projects to be financed through the OSD-sponsored portion of the PIF and provide selection recommendations.

(b) The Office of the Comptroller of the Department of Defense shall:

(1) Issue guidance and procedures for PECI financing and for PECI identification in DoD budget requests.

(2) Ensure compliance with DoD Directive 7750.5 [5].

(c) The Inspector General (IG), Department of Defense, shall provide policy and guidance for the audit of PECI and incorporate the requirement for audit into audit planning and program documents.

(d) The DoD Components shall:

(1) Develop and sustain a formal PECI program that:

(i) Emphasizes and encourages the improvement of day-to-day operations through PECI funding.

(ii) Provides motivation and opportunities for personnel at all levels to participate in the identification, documentation, and implementation of PECI proposals.

(iii) Includes a balanced approach consisting of PIF, PEIF, and CSI efforts.

(iv) Reviews submitted projects, broadens project applicability when reasonable, applies off-the-shelf technology, and integrates capital investment planning into the PPBS.

(2) Designate an official to be the central point of contact who shall oversee and monitor the PECI program.

(3) Establish procedures ensuring that the policies contained in this part are adhered to.

§ 162.6 Procedures.

The following procedures shall be followed by DoD Components in the identification, documentation, selection, and financing of PECI projects:

(a) Document each PECI project to the degree needed to ensure that it is:

(1) A desirable action in consonance with the DoD Component's long-range planning and programming objectives, quality objectives, and customer/user satisfaction.

(2) Needed to improve and perform valid operations, functions, or services (as established by assigned missions and taskings) that cannot be performed as effectively or economically by the use of existing facilities, methods, processes, procedures, or by contract.

(3) Justification on the basis of a valid economic analysis performed in accordance with DoD Instruction 7041.3, and

(4) Reviewed prior to submission for approval and funding (PIF projects), to assure that justifications are valid, reasonable, and complete; that the correct appropriation(s) (i.e. Other Procurement (OP)), Operations and Maintenance (O&M), Military Construction (MILCON), and Research, Development, Test and Evaluation (RDT&E)) have been determined and indicated in the proposal; and that the projected benefits have been accurately categorized as budgetary and or cost avoidance.

(b) Include resources for PEIF/CSI in programming documents and budget submissions. The level of funding will be established in consonance with quality and productivity plans and goals established in accordance with DoD Directive 5010.31.[6]

(c) Use guidelines for project documentation, pre-investment analysis, financing, and post-investment accountability of PECI projects, provided in the DoD handbook on Productivity Enhancing Capital Investments.

(d) Submit to DPPO proposed PIF projects, no later than July 15th of each year. Projects submitted to DPPO for evaluation shall be loaded on floppy disk using the program provided. DoD Components should submit concise project descriptions and justifications that can be used to support the ranking and decision making process.

(e) Classify PECI projects for financing and aggregated reporting as:

(1) *Productivity Investment Fund (PIF) projects.* PIF projects are PECI projects that have been competitively selected by OSD from candidate proposals submitted by DoD Components and financed through traditional budget appropriation processes from funds set

[3] See footnote 2 to § 162.3(b).

[4] See footnote 2 to § 162.3(b).

[5] See footnote 2 § 162.3(b).

[6] See footnote 2 § 162.3(b).

aside by OSD for this purpose. PIF projects must cost over $150,000 and amortize within 4 years from the date they become operational. Both equipment and facilities investments which conform to public law or DoD policies governing their qualification may be included. Projects may include a function at several activities or locations and be Service-wide or Agency-wide.

(2) *Productivity Enhancing Incentive Fund (PEIF) projects.* PEIF projects are financed from DoD Component accounts established in annual appropriations and are expected to amortize within 2 years of the date they become operational. Funding for PEIF projects will be included in DoD Component annual appropriations as a single amount to cover projects as they are proposed throughout the budget year. The cost of a PEIF project cannot exceed $150,000 or cost limitations established by OSD (whichever is greater) and are limited to facility modification and acquisition of "off-the shelf" equipment requiring little or no modification before use. Justification for these projects will be based on the potential to improve quality and productivity which is realized through improvements in operating methods, quality, processes, or procedures.

(3) *Component-Sponsored Investment (CSI).* CSI projects are investments financed from DoD Component accounts that may have longer amortization periods than PEIF and may have different DoD Component cost or benefit criteria than those specified for OSD-sponsored (PIF) projects. CSI projects will be identified and included in the DoD Component's annual budget. Specific criteria shall be developed by the sponsoring DoD Component and promulgated after review and approval by the ASD (FM&P).

§ 162.7 Information requirements.

(a) DoD Components shall submit to the ASD (FM&P), by December 15th, a status report on all PECI programs. As outlined in appendix A to this part, this report requires information for the 4 operational years or the pay back period, whichever is less. DoD Components shall maintain the data at a central point in order to support reporting requirements.

(b) The Summary Report, "PECI Program Status," is assigned Report Control Symbol FM&P (A) 1561 in accordance with DoD Directive 7750.5.

Appendix A to Part 162—Reporting Procedures

A. General

PECI reporting requirements provide OSD with information required to manage funds, provide program accountability, and satisfy Congressional concerns on program management.

B. Information Requirements

1. *Productivity investment fund.* Each DoD Component that has a funded PIF project must annually report six facts about each PIF project. Each funded project is reported for the amortization period or 4 years from implementation, whichever is less. The six facts are shown on the attached blank example and partially filled sample spreadsheets. Explanation or required information is provided in the following:

a. *Project identification.* Column A lists an 11-digit code for each project approved for funding, i.e. A92BAxxxxxx is a (A) Army project, (92) 92 is the fiscal year, (B) B represents a PIF project, (A) A represents a Funded PIF Project, and (xxxxxx) xxxxxx is a DoD Component selected code. A funded project should be reported until amortized or for 4 years from operational implementation, whichever is less.

b. *Total funds provided.* Column B lists the amount of investment provided to the funded project.

c. *Total amount obligated.* Column C lists the cumulative amount of capital actually obligated against a project.

d. *Actual savings through FY 199X.* Column D lists the cumulative actual savings generated for each project. This actual savings figure is the sum of actual budgetary savings realized and cost avoidance savings that were measured and converted to budgetary savings. If an audit resulted in a change to reported actual savings, attach a copy of the audit results to the report.

e. *Annual manyears saved.* Column E lists the actual funded manyears of work or funded positions reduced through project implementation.

f. *New projected life-cycle savings/total life-cycle savings.* In column F, if a PIF project is significantly exceeding or missing the last life-cycle savings estimate, provide a new projected estimate. If an audit generated a change in projected life-cycle savings, attach a copy of audit results to the report. In column F, for PEIF and CSI provide a cumulative projected estimate of Life-Cycle savings for all projects.

2. *Productivity investment fund summary.* This is a summary of the information contained in columns A–E.

3. *Productivity enhancing incentive fund.* Provide summarized information for columns B, C, D, and E. Also provide the total number of projects funded through the productivity enhancing incentive fund in column A. Post Investment Assessments or brief descriptions of results that demonstrate the DoD Component's program may be attached to the report.

4. *Component-sponsored investment.* Provide summarized information for columns B, C, D, and E. Also provide the total number of projects funded through Component-Sponsored Investments in column A. Post Investment Assessments or brief descriptions of results that demonstrate the DoD Component's program may be attached to the report.

Dated: March 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5540 Filed 3–8–91; 8:45 am]

BILLING CODE 3810-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 95

[GEN Docket 91-2; FCC 91-16]

Interactive Video Data Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, the Commission proposes to amend parts 1, 2, and 95 of its Rules to establish an interactive video data service (IVDS) in the 218–218.5 MHz band. An IVDS system would allow viewers to respond to queries associated with television programming, order products and services and offer downloading of educational and other information. This action responds to a petition filed by TV Answer, Inc. who have developed an IVDS system under a Commission experimental authorization.

DATES: Comments must be submitted on or before June 10, 1991 and reply comments on or before July 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocation Branch, Office of Engineering and Technology, (202) 653–8106; or, William Cross, Personal Radio Branch, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in General Docket No. 91–2, FCC 91–16, adopted January 10, 1991, and released March 4, 1991.

The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this

submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0128.

Title: Application for Private Land Mobile and General Mobile Radio Services (FCC 574)—Proposed program change.

Action: New collection.

Respondents: Individuals, businesses (including small business), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 100 responses; 300 hours total; 3 hours per response.

Needs and Uses: Rules require that applicants submit the necessary data for evaluation for a new or modified station authorization, and to ensure spectrum efficiency by requiring applicants to provide system plans and construction progress reports.

Summary of Notice of Proposed Rule Making

1. By this action the Commission proposes to amend parts 1, 2, and 95 of its Rules to establish a new interactive video data service (IVDS). This action responds to a Petitioin for Rule Making (RM-6196) filed by TV Answer, Inc. (TV Answer) requesting that the Commission allocate 500 kHz of spectrum in the 216-220 MHz band for an interactive viewer response system that it had developed under a Commission experimental authorization. An IVDS system would allow real-time viewer response to queries associated with television programming, such as polls, or ordering products and services, as well as offer downloading of educational and other information.

2. Many commenters responded to TV Answer's proposal. The majority of parties were supportive of the TV Answer proposal. However, several broadcasting interests were concerned that TV Answer's system would have the potential to interfere with TV channel 13 operations in the adjacent 210-216 MHz band. In response to these concerns, TV Answer refined its system to operate with multiple local base stations in a cellular arrangement. This will allow lower effective radiated powers (ERP) and will facilitate frequency reuse. In addition, in TV Answer's latest proposal, the output power of the in-home transmitting unit is automatically limited by its parent base station to the minimum necessary for communication.

3. Based on its analysis of TV Answer's system, the Commission believes that reallocating the 218-218.5 MHz band for IVDS would serve the public interest. The Commission believes that IVDS has the potential to provide an interactive capability, such as that enjoyed by personal computer users who subscribe to interactive services, to all television viewing households. Although the proposed spectrum is currently allocated to the Group D ship station channels of the Automated Maritime Telecommunications System (AMTS), these channels are unused due to restrictions on AMTS necessary to protect TV channel 13. The Commission believes that with appropriate limitations on ERP and antenna heights of IVDS base stations, the service can operate successfully without causing harmful interference to TV channel 13 operations. Further, it is proposed that an IVDS licensee investigate and resolve any interference to TV channel 13 operations, or discontinue operation of offending IVDS units.

4. The Commission is proposing to amend part 95 of its rules to provide services rules for IVDS. Our proposals are based on an IVDS system using the TV Answer architecture. We wish to make it clear however, that we are proposing to allocate spectrum for a specific type of service and not for a particular manufacturer's system or technology.

5. This proceeding suggests a proposal which may have an impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3502, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval of the Office of Management and Budget as prescribed by the Act.

7. 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 June 10, 1991, and reply comments on or before July 10, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

Ordering Clause

9. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 2

Communications equipment; Radio.

47 CFR Part 95

Communications equipment; Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

10. Parts 1, 2 and 95 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.926(a)(1) is revised to read as follows:

§ 1.926 Application for renewal of license.

(a) * * *

(1) Renewal of station or system authorization in the Private Land Mobile Radio Services (part 90 of this chapter), the General Mobile Radio Service (part 95, subpart A of this chapter), and Interactive Video and Data Services (part 95, subpart F of this chapter) shall be submitted on FCC Form 574-R when the licensee has received that form in the mail from the Commission. If the licensee has not received the Commission-generated Form 574-R within sixty (60) days of expiration, application for renewal of station or system license shall be submitted on FCC Form 405-A.

* * * * *

3. Section 1.951(c) is revised to read as follows:

§ 1.951 How applications are distributed.

* * * * *

(c) Special Services Branch. Aviation, Ground, Marine coast, Aircraft, Ship, General Radio, Interactive Video and Data.

* * * * *

4. Section 1.952(b) is amended by adding a category under the heading "Personal Radio Services" to read as follows:

§ 1.952 How file numbers are assigned.

* * * * *

(b) * * *

CV-Interactive Video and Data Service.

* * * * *

5. Section 1.972(a)(1) is amended by adding "Part 95—Personal Radio Services" at the end of the list and paragraph (c) is revised to read as follows:

§ 1.972 Grants by random selection.

(a) * * *

(1) * * * Part 95—Personal Radio Services.

* * * * *

(c) If there are mutually exclusive applications for an initial license for stations subject to part 80 or part 87 of this chapter, or if there are more applications for an initial license in part 90, part 94 or part 95, subpart F of this chapter, than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Private Radio Bureau and under the direction of the Chief of the Bureau.

* * * * *

6. Section 1.1102 is amended by adding numerically a new private radio service to the schedule of charges to read as follows:

§ 1.1102 Schedule of charges for private radio services.

Action	FCC form no.	Fee amount	Fee type code	Address
*	*	*	*	*
14. Interactive Video and Data Stations:				
a. New Modification and/or Renewal (per system).	FCC 574			FCC, Attn: IVDS P.O. Box ____, Pittsburgh, PA 15251.
b. Assignment (per system)	FCC 703			FCC, Attn: IVDS Gettysburg, PA 17326.
c. Renewal of License	FCC 574R, FCC405A			FCC, IVDS, P.O. Box ____ Pittsburgh, PA 15251.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising in columns 4, 5 and 6 the entry 216–220 MHz band and adding the text of footnote US317 to the list of footnotes at the end of the table to read as follows:

§ 2.106 Table of Frequency Allocations.

United States table		FCC use designator
Government allocation (MHz)	Non-Government allocation (MHz)	Rule parts
(4)	(5)	(6)
* *	* * *	* *
216–220	216–220	
Maritime Mobile	Maritime Mobile	Maritime (80).
Aeronautical Mobile, Fixed, Land Mobile Radiolocation 627.	Aeronautical Mobile, Fixed, Land Mobile 627	Private Land Mobile (90), Personal Radio Services (95).
US210 US229 US274 US317 G2	US210 US229 US274 US317 NG121	
* *	* * *	* *

United States (US) Footnotes

* * * * *

US317 The band 218.0–218.5 MHz is also allocated on a primary basis to the interactive video and data service.

* * * * *

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Part 95 is amended by adding subpart F to read as follows:

Subpart F—Interactive Video and Data Service (IVDS)

General Provisions

Sec.
95.801 Scope.
95.803 IVDS system description.
95.805 Permissible Communications

System License Requirements

95.811 License required.
95.813 License eligibility.
95.815 License application.
95.817 Application for renewal of license.
95.819 License not transferable.
95.821 Application for assignment of license.

Sec.

System Requirements

95.831 Construction requirements.
95.833 Station Identification.
95.835 Station inspection.
95.837 Operation in the National Radio Quiet Zone.
95.839 Operation near a Commission monitoring facility.

Technical Standards

95.851 Type Acceptance.
95.853 Frequency segments.
95.855 Interference prevention.
95.857 Transmitter effective radiated power limitation.
95.859 Authorized emission types.
95.861 Emission standards.
95.863 Frequency tolerance.
95.865 Antennas.

General Provisons

§ 95.801 Scope.

The Interactive Video and Data Service (IVDS) is a real-time, response service to obtain personal video and data responses from television viewers and for use in conducting educational programming and polls, downloading data, and ordering services, products, and pay-per-view programming.

§ 95.803 IVDS system description.

Each IVDS system is comprised of a number of interconnected cells. Each cell contains one cell transmitter base station (CTS) and multiple in-home response transmitter units (RTUs). Each RTU is situated in the residence of a subscriber located in the cell.

§ 95.805 Permissible Communications.

Unless othewise directed or conditioned in the applicable instrument of authorization, an IVDS system may be used for point-to-multipoint (CTS to RTUs) and multipoint-to point (RTUs to CTS) transmissions of video and digital information exchanges consistent with the scope of the IVDS.

System License Requirements

§ 95.811 License required.

Before any station transmits on any frequency segment authorized in the IVDS from any geographical location within the territorial limits of any area where radio services are regulated by the FCC, the responsible party must obtain a license form the FCC for an IVDS system. The written authorization that permits operation of an IVDS system is an IVDS system license (FCC Form 574) (issued to the licensee. The term of the license is five years.

§ 95.813 License eligibility.

An entity is eligible to apply for an IVDS system license if:

(a) The entity is an individual who is not a representative of a foreign government;

(b) The entity is a partnership and no partner is a representative of a foreign government;

(c) The entity is a corporation organized under the laws of the United States of America.

(d) The entity is not a current licensee of an IVDS system in the system area for which the entity is applying.

(e) The entity has not had an IVDS license in the service area proposed in the application canceled for failure to meet the construction requirements specified in § 95.831 of this part.

§ 95.815 License application.

(a) Each application for an IVDS system license must be made on FCC Form 574. The application must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 360 _____, Pittsburgh, PA 15251–_____. Applications shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; or by an officer or duly authorized employee, if the applicant is a corporation.

(b) A separate application form must be filed for each IVDS system. Each IVDS system application must specify the system service area in terms of a set of coordinates, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) or city being served. (See appendix B to subpart A of this part.)

(c) Each applicant must submit as part of the application a detailed plan indicating how the frequency segment requested will be utilized including the number and location of CTUs and how the proposed system will provide service to at least 50 percent of the area within the protected service area. In particular, the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughout capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

(d) When mutually exclusive applications subject to section 309(b) of the Communications Act are filed or when there are more such applications for initial licenses that can be accommodated on available frequencies, the applications will be designated for random selection (See § 1.972 of this chapter). An application which is substantially amended, (as defined by § 1.962(c) of this chapter), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment. Mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA) for applications requiring the fees set forth at part 1, subpart G of this chapter in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed applications (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission.

§ 95.817 Application for renewal of license.

Renewal of systems authorizations in the Interactive Video and Data Service shall be submitted on FCC Form 574–R when the licensee has received that form in the mail from the Commission. If the licensee has not received the Commission-generated Form 574–R within sixty days of expiration, application for renewal of station or system license shall be submitted on FCC Form 405–A. All applications must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 360 _____, Pittsburgh, PA 15251–_____.

§ 95.819 License not transferable.

The licensee must not transfer, assign, sell or give the license for an IVDS system to any other entity except in accordance with the provisions of § 95.821 of this part. If the licensee sells or gives away the IVDS system equipment, the new owner must obtain a new licensee before using it.

§ 95.821 Application for assignment of license.

If the licensee of an IVDS system is a corporation, and there is a change in control of the corporation, the licensee must request consent for the change of control from the Commission on Form 703. The licensee shall mail the request to: Federal Communications Commission, Attention: IVDS, Gettysburg, Pennsylvania 17326. The document granting such consent must be kept as part of the IVDS system license.

System Requirements

§ 95.831 Construction requirements.

Each IVDS system licensee must construct at least 10 percent of the proposed CTSs within one year of licensing and at least 60 percent of the proposed CTSs within five years of licensing or the license cancels automatically and must be returned to the Commission. The licensee shall file a progress report at the conclusion of each benchmark period to inform the Commission of the status of the system and shall address the report to: Federal Communications Commission, Special Services Branch, 1270 Fairview Road, Gettysburg, PA 17325–7245.

§ 95.833 Station identification.

RTUs and CTSs are not required to transmit a station identification announcement.

§ 95.835 Station inspection.

If an authorized Commission representative requests to inspect any station in an IVDS system, the licensee must make the station available.

§ 95.837 Operation in the National Radio Quiet Zone.

Before establishing an IVDS system in any area within the National Radio Quiet Zone (see § 95.41 of this part) or before changing frequency segment, transmitter power, antenna height or directivity, or the coverage area of an existing IVDS system within any area within the National Radio Quiet Zone, the licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(a) The notification must include the geographical coordinates of the station antenna, antenna ground elevation above mean sea level, antenna center of radiation above ground level, antenna directivity, proposed frequency, type of emission, and transmitter power.

(b) If an objection to the proposed operation is received by the Commission from the National Radio Astronomy Observatory at Green Bank Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

95.839 Operation near a Commission monitoring facility.

An IVDS system operating within 1.6 km (1 mile) of a Commission monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the operation of the system by the Engineer-in-Charge of the facility. (Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.)

Technical Standards

§ 95.851 Type acceptance.

Each CTS and each RTU in an IVDS system must comply with these technical standards. Every CTS and RTU must be type-accepted for use in the IVDS in accordance with subpart J of part 2 of this chapter.

§ 95.813 Frequency segments.

(a) Each CTS and each RTU in the same IVDS system shall transmit in the same assigned frequency segment.

(b) Frequency segment A is 218.0–218.250 MHz. Frequency segment B is 218.251–218.500 MHz.

(c) Each frequency segment will be protected solely on the basis of geographical separation. The minimum separation between assignments on the same frequency segment will be 128.8 km (80 miles) except where licensees agree that a lesser distance is sufficient.

(d) No licensee will be authorized an additional segment to operate within its service area.

(e) No license will be authorized for an IVDS system when the service area includes territory north of Line A and east of Line C (See § 1.955 of this chapter).

§ 95.855 Interference prevention.

(a) Each licensee of an IVDS system suffering or causing harmful interference must cooperate and resolve the problem by mutally satisfactory arrangements. If the licensee is unable to do so, the FCC may impose restrictions including specifying the transmitter power, antenna height, or area of hours of operation of the stations concerned.

(b) The use of any frequency at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of segment channel specified for IVDS may be restricted as to specified geographical areas, maximum power, or other operating conditions.

(c) The licensee of each IVDS system shall inform all households within a Grade B TV channel 13 viewing area of the potential for interference from an IVDS system.

(d) The licensee of each IVDS system shall provide and install free of charge an interference reduction device, such as a 218.25 MHz notch filter, to each household within a television channel 13 station Grade B contour that experiences interference due to the IVDS system, and requests such a device.

(e) The licensee of each IVDS system shall investigate and eliminate any interferences to TV channel 13 broadcasting and reception, from its system, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the IVDS licensee fail to eliminate the interference within the 30 day period, the IVDS units causing the interferences shall discontinue operation.

§ 95.857 Transmitter effective radiated power limitation.

(a) The effective radiated power of each CTS and RTU shall be limited to the minimum necessary for successful intercommunication. No CTS or RTU may transmit with an effective radiated power (ERP) exceeding 20 watts.

(b) For an IVDS system located in a TV channel 13 viewing area, the maximum ERP shall be limited as follows:

TV Channel 13 service area	Maximum CTS ERP
City Grade	20 watts
Grade A	7 watts
Grade B	1 watt
Grade B+2 miles	1 watt
Grade B+3 miles	3 watts
Grade B+4 miles	10 watts
Grade B+5 miles	20 watts

§ 95.859 Authorized emmission types.

Transmissions by a CTS and a RTU shall be limited to emission type V1D.

§ 95.861 Emission standards.

All emissions shall be attenuated in accordance with the following schedule.

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 50 percent up to and including 150 percent of the authorized bandwidth: At least 25 dB;

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 150 percent up to and including 250 percent of the authorized bandwidth: At least 35 dB; and

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 250 percent of the authorized bandwidth: At least 43 plus 10 log (base 10) (mean power in watts) dB.

§ 95.863 Frequency tolerance.

Each CTS and RTU shall maintain a frequency tolerance of 0.0005 percent of the center frequency of the segment in which it is transmitting.

§ 95.865 Antennas.

(a) No CTS antenna shall be elevated higher than necessary to assure adequate service. No CTS antenna structure, including the radiating elements, tower, supports and all appurtenances, may exceed a maximum Height Above Average Terrain (HAAT), as defined in § 90.309 of this chapter, of 36.6m (120 feet) within an area defined by a boundary line 16 km (10 miles) outside of the Grade B contour of a TV channel 13 station. When an antenna is located beyond 10 miles from a TV channel 13 Grade B contour, the HAAT shall not exceed 152.5m (500 feet).

(b) Each RTU antenna shall be an intergal part of the RTU.

[FR Doc. 91-5434 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-49, RM-7599]

Radio Broadcasting Services; Sheboygan Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKTS, Inc., proposing the allotment of Channel 229A to Sheboygan Falls, Wisconsin, as that community's first local service. The coordinates for Channel 229A are 43-43-30 and 87-47-04. There is a site restriction 2.1 kilometers (1.3 miles) east of the community.

DATES: Comments must be filed on or before Apirl 29, 1991, and reply comments on or before May 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows.

Marshall E. Harris, President, WKTS, Inc., P.O. Box 1045, Sheboygan, Wisconsin 53081, (Petitioner).

Larry G. Fuss, Contemporary Communications, P.O. Box 159, Fayetteville, Georgia 30214, (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-49, adopted February 26, 1991, and released March 6, 1991. The full text of this Commission decision 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 of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, and *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5703 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

48 CFR Parts 1403, 1405, 1415 and 1453

RIN 1090—AA15

Procurement Ethics

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department is withdrawing a proposed rule implementing the procurement integrity provisions of section 27 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 423) and providing guidance on avoiding conflicts of interest. The rule was published in the **Federal Register** on September 14, 1989, (54 FR 37959, September 14, 1989).

FOR FURTHER INFORMATION CONTACT: Dean Titcomb, Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Stop 5512, 1849 C Street, NW., Washington, DC, 20240, or call on (202) 208-3433.

SUPPLEMENTARY INFORMATION: Public Law 100-679, the OFPP Act Amendments of 1988, dated November 17, 1988, included provisions on procurement integrity in section 27 which were subsequently implemented in Federal Acquisition Circular (FAC) 84-47. The Department's proposed rule provided internal procedures which supplemented the FAR coverage and also included guidance for procurement officials on avoiding conflicts of interest. Although most of the guidance was provided for Departmental employees, it did incorporate agency-authorized exceptions to Departmental standards of conduct in 43 CFR 20.735-7 and 20.735.8. The rule had the potential of affecting the general public and, consequently, it was proposed as a codified rule.

Subsequently, FAC 84-60 replaced the coverage in FAC 84-47 to incorporate amendments to the public law. FAC 84-60 provided a revised, very specific definition of "gratuity or other thing of value" which does not recognize agency regulations on standards of conduct for procurement officials during the conduct of a procurement. Because this FAR coverage sets a governmentwide threshold for acceptance of gratuities by a procurement official at $10, the Departmental rule was revised to eliminate all references to agency-authorized exceptions. Thus, the need for codification has been eliminated and Departmental implementation of the FAR coverage on procurement integrity may be issued as an uncodified rule.

Dated: February 27, 1991.

John Schrote,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 91-5638 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-RF-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102-0002]

RIN 0648-AD01

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except by vessels permitted in the Incidental Catch category; (3) reduce the daily catch limit in the Angling category from four to one young school, school, or medium tuna per day; and (4) make other technical revisions to the regulations. This action is necessary to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico and tc prevent the angling sector from exceeding its annual quota. The intent of this action is to ensure that the United States fulfills its International Commission for the Conservation of Atlantic Tunas (ICCAT) obligations.

DATES: Comments on this proposed rule must be received on or before April 25, 1991.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of the environmental assessment are available from, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Atlantic Bluefin Tuna Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations that govern the Atlantic bluefin tuna fishery, at 50 CFR part 285, are authorized under the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA directs the Secretary of Commerce to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT.

The current regulations governing the domestic fishery were designed to ensure compliance with the recommendations adopted by ICCAT. Developments within the U.S. fishery, however, have reduced the effectiveness of these regulations and thus brought into question U.S. compliance with its international obligations.

Gulf of Mexico Longline Fishery

The United States first promulgated regulations for the Atlantic bluefin tuna fishery in 1975 with the passage of the ATCA. These regulations implemented the two standing recommendations of ICCAT: (1) Establish a minimum size limit; and (2) establish a limit on the level of fishing mortality. To comply with the second recommendation, the United States established fishing seasons, quota categories delineated according to gear type, and reporting requirements. This management regime did not specifically include or exclude longline vessels because longlines were used to target swordfish and yellowfin tuna, and, at that time, only small numbers of Atlantic bluefin tuna were landed incidental to those fisheries. It was not until several years after the establishment of domestic quotas, and until the price per pound for Atlantic bluefin tuna increased, that longline fishermen began to land significant amounts of giant bluefin tuna.

The longline fishery for Atlantic bluefin tuna has been problematic since at least 1980. In a final rule dated January 26, 1981 (46 FR 8012), NMFS discouraged a directed longline fishery for Atlantic bluefin tuna by instituting an incidental catch limit of two fish per trip in the area south of 36° N. latitude (which includes the Gulf of Mexico), and 2 percent by weight of all other fish on board per trip in the area north of that latitude. The intent of the incidental catch measure was to preclude catch increases and remain in compliance with the ICCAT recommendation to limit fishing mortality. The reason for the disparity in the northern and southern incidental catch limits was that the 2 percent by weight limit was thought to be unenforceable in southern ports due to the lack of weighing facilities in many areas where bluefin were landed.

In 1981, the continuing decline of the Atlantic bluefin tuna resource prompted ICCAT to recommend that fishing on the Western Atlantic stock be limited to the amount of catch necessary for scientific monitoring. In early 1982, Japan, Canada, and the United States agreed to set the scientific monitoring quota at 1160 metric tons (mt) and to prohibit directed fishing on the spawning stock in the Gulf of Mexico (Gulf). At that time, the only vessels fishing directly on bluefin tuna in the Gulf were Japanese tuna longliners. U.S. swordfish longliners were landing a small amount of bluefin as bycatch. With catch restrictions already in place for U.S. longliners, NMFS believed that the only revision necessary to implement the ICCAT recommendation concerning the Gulf was a general notification in the preamble of the implementing rule (47 FR 25350; June 11, 1982) stating that directed fishing for bluefin tuna in the Gulf of Mexico is prohibited. Japanese longline vessels subsequently departed the Gulf.

The very restrictive nature of the scientific monitoring quota led the United States to place stringent allocations on the various components of the fishery, including placing an annual cap on the total allowable incidental harvest by domestic longliners. This incidental longline quota currently stands at 131.5 mt per year and is intended to account for the incidental catch of bluefin tuna associated with the swordfish and yellowfin tuna longline fisheries.

During the past several years, however, the price of Atlantic bluefin tuna has escalated to as much as $20 per pound or higher. Accordingly, fish landed may be worth several thousand dollars. This has encouraged the development of a directed fishery in the Gulf. The present incidental catch limit of two giant bluefin per trip no longer serves as an effective restriction, particularly when vessels can make several trips in a matter of days.

NMFS is proposing two measures to preclude directed fishing for Atlantic bluefin tuna in the Gulf. The first measure would prohibit retention of Atlantic bluefin tuna by longline vessels permitted in the Incidental Catch category while fishing in the area south of 36° N. latitude, that land less than 2,500 lbs (1,134 kg) of yellowfin tuna, swordfish, and shark. Longline vessels that land 2,500 lbs (1,134 kg) or more of these species for a given trip will be authorized to land one bluefin tuna for the same trip. NMFS believes that requiring threshold amounts of other species to be landed ensures that bluefin tuna are harvested incidental to other fisheries.

The second measure proposed would prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except for vessels permitted in the Incidental Catch category. This measure precludes a directed fishery by vessels permitted in other categories in the event that there remains some unused amount of quota at year's end when bluefin begin to concentrate on the Gulf spawning grounds.

NMFS considered several alternatives that would achieve the objective to preclude directed fishing in the Gulf of Mexico. They are as follows: (1) Delay the opening of the Incidental Catch category until June 1, by which time most of the spawning stock has departed the Gulf; (2) prohibit all retention of Atlantic bluefin tuna from the Gulf of Mexico, except by vessels permitted in the Incidental Rod and Reel category; (3) reduce the allowable bycatch limit from two to one bluefin per vessel per trip; (4) allow bycatch based on a percentage of the directed catch; and (5) close a certain portion of the Gulf to all longlining during the spawning season. Options (1) and (2) would have achieved the objective but would also have precluded any retention of legitimate bycatch. Option (3) was rejected because it is likely that a directed fishery could be prosecuted on a one fish per trip basis, given the proximity of the fishing grounds to the landing ports. The fourth option, to base bycatch on a percentage of the catch, was rejected for the same reason it was rejected in the 1981 rulemaking, *i.e.*, the lack of weighing facilities in some areas would make enforcement difficult. Instead of a percentage of catch, a threshold catch of directed species is used because the majority of trips legitimately directed at other species already easily meet or exceed the threshold, making accurate weighing

unnecessary in most cases. The final option, to close specific spawning areas, was considered problematic because the location of the areas varies from year to year.

NMFS believes the two measures proposed in this rulemaking will effectively implement the ICCAT recommendation prohibiting a directed fishery for bluefin tuna in the Gulf of Mexico spawning area, without precluding a legitimate bycatch allowance to vessels fishing for other species in this area. These prohibitions carry out NMFS's obligation to comply with the ICCAT recommendation by ensuring the available incidental catch quota is not used in a manner contrary to international agreement. These measures do not change the 131.5 mt incidental quota allocated to longline vessels or any other allocations.

Angling Category Quota

The second issue addressed by this rulemaking concerns the overharvest of the Angling category quota that has occurred during each of the past 6 years. The total amount of young school (less than 66 cm), school (66 cm or greater, but less than 145 cm), and medium (145 cm or greater, but less than 196 cm) Atlantic bluefin tuna that may be harvested in the regulatory area by anglers is 126.1 mt. This quota allocation falls within the ICCAT recommendation, which limits the U.S harvest of bluefin measuring less than 120 cm to approximately 208 mt (15% of the total allocation).

The intended purpose of the Angling category is to preserve the recreational angling sector of the fishery and provide data on the smaller size classes to scientists for monitoring the condition of the stock. The current daily catch allowance is four fish per angler, one of which may be a medium, with a cap of four mediums per vessel. Since 1984, however, this quota has been exceeded by an average of 146 mt each year.

This sector of the fishery is difficult to monitor due to the large number of persons angling for small bluefin tuna over a widespread area of the Atlantic coast. Most of the small fish caught by anglers are not sold and, therefore, catches are not reported to NMFS under the dealer logbook system. NMFS currently conducts a port canvass and telephone survey from which recreational catch estimates are calculated. These data, however, are not available on a timely basis. (Final tabulations are not completed until 8 to 12 months after the fishery has ended for the year). The lack of timely catch data impedes attempts to close the fishery at the proper time, resulting in quota overages.

NMFS intends to address this problem by modifying the allowable daily catch to a level that would reduce the probability of exceeding the quota. The proposed modification would reduce the present daily catch allowance in the Angling category from four to one fish per angler. The vessel cap of four mediums per vessel per day for vessels with four or more anglers on board remains in effect.

NMFS considered other alternatives to restrict the harvest from this category. Prohibiting sale of small fish by recreational anglers was considered but rejected on the basis that it would impose a significant administrative burden on NMFS to devise a permitting program to classify commercial and recreational anglers.

NMFS also considered reducing the daily catch allowance to two (instead of one) per angler per day. This was rejected because NMFS's analysis shows that, given current fishing patterns, the appropriate daily catch allowance should be less than one per angler. NMFS is proposing a one-fish limit based on the likelihood that fishing patterns will change. For instance, with the reduction in the daily catch allowance to one, fishermen will be likely to change fishing practices to target medium fish. This would have the effect of reducing the number of individual fish harvested and would benefit the stock. Second, the availability of school fish to the inshore fishery is largely dependent on water temperature and weather patterns. It is expected that there will be some years, as there have been, when fish are not accessible and catches may be low.

NMFS believes that the proposed reduction in the daily catch allowance will be sufficient to comply with the size restriction recommended by ICCAT. NMFS estimates that an average of 214 mt of bluefin tuna measuring less than 120 cm were landed by rod and reel fishermen annually during the period 1985 to 1989. NMFS's analysis shows that the measure proposed in this rulemaking would reduce the rod and reel catch of small fish by 9 percent. Nine percent applied to the average catch estimate would result in a catch of 195 mt, which allows for some incidental catch by other gears before the 208 mt ICCAT limit is reached.

Technical Modifications

NMFS has identified a number of provisions currently contained in the regulations that require modification to improve enforceability and administration of the management program. The proposed modifications are described below.

A definition of the term "fishing record" would be added to mean all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale. This would clarify the regulation to allow the inspection of more than the normal fishing logbook. This change would facilitate enforcement of the existing regulations.

The definition of "Regional Director" would be modified to reflect the current address.

Section 285.3(b) would be amended by adding the words "possessed or landed" after the words "taken or retained" to give this prohibition a broader application. Paragraph (f) of § 285.3 would be amended to require tuna to be landed in whole or eviscerated form only. A definition of "eviscerated" would also be added. Currently, fishermen are allowed to remove the head. The lack of a uniform heading practice results in measurements that may not accurately reflect the overall length of the fish, which is important information for fishery management purposes. The gills and entrails could be removed. In addition, revised § 285.3(f) would prohibit any person from possessing a giant or medium Atlantic bluefin tuna in any form other than whole or eviscerated, unless such tuna is being prepared for immediate packing into a sealed container for commercial shipment or transport. Tuna of this size are normally packed with ice in a large wooden box sealed with a lid. Giant or medium Atlantic bluefin tuna purchased by a dealer operating from a truck would have to be transported to the dealer's place of business in whole or eviscerated form. Any giant or medium Atlantic bluefin tuna would have to remain in this form until the fish is packed and sealed for shipment.

Section 285.3(g) would be added to enhance enforcement of prohibitions on imported regulated species, as that term is used in the regulations, that were harvested contrary to another country's regulations.

Section 285.21(c) would be modified to allow the Regional Director to change a vessel's permit category after May 15 if that vessel has been inactive in the fishery or in instances where an error was made during the application procedure. A vessel that has never landed an Atlantic bluefin tuna would be considered inactive in the fishery. The intent of the present regulation, which does not allow permit category changes after May 15, is to prevent vessels from fishing from two quota

categories in the same year. The proposed change would provide some administrative latitude without altering the intent or effectiveness of this section.

Section 285.21(e) would be amended by adding the phrase "or on any other date specified by the Regional Director." This change would allow the Regional Director to purge the Atlantic bluefin tuna permit file, which currently contains over 30,000 records. Many of the vessels holding these permits are presumed to be inactive. The size of the permit file adds to administrative costs, such as mailing and computer costs. Requiring fishermen to reapply, at a date to be specified by the Regional Director, would decrease these costs; the date is not specified in this proposed rule because a short-term reassignment of resources to the Northeast Regional Permit Office must be arranged prior to implementation.

Section 285.23(g) would be revised by removing the phrase "in the Gulf of Mexico." The intent of § 285.23(g) is to allow the incidental harvest of bluefin caught in traditional rod and reel fisheries. Historical fisheries engaged in by U.S. fishermen, such as those in the Bahamas, Cayman Islands, etc., were inadvertently excluded. This would be corrected by removing the geographical distinction.

Section 285.25(c) would be revised to reflect the current telephone number for purse seine vessel and gear inspection.

Section 285.26 would be revised to reflect the requirement that bluefin tuna remain in whole or eviscerated form until it is prepared for immediate packing or shipping.

Section 285.28(a) would be revised to clarify the requirement that all dealers who purchase or receive bluefin tuna must obtain a permit. This clarification would enhance enforcement of the quota monitoring system.

Sections 285.29 (a) and (b) would be revised to require lengths to be measured and recorded with the head and tail on (whole fork length). Paragraph (b) would be revised to clarify the current requirement in the regulation that dealers must include imported Atlantic bluefin tuna on their weekly report form. Paragraph (e) of § 285.29 would be revised to include the current phone number to be called for the inspection of a buyboat.

Section 285.30 would be revised to remove the requirement that the metal tag be affixed to the outside of a container holding a medium or giant Atlantic bluefin tuna. Some of these fish are cut into pieces before they are exported. Therefore, it is impossible for the tag to accompany each boxed piece. A new requirement would be added that tag numbers must be written on any documents accompanying bluefin tuna shipments. The requirement that the tag number be marked on the outside of these containers would remain unchanged. Section 285.30 would also be revised to reflect current phone numbers and to allow the Regional Director to designate a person other than a NMFS agent to tag a medium or giant tuna.

In § 285.31(a), paragraphs (1), (2), and (5) would be revised by adding the words "possess or land" after the words "Fish for." This would broaden the application of these sections to facilitate enforcement. Paragraphs (31), (32), and (33) would be added to prohibit interfering with or obstructing investigations or enforcement actions pertaining to this part.

Classification

An environmental assessment was prepared to accompany implementation of the ICCAT recommendations in 1982. This proposed rule would not alter the scope, intent, or impact of those regulations; thus no new environmental assessment was prepared. You may obtain a copy of the 1982 environmental assessment from the Regional Director (see ADDRESSES).

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce 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 entities. As a result, a regulatory flexibility analysis was not prepared. All of the vessels operating in the Atlantic bluefin tuna fishery are considered small entities.

The proposed measures would not reduce the total amount of bluefin tuna allocated for harvest by U.S. fishermen and are not expected to result in under-harvesting of any of the quotas established for bluefin tuna. Income previously derived from the fishery for Atlantic bluefin tuna in the Gulf of Mexico would be redirected to vessels that legitimately land bluefin incidental to other species. This is consistent with the original intent of the rule. Reduction in the daily catch allowance of the Angling category should not significantly affect anglers economically because this category is primarily of a recreational nature and because smaller sized fish are of comparatively little value. The opportunity to participate in a recreational fishing activity, and its benefits, are preserved.

This proposed rule contains two collection-of-information requirements subject to the Paperwork Reduction Act. The first is an expansion of the dealer permitting requirement to approximately ten additional importers of bluefin tuna (OMB #0648–0239). The second would require annual renewal of fishing permits for an estimated 10,000 permit holders (OMB #0648–0202). The reporting burden for the dealer reports is estimated to average 2 minutes per report. The fishing permits would require a maximum of 30 minutes per permit. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20235, Attention: Desk Officer for NOAA. Requests to collect this information have been submitted to the Office of Management and Budget for approval.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 4, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for 50 CFR part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.2 is amended by adding, in alphabetical order, definitions of

"eviscerated" and "fishing record," and by revising paragraph (a) of the definition of "Regional Director," to read as follows:

§ 285.2 Definitions.

* * * * *

Eviscerated means removal of the gills and internal organs only.

* * * * *

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase, or sale.

* * * * *

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-3799; and

* * * * *

3. Section 285.3 is amended by revising paragraphs (b) and (f) and by adding a new paragraph (g) to read as follows:

§ 285.3 Prohibitions.

* * * * *

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that took the fish.

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than whole or eviscerated, or to possess giant or medium Atlantic bluefin tuna in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport for commercial purposes.

(g) For any person subject to the jurisdiction of the United States to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

4. Section 285.21 is amended by revising paragraphs (c) and (e) to read as follows:

§ 285.21 Vessel Permits.

* * * * *

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the tonnage if known, the length of the vessel, the area to be fished and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless the vessel never had recorded landings of Atlantic bluefin tuna, or there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the permit application.

* * * * *

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or expires. Except with respect to purse seine permits, a permit issued under this section expires when the owner or name of the vessel changes, or on any other date specified by the Regional Director by notice published in the **Federal Register** at least 30 days in advance.

* * * * *

5. Section 285.23 is amended by revising paragraphs (f)(1) and (g) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) * * *

(1) One fish per vessel per trip landed south of 36.00' N. latitude, provided that at least 2,500 lbs of yellowfin tuna, swordfish, and shark are landed from the same trip.

* * * * *

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and retain, annually, one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing, the landing of any giant Atlantic bluefin tuna and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

6. Section 285.24 is amended by revising paragraph (c) to read as follows:

§ 285.24 Catch limits.

* * * * *

(c) Persons angling in the regulatory area may catch and retain no more than one Atlantic bluefin tuna other than giant Atlantic bluefin tuna each day, provided that no more than four medium Atlantic bluefin tuna per day may be caught and retained per vessel for vessels having four or more anglers aboard. Persons angling in the regulatory area may possess Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit.

* * * * *

7. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading by calling 508-563-5721 or 508-281-9261. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

* * * * *

8. Section 285.26 is amended by revising the text preceding the table to read as follows:

§ 285.26 Size classes.

For any Atlantic bluefin tuna found with the head removed in preparation for immediate packing or shipping, it is deemed for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forward-most part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic

bluefin tuna. Approximate round weights are given for illustrative purposes only.

* * * * *

9. Section 285.28 is amended by revising paragraph (a) to read as follows:

§ 285.28 Dealer permits.

(a) *General.* Any person purchasing, receiving, possessing, importing, or exporting Atlantic bluefin tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (l) of this section.

* * * * *

10. Section 285.29 is amended by revising paragraphs (a), (b), and (e), and by adding an GMB control number to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the whole fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by NMFS, within 2 days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: the number of tuna purchased or received, including imported tuna; location where each tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); dates purchased or received; metal tag numbers (where applicable); round or dressed weight and whole fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time and date when each tuna was received aboard the buy-boat.

* * * * *

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any intended offloading, and must request a vessel inspection at least 6 hours before such offloading by calling 508–281–9261 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends by calling 508–992–7711. In making the request for inspection, the owner or operator of the buy-boat, or a designated representative, must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 0648–0202)

11. Section 285.30 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207–780–3241); Otis Air Force Base, Massachusetts (508–563–5721); Brielle, New Jersey (201–528–3315); Atlantic Beach, North Carolina (919–247–4549); Brunswick, Georgia (912–265–0108); Miami, Florida (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, Florida (813–893–3145); St. Joe, Florida (904–227–1879); or Corpus Christi, Texas (512–888–3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipments of bluefin tuna for domestic commercial use or for export.

* * * * *

12. Section 285.31 is amended by revising paragraphs (a)(1), (a)(2), (a)(5), (a)(10), and (a)(15), and by adding paragraphs (a)(30), (a)(31), (a)(32), and (a)(33), to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(1) Fish for, catch, possess, or land Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for, catch, possess, or land Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

* * * * *

(5) Fish for, catch, possess, or land Atlantic bluefin tuna in excess of any allocation made under § 285.25(d);

* * * * *

(10) Land any Atlantic bluefin tuna in forms other than round (whole) or other than eviscerated;

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally with rod and reel gear under § 285.23(g);

* * * * *

(30) Fish for, catch, possess or land Atlantic bluefin tuna from the Gulf of Mexico except under § 285.23 (g);

(31) Assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search, inspection, or seizure made in connection with enforcement of this part;

(32) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer in the process of enforcing this part;

(33) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

[FR Doc. 91–5531 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 9:30 a.m., on Friday, March 15, 1991, at the Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

The committee will meet to discuss a study concerning evaluation of the procedures of the national child vaccine injury compensation program. The study is being conducted by Professor Wendy K. Mariner of Boston University School of Public Health and Medicine.

For further information concerning this meeting, contact: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC. (Telephone: 202–254–7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 6, 1991.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 91–5709 Filed 3–8–91; 8:45 am]
BILLING CODE 6110-01-M

CIVIL RIGHTS COMMISSION

Agenda Public Meeting; Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 9 p.m. on March 25, 1991, at the Holiday Inn, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert E. Riggs or Philip Montez, Director of the Western Regional Division, (213) 894–3437, TDD (213) 894–0508. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, February 27, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 91–5636 Filed 3–8–91; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Meeting Cancellation

This document cancels the following meeting: **Federal Register** citation of previous announcement: p. 6372, February 15, 1991. Previously announced time of meeting: 9:30 a.m., March 14 1991.

Dated: March 6, 1991.

Betty Ferrell,
Director, Technical Advisory Committee Unit.

[FR Doc 91–5686 Filed 3–8–91; 8:45 am]
BILLING CODE 3510-DT

Foreign Trade Zones Board

[Order No. 514]

Designation of New Grantee for Foreign-Trade Zone 86, Tacoma, WA; Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the request with supporting documents (Docket 44–90, filed 12/28/90) of the Puget Sound Foreign-Trade Zone Association (PSFTZA), grantee of Foreign-Trade Zone 86, Tacoma, Washington, for reissuance of the grant of authority for said zone to the Port of Tacoma, a Washington State municipal corporation, which has accepted such reissuance subject to approval of the Foreign-Trade Zones Board, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Port of Tacoma as the new grantee of Foreign-Trade Zone 86, Tacoma, Washington.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Signed at Washington, DC, this 4th day of March, 1991.

Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–5688 Filed 3–8–91; 8:45 am]
BILLING CODE 3510-05-M

[Docket No. 12-91]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Application for Subzone; Mallinckrodt Medical, Inc., Pharmaceutical Manufacturing Facility, Wake County, NC

An application has been submitted to

the Foreign-Trade Zones Board (the Board) by The Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Mallinckrodt Medical, Inc. (MMI), a subsidiary of IMCERA Group, Inc., located in Wake County (Raleigh area), North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 27, 1991.

The MMI site (28 acres, 126 employees) is located at 8800 Durant Road, some nine miles northeast of Raleigh's business district in Wake County, North Carolina. The facility is used for the production of diagnostic pharmaceutical products (imaging agents, HTS Heading 3006) for use in radiology, cardiology, anesthesiology and nuclear medicine. The finished products include the "Hexabrix", "Conray", "Optiray", and "MD" brands of contrast media, which are sold mainly to hospitals and clinics. Foreign-sourced items will account for, on average, 20–30 percent of the finished products' value and include the following chemicals: ioxaglic acid, iothalmic acid, meglumine USP, diatrizoic acid, tromethamine USP, and iocetamic acid.

Zone procedures would exempt MMI from Customs duty payments on the foreign material used in the production of items for export. On its domestic sales, the company would be able to choose the duty rate (6.9%) that applies to the finished imaging agents. The duty rates on foreign-sourced item range from 7.9 to 13.5 percent. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director for Inspection and Control, U.S. Customs Service, Southeast Region, 909 S.E. First Avenue, Miami, Florida 33131–2595; and, Lt. Colonel Thomas C. Suermann, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 30, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, suite 432, 251 N. Main Street, Winston-Salem, NC 27101

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 5, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–5687 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–BS–M

International Trade Administration

Sanctions for Violations of an Administrative Protective Order

AGENCY: Import administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on recent findings that the provisions of ITA APO's have been violated.

The investigations consisted of cases where counsel released to their clients, which did not have access to proprietary information under APO, proprietary versions of submissions which contained another party's proprietary information. In all cases, the APO violations were found to be inadvertent and no significant harm was caused to the submitter of the information by the disclosures.

In each of the cases, the individuals involved were (1) issued private reprimands which warned that future violations by them or others associated with their firms would be treated more severely; (2) were required to attend a training session on proper procedures for protecting proprietary data; and (3) were required to review the ITA regulations and public reports of APO violations published in the **Federal Register** and submit a report which provides suggestions for improving APO procedures. In addition, the firms with which these individuals were associated at the time of the violations were required to hold in-house seminars on APO procedures providing practical guidance on how to avoid APO problems.

Serious harm can result from inadvertent or other disclosures of proprietary information obtained under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have not faithfully been observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or debarment from practice before the ITA.

This notice is published pursuant to 19 C.F.R. 354.15(e) (1990).

Dated: February 19, 1991.

Roger W. Wallace,

Deputy Under Secretary for International Trade.

[FR Doc. 91–5693 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–25–M

[A–583–605]

Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the U.S. Butt-Weld Pipe Fittings Committee and its individual members, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Taiwan. The review covers shipments of this merchandise to the United States from two exporters during the period December 1, 1987 through November 30, 1988. As a result of this review, the Department has preliminarily determined that dumping margins exist with respect to the two exporters. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Ave. NW., Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45152) an antidumping duty order on certain carbon steel butt-weld pipe fittings from Taiwan. On November 29, 1988, we published in the **Federal Register** (53 FR 48004) a notice of opportunity to request an administrative review of this order. On December 29, 1988 the U.S. Butt-Weld Fittings Committee requested an administrative review of this order. We published a notice of initiation on January 31, 1989 (54 FR 4871). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

This review covers shipments made by two exporters of carbon steel butt-weld pipe fittings from Taiwan to the United States. The exporters covered by this review are C.M. Pipe Fitting Mfg. Co., Ltd. ("C.M.") and Rigid Industries Co., Ltd. ("Rigid").

Scope of the Review

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting.

Until January 1, 1989, this merchandise was classifiable under item number 610.8800 of the TSUSA. Since that date, these products have been classifiable under HTS item number 7307.93.3000. As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

Fair Value Comparisons

To determine whether sales in the United States of carbon steel butt-weld pipe fittings from Taiwan were made at less than fair value, we compared the United States price with the foreign market value. Since Rigid had no home-market sales, and C.M. did not have a viable home-market, we compared each company's U.S. sales to their largest third-country market, which in both cases was Canada.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., duty-paid, packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered or ex-factory packed prices to unrelated purchasers in Canada. We made deductions to foreign market value, as appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges. In order to adjust for differences in packing between the two markets, we deducted the packing costs for Canada and added U.S. packing costs. Adjustments were made for differences between Canadian and U.S. commission sales. Neither C.M. nor Rigid claimed any difference of merchandise adjustments. Where there was no identical product in the third country with which to compare a product sold in the U.S. market, the Department selected the most similar product for fair value comparisons and made no adjustment for differences in the physical characteristics of the merchandise.

Petitioners alleged that sales in the third-country market were made at prices below the cost of producing the merchandise. We verified the cost-of-production information used in determining whether sales were made at less than the cost of production (COP), in accordance with section 776(b) of the Act.

C.M.

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of C.M.'s cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by C.M. in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted material costs for all four products under review, *i.e.*, caps, elbows, reducers, and tees, to reflect the material unit cost and actual yield experienced by the company after deduction of the revenue earned from scrap sales. Company-wide direct labor and factory overhead allocations to each cost center were inappropriate because they were based on a calculation involving 1984 machine time standards. Because C.M. only produces the type of products under review, we used, as best information available, the total machine time used for total production during 1988 by each cost center in allocating direct labor and factory overhead costs to the cost centers. Additionally, we adjusted total factory overhead by deducting the cost of packing materials, because these costs were also included in the submission as packing costs. We adjusted selling, general and administrative cost (SG&A) expense by reclassifying certain G&A expenses that were previously misclassified as selling expenses. Because C.M. did not report its interest expenses, we included net interest expense as reported in the company's accounting records, as best information available. All of C.M.'s sales in the third-country were found to have been above the cost of production.

Rigid

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of Rigid's cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by Rigid in our analysis, except in the following instances where

the costs were not appropriately quantified or valued.

We adjusted the allocation of direct labor and factory overhead costs for caps to reflect actual production quantities. Due to clerical errors, standard machine times were incorrectly recorded on factory documents for certain models in the elbow, reducer, and tee cost centers. Therefore, within each cost center, we adjusted the allocation of direct labor and factory overhead costs to each model to agree with the appropriate machine time standards. Because Rigid did not report its interest expense, we included net interest expense as reported in the company's accounting records, as best information available.

We found that 20 percent of Rigid's sales of the subject merchandise in the third-country were at prices below the cost of production, within the meaning of section 773(b) of the Act. We disregarded those sales, and used the remaining 80 percent to determine foreign market value.

Verification

We verified the cost-of-production information used in determining whether sales were made at less that cost of production (COP), in accordance with section 776(b) of the Act. We used standard verification procedures including on-site inspection of the manufacturers' operations and examination of accounting record and other documents containing relevant information.

Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margins exist:

Manufacturer/Producer/Exporter	Margin (percent)
C.M.	8.31
Rigid	6.89

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries upon completion of this administrative review.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Further, as provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require upon publication of our final results, a cash deposit of estimated antidumping duties based on the above margins for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of his merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after November 30, 1988, and who is unrelated to the reveiwed firms or any previously investigated firm, the Customs Service will require a cash deposit of 8.31 percent *ad valorem*.

These deposit requirements are effective for all shipments of carbon steel butt-weld pipe fittings from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this adminisrative review, including the results of its analysis of issues raised in any such written comments or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations 19 CFR 353.22.

Authority: Dated: March 4, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5691 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-817]

Postponement of Final Antidumping Duty Determination: High Information Content Flat Panel Displays and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received request from Toshiba Corporation, a respondent in the antidumping duty investigation, to postpone the final determination, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Based on this request, we are postponing our final determination as to whether sales of high information content flat panel displays and subassemblies thereof (FPDs) from Japan have been made at less than fair value until not later than July 8, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230, at (202) 377-5288.

SUPPLEMENTARY INFORMATION: On February 26, 1991, Toshiba Corporation, a respondent that accounts for a significant proportion of exports of the subject merchandise, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act.

Accordingly, we are postponing the date of the final determination until not later than July 8, 1991. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than May 30, 1991, and rebuttal briefs no later than June 6, 1991. In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on June 10, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration,

U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: March 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5692 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-806, A-433-802, A-351-808, A-122-811, A-582-803, A-437-801, A-201-804, A-570-812; A-455-801, A-560-808, A-469-801, A-583-813, A-489-803, A-479-802]

Initiation of Antidumping Duty Investigations: Ball Bearings, Mounted or Unmounted, and Parts Thereof From Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating antidumping duty investigations to determine whether imports of ball bearings, mounted or unmounted, and parts thereof (ball bearings) from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China (PRC), Poland, the Republic of Korea (ROK), Spain, Taiwan, Turkey and Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, the International Trade Commission (ITC) will make its preliminary determinations on or before April 1, 1991. If these determinations are affirmative, we will make our preliminary determinations on or before July 23, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or 377-4087, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 13, 1991, we received a petition filed in proper form by The Torrington Company on behalf of the domestic ball bearings industry. Supplements to the petition were received on February 20 and 28, 1991. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia, are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragrpahs (C), (D), (E), or (F) of Section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

For all countries subject to these investigations, petitioner's estimate of U.S. price is based on prices obtained by petitioner's own market intelligence, or from U.S. importer price lists. The petitioner made deductions, where appropriate, for importer markups, international movement charges, and customs duties. Petitioner incorrectly calculated the importer's markup by basing it on the gross price, rather than the importer's price, of U.S. prices for ball bearings from Brazil, Hungary, the PRC, Poland and Yugoslavia. Consequently, we recalculated the U.S. price from those countries. In addition, we corrected other mathematical errors in the U.S. price calculations for Brazilian comparisons.

For Argentina, Austria, Brazil, Mexico, ROK, Spain, Taiwan and Turkey, petitioner's estimate of foreign market value (FMV) is based on home market prices obtained from price lists and/or petitioner's market intelligence. Petitioner deducted discounts, distributor markups and commissions, where appropriate, based on its market intelligence. For Mexico, petitioner also made a circumstance of sale adjustment for credit expenses; no adjustment was made for the other countries as the petitioner stated it could not obtain information on credit terms for those countries.

For Hong Kong and Yugoslavia, petitioner's estimate of FMV is based on constructed value (CV), as it could not obtain home market prices for ball bearings from these countries. Petitioner estimated FMV for Canada on a CV basis as well. Petitioner calculated CV based on tis costs for materials and labor, adjusted for estimated differences in each country. Overhead was calculated based on actual costs incurred in Canada for Canadian comparisons, and on costs incurred in Portugal for Hong Kong and Yugoslavian comparisons, as petitioner could not obtain actual overhead costs incurred in those countries. The petitioner also added the actual general expenses for Canada, and the statutory ten percent of material and fabrication costs as general expenses for Hong Kong and Yugoslavia. For all three countries, petitioner added the statutory eight percent of material, fabrication and general expenses for profit. In each case, petitioner added an amount for U.S. packing.

For comparisons involving Canada, we excluded the expense for scrap material in the CV calculation as it was not adequately supported in the petition, and revised the factory overhead and general expenses based on data in the petition. Although petitioner alleged that Canadian home market sales are being made at below the cost of production, we have not initiated a cost investigation because the allegation was not adequately supported in the petition.

For comparisons involving Hong Kong, we recalculated the material cost for retainers as the adjustment in excess of the petitioner's cost was not adequately supproted in the petition. For comparisons involving Yugoslavia, we recalculated certain packing costs that were not adequately supported in the petition.

Petitioner alleges that Hungary, Poland and the PRC are non-market economy countries within the meaning of section 773(c) of the Act. Accordingly, FMV for these countries is a market valuation of the factors of production, based on estimated costs in the "surrogate" market economy countries of Portugal (for Hungary), Mexico (for Poland), and India (for the PRC), in accordance with section 773(c)(1). Petitioner adjusted its unit labor and materials costs to reflect labor and material prices in each surrogate country. Overhead was based on actual costs incurred in Portugal for Hungarian and Polish comparisons, and in India for PRC comparisons. Petitioner used Portuguese overhead costs in the Polish FMV calculation as it could not obtain actual overhead costs incurred in Mexico. The petitioner also added the actual general expenses for the Indian cost in PRC comparisons, and the statutory ten percent of material and fabrication costs as general expenses for Portuguese and Mexican costs in Hungarian and Polish comparisons. For all three countries, petitioner added the statutory eight percent of material, fabrication and general expenses for profit. In each case, petitioner added an amount for U.S. packing.

For comparisons involving Hungary and the PRC, we recalculated the material cost for retainers as the adjustment in excess of the petitioner's cost was not adequately supported in the petition. For comparisons involving Hungary, we recalculated certain packing costs that were not adequately supported in the petition. For comparisons involving Poland, we excluded the expense for scrap material in the FMV calculation as it was not adequately supported in the petition.

Based on the comparisons of the prices presented by the petitioner, and adjusted as described above, the alleged dumping margins for each country are as follows:

Country	Alleged margins
Argentina	14.56 to 22.44 percent.
Austria	11.80 to 42.52 percent.
Brazil	2.70 to 41.45 percent.
Canada	7.22 to 22.20 percent.
Hong Kong	79.31 to 222.41 percent.
Hungary	22.08 to 166.80 percent.
Mexico	36.24 to 66.08 percent.
PRC	12.95 to 284.62 percent.
Poland	53.97 to 172.50 percent.
ROK	7.41 to 149.78 percent.
Spain	5.90 to 36.04 percent.
Taiwan	4.76 to 107.55 percent.
Turkey	10.20 to 329.70 percent.
Yugoslavia	2.70 to 35.22 percent.

Initiation of Investigations

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of ball bearings form the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our preliminary determinations by July 31, 1991.

Scope of Investigation

The products covered in these investigations include all ground antifriction bearings and parts thereof, finished or unfinished, which employ balls as the rolling element, whether or not housed or combined. Imports of these products are classified under the following categories: Antifriction balls and other parts of ball bearings, ball bearings with integral shafts, other ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Wheel hub units which employ balls as the rolling element are included in these investigations. Finished but unground or semiground balls are not included in the scope of these investigations. Unfinished parts (inner race, outer race, balls, etc.) are included in these investigations if they have been heat treated, or heat treatment is not required to be performed on the part. Unfinished parts which will be subject to heat treatment after importation are not included in these investigations.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 6909.19.50, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.99.50. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 1, 1991, whether there is a reasonable indication that imports of ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia are materially injuring, or threaten material injury to, a U.S. industry. If its determinations are negative, the investigations will be terminated. Otherwise, the Department will make its preliinary determinations on or before July 23, 1991.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: March 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5689 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-804]

Initiation of Countervailing Duty Investigation: Ball Bearings, Mounted or Unmounted, and Parts Thereof, From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Turkey of ball bearings, mounted or unmounted, and parts thereof ("ball bearings"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are

notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of ball bearings from Turkey are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before May 9, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3534 or (202) 377-0114.

SUPPLEMENTARY INFORMATION:

The Petition

On February 13, 1991, we received a petition in proper form from The Torrington Company, filed on behalf of the U.S. industry producing ball bearings. In compliance with the filing requirements of § 355.12 of the Department's Regulations (19 CFR 355.12) (1990), the petition alleges that manufacturers, producers or exporters of ball bearings in Turkey receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation and the ITC is required to determine whether imports of ball bearings from Turkey materially injure, or threaten material injury to, the U.S. industry.

Petitioner stated that it has standing to file the petition because it is an interested party as defined under section 771(9)(C) of the Act and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the petition on ball bearings from Turkey and has found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Turkish manufacturers, producers or exporters of ball bearings receive subsidies. However, we are not initiating an investigation on one program that did not meet the requirements under section 702(b). If our investigation proceeds normally, we will make our preliminary determination on or before May 9, 1991.

Scope of Investigation

The products covered in this investigation include all ground antifriction bearings and parts thereof, finished or unfinished, which employ balls as the rolling element, whether or not housed or combined. Imports of these products are classified under the following categories: Antifriction balls and other parts of ball bearings, ball bearings with integral shafts, other ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Wheel hub units which employ balls as the rolling element are included in this investigation. Finished but unground or semiground balls are not included in the scope of this investigation. Unfinished parts (inner race, outer race, balls, etc.) are included in this investigation if they have been heat treated, or heat treatment is not required to be performed on the part. Unfinished parts which will be subject to heat treatment after importation are not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 6909.19.50, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.99.50. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Turkey which allegedly confer subsidies on manufacturers, producers or exporters of ball bearings. We are initiating an investigation of the following programs:

- Subvention and Price Stabilization Fund
- Tax Deductions on Export Revenue
- Marketing Premium
- Freight Subsidies
- Energy Subsidies
- Preferential Export Credits
- Stamp Duty Exemption on Export Transactions
- Exemption from Taxes, Duties and Charges on Credits Pursuant to Export Commitment
- Double Deduction of Value-Added Tax (VAT) on Imported Inputs

We are not initiating an investigation on the export insurance program described below because the petitioner did not fulfill the requirements of section 702(b) of the Act.

Export Insurance

Petitioner alleges that because the Eximbank of Turkey provides export financing at preferential rates, it is likely that it also provides export insurance to Turkish exporters at preferential rates. Petitioner neither alleges nor provides, however, specific evidence which would indicate that the premium rates charged by the Turkish Eximbank for export insurance are inadequate to cover the long-term operating costs of the program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 1, 1991, whether there is a reasonable indication that imports of ball bearings materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: March 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5690 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER: Industrial Base Program Industrial Facility Survey; DD Form X120-2; OMB Control Number 0704-0045.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 2 hours.

Responses per Respondent: 1.

Number of Respondents: 2,050.

Annual Burden Hours: 4,100.

Annual Responses: 2,050.

Needs and Uses: The DD Form X120-2 is used by the DoD industrial planners to record production capabilities and physical properties of privately owned facilities. The data obtained is used to plan for effective utilization of the plant during mobilization.

Affected Public: Businesses or other for-profit.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: March 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5589 Filed 3-8-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 2 April 1991 from 1100 until 1700 and 3-4 April 1991 from 0900 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense, and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: March 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5666 Filed 3-8-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold its first meeting on March 28th and 29th, 1991, in the Washington, DC area. The meeting will convene at noon on the 28th and adjourn at 3 p.m. on the 29th. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

This notice of the first meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, phone (703) 756-8969.

Dated: March 6, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5667 Filed 3-8-91; 8:45 am]

BILLING CODE 3810-01-M

Military Appeals Court; Practice and Procedure Rules, Proposed Changes

AGENCY: U.S. Court of Military Appeals.

ACTION: Notice of Proposed Change to Rule 8(a) of the Rules of Practice and Procedure of the United States Court of Military Appeals.

SUMMARY: This notice announces the following proposed change (italicized) to Rule 8(a) (Parties) of the Rules of Practice and Procedure, United States Court of Military Appeals:

Rule 8: Parties

(a) The title of any case filed with the Court shall contain the name, military rank and service number of an accused and, where appropriate, the official military or civilian title of any named party who is an agent or officer of the United States acting in such official capacity. *In the case of an appeal taken by the United States under Article 62,*

UCMJ, 10 U.S.C. 862, the appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States denominated as the sole parties therein.

DATES: Comments on the proposed change must be received by May 10, 1991.

ADDRESSES: Forward comments to Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, telephone (202) 272–1448.

Dated: March 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5668 Filed 3–8–91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

DATES: This proposed action will become effective April 10, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify individuals of the Reserve Forces who are also employed in civilian positions of the Federal Government, who might need to be terminated from their reserve status because they fill critical positions and cannot be mobilized.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of obtaining and processing the information needed to determine whether employees are both reservists and civilian employees holding critical positions and not able to be mobilized. The principal alternative to using a computer matching program for identifying such employees would be a manual comparison of all records of Reserve Forces with the records of all civilian employees serving in critical positions.

This match is intended to allow full mobilization without hindering civilian or military tasking due to dual status.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Secretary, Data Integrity Board, Workforce Information, room 7494, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on February 27, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate. and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elasped.

Dated: March 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program between the Office of Personnel Management and the Department of Defense for screening of ready reserve

A. *Participating agencies*: Participants in this computer matching progam are: Office of Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match*: The purpose of the matching agreement is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position. Reservists who occupy critical civilian positions cannot be mobilized and may have their reserve status terminated if necessary.

DoD has responsibility for ensuring that members of Reserve Forces who are also civilian employees of the Federal government do not occupy critical civilian positions which could prevent their mobilization in an emergency. If a reservist does have such dual status, he/she may have to terminate either his reserve status or civilian position.

Based on experience, OPM and DMDC expect a computer matching program is the most effective and expedient way to identify individuals who are serving both in the Reserve Forces and a critical civilian position. No dollar savings are anticipated by the DoD as a result of this match. The match is intended to allow full mobilization

without hindering civilian or military tasking due to dual status.

C. *Authority for conducting the match*: Executive Order 11190, Providing for the Screening of the Ready Reserve of the Armed Services, contains the legal authority for conducting the matching program.

D. *Records to be matched*: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the Central Personnel Data File (CPDF) portion of the OPM/GOVT-1, General Personnel Records, system published at 55 FR 3838 (February 5, 1990). The disclosure from the OPM/GOVT-1 system of records will be made in accordance with routine use"hh". The CPDF contains information on approximately 2.2 million current non-Postal Federal civilian employees.

2. The DoD system of records is S322.10 DLA-LZ, Defense Manpower Data Center Base, published at 55 FR 42755 (October 23, 1990). The DMDC files contain information on 5 million active, retired, reserve military and civilian employees.

E. *Description of Computer Matching Program*: DMDC will compare information from the CPDF file with selected reserve files.

The CPDF extract to be provided by OPM contains the name, Social Security Number, date of birth, sex, annual salary rate (but not actual earnings), occupational series, service computation date of basic active service, veteran's preference, retirement plan, position occupied, work schedule (full time, part time, intermittent), agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier.

The data elements to be used from the DMDC files are Social Security Number, name, service, employment category and address.

Records matching on the Social Security Number will be sent to the applicable employing agency which will screen the initial data and verify that the matched data is consistent with the employing agency's files. The employing agency will verify the match results by reviewing the information in the acutal case file before an adverse action is taken.

Each individual identified as serving in the Reserve Forces and occupying a critical civilian position will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. *Inclusive dates of the matching program*: This computer matching progam is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching progam becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated annually. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elasped as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries*: Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 91-5588 Filed 3-8-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Environmental Statements: Upper Mississippi, MN

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The St. Paul District, Corps of Engineers, proposes modifications to the channel maintenance practices on the Upper Mississippi River to improve efficiency of channel maintenance, reduce projects costs, and minimize environmental impacts.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Gary Palesh, Environmental Resources Branch, St. Paul District, Corps of Engineers, 1421 U.S. Post Office and Custom House, St. Paul, Minnesota 55101-1479, (612) 220-0266.

SUPPLEMENTARY INFORMATION: The St. Paul District maintains a 9-foot navigation channel on the Upper Mississippi River from the head of navigation in Minneapolis, Minnesota, to Guttenberg, Iowa. The proposed action includes modified dredging practices to reduce costs and environmental effect, channel structure modifications to reduce dredging volumes, and long-term dredged material placement sites.

In addition to the No Action alternative, the following alternatives will be addressed:

a. Alternative dredging practices; e.g., dredging equipment, dredging depths, and channel modifications.

b. Alternative dredged material placement sites.

The scoping process for the DEIS will involve the distribution of a scoping letter. No formal scoping meeting is scheduled at this time.

Public involvement is expected to include public notices, public meetings during the DEIS review process, and newsletters. The participation of affected Federal, State, and local agencies, Indian tribes, and other private organizations and parties is invited in the scoping, planning and review of the DEIS. Significant issues identified to date that would be analyzed in depth in the DEIS include:

a. Dredging alternatives and channel modifications to reduce dredging requirements.

b. Disposal of dredged material at placement sites to minimize adverse environmental effects.

The DEIS is currently scheduled to be made available to the public in October 1991.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-5639 Filed 3-8-91; 8:45 am]

BILLING CODE 3710-CY-M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Change in agenda.

SUMMARY: This notice amends the notice of meeting of the Advisory Council on Education Statistics, published February 13, 1991, (56 FR 5809). The change is to add a session on the publication and data release policies for the National Assessment of Educational Progress on March 14 at 9 a.m. This session will replace the Commissioner's report, previously scheduled for that time. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is

intended to notify the general public of their opportunity to attend.

DATES AND TIME: March 14, 1991, 9 a.m.–4:45 p.m. and March 15, 1991, 9 a.m.–Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326 Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Carrol B. Kindel, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400e, Washington, DC 20208–5574, telephone: (202) 219–1329.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–5694 Filed 3–8–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Contract Award; Consultec Scientific, Inc.

AGENCY: Department of Energy.

ACTION: Notice of potential organizational conflict of interest after contract award.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that a contract has been awarded, recognizing the existence of potential organizational conflicts of interest, because it has been determined to be in the best interest of the United States and the services required under this contract cannot otherwise be obtained.

FOR FURTHER INFORMATION CONTACT: Mr. F. Don Freeburn, Office of Energy Research, room F–330, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353–3156.

Findings, Mitigation, and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Public Law 93–577, and section 33 of the Federal Energy Act of 1974, Public Law 93–275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulation, 48 CFR 909.570–3. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI.

Based on the following findings and determination, the contract described below has been awarded, after taking into account the existence of an OCI, because the contract is determined to be in the best interest of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570 and this is a situation where the work or services cannot otherwise be obtained. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Office of Energy Research is established as a component of the Department of Energy (DOE) by section 209 of Public Law 95–91 (Department of Energy Organization Act). The statutory functions stated in that Act which define the role of the Office, and of the Director of Energy Research, include, among other responsibilities, the following items:

(1) Monitoring the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs; and

(2) Carrying out such additional duties assigned to the Office by the Secretary relating to basic and applied research activities including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

The Director, Office of Energy Research, functions in essence as a science and technology advisor to the Office of the Secretary with additional responsibilities consistent with the intent of the statute and is the principal advisor to the Secretary on matters relating to physical research programs of the Department, utilization of multipurpose laboratories, cross-discipline research and development projects, and is assigned management responsibilities for major outlay programs in Basic Energy Sciences, High Energy and Nuclear Physics, Fusion Energy, and Health and Environmental Research.

2. Therefore, a competitive procurement (DE–RP01–89ER30156, Assessment of the Research Needs for Fossil Energy Diotechnology) was initiated in August 1989 to solicit support services to accomplish a specific Statement of Work.

Biotechnology can be broadly defined as the use of living organisms, or their components, to provide goods or services. While biotechnology has been practiced for centuries, its application to fossil energy resources has only been more recently investigated. During the last decade, researchers in the United States and abroad began to examine more closely how microorganisms might be purposely applied to produce additional and better fuel forms and chemicals from fossil fuel resources such as coal, petroleum, and natural gas. Examples of applications include microbial coal desulfurization and enhanced oil recovery

Researchers in fossil energy biotechnology have communicated the results of their research through papers and reports at dedicated workshops, contractors' meetings and conferences sponsored by such organizations as the Department of Energy's Office of Fossil Energy, the Electric Power Research Institute, and the 196th American Chemical Society National Meeting. Potential research areas and directions for fossil energy biotechnology have been identified and discussed by attendees, although not necessarily with agreement. These discussions have not included the larger research community of microbiologists, biochemists, and fossil energy researchers and technologists who are not familiar with the present status and directions of fossil energy biotechnology research.

Therefore, an independent reseach assessment is needed, to be performed primarily by prominent experts from this latter community, to identify new and novel applications of biotechnology for the use or conversion of domestic fossil energy resources to fuels and chemicals. The assessment will identify and describe the most promising developments, applications, and opportunities in biotechnology with potential applications to domestic fossil energy resources. In addition, the assessment will identify the major deficiencies, limits, unknowns and problems in the current technology base

and the most promising research directions and opportunities.

3. Based on a comprehensive evaluation of its technical and cost proposals, Consultec Scientific, Inc., has been determined to possess the required staffing experience for performing the Statement of Work.

4. Consultec Scientific, Inc., submitted the necessary OCI information as part of the required proposal package. The Consultec Scientific, Inc. statement certified that no OCI existed regarding the proposed work.

5. Consultec Scientific, Inc., has identified staff members with expertise in scientific and technical areas directly relating to fossil energy biotechnology. These individuals will serve as the project manager and principal investigator for the effort. To adequately and competently address the full scope of the assessment's subject area of research needs for fossil energy biotechnology at sufficient technical depth in all major topical areas, the contractor will convene a group of experts on the scientific and technical areas of the subject. Consultec Scientific, Inc., proposes to use a number of expert panelists in its efforts to perform the needs assessement and to engage in individual consulting agreements with each of them. Consultec Scientific, Inc., submitted OCI information for the firm, its primary staff members assigned to the project, and proposed experts and consultants.

6. Based on an evaluation of the facts contained in the OCI information submitted by the Consultec Scientific, Inc. staff members and the consulting experts, the Department of Energy believes that there is a minor conflict of interest under 48 CFR 909.570. As these Consultec Scientific, Inc., staff members and most of the consultants are experts in their respective fields of the technology being researched, each would potentially stand to benefit if their particular field were ultimately recommended by the prime contractor as an appropriate area for priority research. The potential benefit would be manifest in such a situation in terms of future opportunities for the Consultec Scientific, Inc., staff member or consultant to be awarded research contracts because he or she is a leading expert in that area. Therefore, the recommendations of such experts have the potential to be biased in favor of their own particular area of expertise.

Mitigation

The Department of Energy believes that the actual potential for conflict of interest is minor. Consultec Scientific, Inc., as the prime contractor, has selected a panel of experts to include representatives from each of the relevant areas of research applicable to fossil energy biotechnology. This balance in the panel should effectively level out potential bias toward any particular area. Further, the contract has been drafted to include numerous precautions that will detect bias and further mitigate the likelihood of bias and its potential impact. The contract requires:

(a) Attendance by the DOE Contracting Officer's Technical Representative at all meetings of the contractor and his experts;

(b) Cross review of all findings both within the group of experts and by a final, separate group of peer reviewers;

(c) Submission of monthly progress reports which will include notification by the contractor of any efforts he has made to mitigate conflict or potential conflict of interest; and

(d) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest" (48 CFR 952.209–72).

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, contract award is considered to be in the best interest of the United States and the services required under this contract cannot otherwise be obtained.

Dated: March 5, 1991.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91–5879 Filed 3–8–91; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Merit Review System

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Office of Energy Research (ER) today proposes a number of changes to its Merit Review System, published in the **Federal Register** on May 9, 1990, to reflect desired policy and procedural changes. The changes include: (1) clarifying the number of qualified reviewers required for merit review, (2) deleting the requirement for a waiver to accept a competitive application or proposal with fewer than three qualified reviewers in favor of an explanation of the circumstances, and (3) specifying that the merit review of on-going programs may consist either of a review of the renewal application/proposal or an on-site or off-site review of the technical or scientific progress. The Energy Research Merit Review System is being republished in its entirety with these revisions.

EFFECTIVE DATE: Effective March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Zich, Director, Acquisition and Assistance Management Division (ER–64), Office of Energy Research, Department of Energy, Washington, DC 20585, (301) 353–5544.

SUPPLEMENTARY INFORMATION: An amendment to the DOE Financial Assistance Rules (54 FR 41943, October 13, 1989) requires program offices to establish and publish an objective merit review system for research and to ensure its satisfactory functioning. This notice publishes ER's Merit Review System as follows:

I. DOE Office of Energy Research Merit Review System

A. Consistent with 10 CFR 600.16(a)(1), the Office of Energy Research (ER) is publishing its Merit Review System (MRS) for research grant applications received pursuant to 10 CFR Part 605, which was published in the **Federal Register** on March 19, 1990 (55 FR 10035) and which may be supplemented from time to time by notice of grant availability. In addition, this ER MRS also is used for acquisition research proposals submitted pursuant to the ER Research Opportunity Announcement (ROA) which was published in the **Federal Register** on November 8, 1988 (53 FR 45234) and which may be amended or superseded from time to time. The solicitation documents discussed above may include information on how ER expects to review and select meritorious research applications and proposals. Reviews related to specific solicitations, Source Evaluation Boards and unsolicited applications/proposals will be conducted in accordance with DOE assistance or acquisition regulations as the case may be.

B. *Basic Review Standards.* 1. New applications/proposals will be received by the Division of Acquisition and Assistance Management and assigned to an ER project manager (officer) who will initially screen the document(s) to assure that they meet the following standards before they are subjected to detailed evaluation utilizing merit review.

a. *Sufficient technical/scientific content and merit.* Those applications/proposals judged to be so inadequate that detailed evaluation is not

warranted will be returned to the sender.

b. *Completeness.* Those applications/proposals not meeting the requirements of the ER Special Research Grants Program Rule (10 CFR Part 605) or an ER Research Opportunity Announcement may be returned to the sender to be corrected or modified/supplemented by the sender. Until the application/proposal meets the above requirements, it generally will not be given detailed evaluation.

c. *Program Policy and Priorities.* Applications/proposals must be relevant to ER's missions and be of sufficient interest to warrant funding. In addition, sufficient funds must be available.

d. *No Unnecessary Duplication or Overlap.* Applications/proposals offering to perform research already being supported by DOE or other Federal agencies generally will not be subjected to formal merit review unless there is a cogent programmatic reason to do so.

2. *Determination to Return Application/Proposal.* The determination to return an application/proposal will be prepared by the ER project manager and will be approved at least one level higher than that of the project manager.

3. *Evaluation Criteria.* Applications/proposals meeting the standards in B.1. above, will be subjected to formal merit review and will be evaluated against the evaluation criteria set forth in 10 CFR Part 605.

4. *Additional Reviewers.*

a. The ER project manager will review applications/proposals for technical/scientific merit and program policy factors. In addition, he or she will submit applications/proposals to, generally, at least three qualified reviewers for evaluation in addition to anyone having direct line authority over the project manager, including the selection official, for formal merit review. Instructions to reviewers will include a reasonable length of time for responding to ER's request for a merit review. In those instances where three or more reviews are not obtained, the project manager must provide a written explanation of the situation. This explanation shall be included in a selection statement if the application/proposal is being selected for funding. If the application/proposal is being declined, this explanation shall be placed in the declined file. In the event that the project manager is a reviewer and is also the selection official, the decision shall be approved by the Director, Office of Energy Research, or a designee. If no reviews are provided to ER by the selected qualified reviewers, any award must be justified on a non-competitive basis.

b. Such additional reviewers may be Federal employees, including those from ER that are neither the selecting official nor those in a direct line of supervision above the project manager, or non-Federal employees. Additional reviewers will not include former employees of the project manager's immediate office, or anyone having line authority over that immediate office, within the past one year.

c. All reviewers serve as advisors to the selecting official and their recommendations are not binding. All significant adverse recommendations will be addressed in writing by the project manager to the selecting official and retained in the official file.

d. In selecting additional reviewers in accordance with this section B.4, such additional reviewers shall not include anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications/proposals:

(1) Providing substantial technical assistance to the applicant/proposer;

(2) Approving/disapproving or having any decisionmaking role regarding the application/proposal;

(3) Serving as the project manager or otherwise monitoring or evaluating the recipient's programmatic performance;

(4) Serving as the Contracting Officer or performing business management functions for the project; or

(5) Auditing the recipient of the project.

e. Anyone in ER who has line authority over a person who is ineligible to serve as an additional reviewer because of the above limitations also is ineligible to serve as an additional reviewer.

f. It occasionally may be necessary, after the fact, to change project manager designation, thereby resulting in an individual who participated as an additional reviewer in the evaluation of an application/proposal being appointed as the project manager. This is not a violation of the policy of objective merit review, provided the assignment was not expected when the review was conducted.

C. *Comparative Review.* In order to enhance the validity of the evaluation, applications/proposals may be evaluated in comparison to each other.

D. *Methods of Reviewing On-going Programs.* Generally, ER will conduct a merit review before every renewal unless, based upon a review by program staff and one of the criteria listed below, a written determination is made that a project need not be reviewed at each renewal. The project manager shall prepare the determination prior to the date a renewal would become effective and the determination will be subject to the concurrence of the ER Division of Acquisition and Assistance Management and the approval of the Selecting Official. In no situation will a grant or contract be renewed for more than six (6) years without a merit review. The criteria to be used as a basis for such a determination are as follows:

(1) Instances involving annual award;

(2) The nature of the project requires additional time for performance; or

(3) Instances where a final period of support is being authorized to provide reasonable time and funds sufficient to bring the project to an orderly close.

Merit reviews of ongoing programs include:

(1) A review of the renewal proposal generally by at least three qualified reviewers who meet the requirements of I.B.4. above and who document their findings and provide them to the ER program official; or

(2) An on-site or off-site review of the scientific or technical program attended generally by at least three qualified reviewers who meet the requirements of I.B.4., above, and who evaluate the program and provide their documented findings to the ER program official.

In those instances where a merit review is not conducted prior to a renewal award, the renewal award is considered to be noncompetitive and must meet the requirements of 10 CFR 600.7(b)(2).

E. *Types of Review Groups.* ER utilizes various types of review mechanisms to accomplish a merit review; however, within each mechanism the reviewer is selected based upon his/her expertise and professional qualifications as they relate to the field(s) of research contained in the application/proposal. Each reviewer chosen to participate will be provided with a copy of the application/proposal, the ER evaluation criteria from 10 CFR Part 605.10, and other programmatic information needed to conduct the review. Based upon his/her review of these documents, the reviewer is expected to provide the ER project manager with a written analysis based on the pertinent evaluation criteria and other program information for each application/proposal. The types of review mechanisms used by ER and the situations they are used in are as follows:

1. Field Readers.

a. Merit review of applications/proposals may be obtained by using

field readers to whom applications/proposals are sent for review and comment. Field readers also may be used as an adjunct to review committees when, for example, the type of expertise needed or the volume of applications/proposals to be reviewed requires such auxiliary capacity.

b. Appropriate action should be taken by ER project managers to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications/proposals are to be evaluated.

c. For those situations in which a standing committee is determined to be the appropriate review mechanism, but a group of field readers must be used instead, it should function as nearly like a committee as possible. For example, if all members of the standing committee were to evaluate all of the applications/proposals under review, then all field readers must receive all of the applications/proposals to be reviewed even though they are in geographically separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications/proposals.

2. Standing Committees.

a. The determination whether it is appropriate to establish and use a standing committee(s) shall be made only by ER. Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(1) A number of applications/proposals on specific topics sufficient to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(2) There is a sufficient number of persons with the required expertise who are willing and able to (a) accept appointments, (b) serve over reasonably protracted periods of time, and (c) convene at regularly scheduled intervals or at the call of the chairperson; and

(3) The legislative authority for the particular program(s) involved extends for more than one year.

b. Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved under 10 CFR 600.16(g).

3. Ad Hoc Committees.

a. Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(1) An on-site or off-site review of the scientific or technical program is being conducted.

(2) A small number of applications/proposals is received on an intermittent basis, or applications/proposals are received throughout an open solicitation period, generally for a period up to about one year.

(3) The program is one of limited duration, usually less than one year;

(4) The applications/proposals to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(5) The volume of applications/proposals received necessitates convening an additional committee(s) of available reviewers; or

(6) It is determined that the applications/proposals submitted have special review requirements, e.g., construction of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

b. Ad hoc committees may not be used for reviewing applications/proposals for any program for which a standing committee has been established (except for paragraph E.3.a.(4) of this section) unless a deviation is approved under 10 CFR 600.16(g).

F. *Review Summary.* Upon request, applicants/proposers will be provided with a written summary of the evaluation of their application/proposal.

G. *Reviewers With Interests in Application/Proposal Being Reviewed.* Reviewers must compy with the requirements of 10 CFR 1010.101(a) and 1010.302(a)(1) concerning conflict of interest. A committee or group of field readers which includes as reviewers any individuals who cannot meet these requirements or the program's review procedures, with regard to a particular application/proposal being reviewed, e.g., officials mentioned in paragraphs B.2 and 4., shall operate as follows:

1. These individuals or officials may not review, discuss, and/or make a recommendation on an application(s)/proposal(s) in which they have a conflict of interest.

2. In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s)/proposal(s) in which he/she has a conflict of interest.

H. *Deviations.* 1. In any instance in which ER's Merit Review System is not to be used to review an application/proposal, group of applications/proposals, or class of applications/proposals, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to merit review, must be obtained from the ER Director of Acquisition and Assistance Management.

2. If the deviation sought applies to a class of applications/proposals and constitutes a deviation from the requirements of 10 CFR 600.16, approval for deviation must be obtained in accordance with 10 CFR 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

II. ER Selection Process

Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to ER's mission, and funding availability. Cost reasonableness and realism also will be considered to the extent appropriate. Adverse recommendations also will be considered and all the above will be addressed and documented in a written selection statement for the selection official.

Issued in Washington, DC on February 22, 1991.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91-5680 Filed 3-8-91;8:45am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-275-000, et al.]

West Texas Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 28, 1991.

Take notice that the following filings have been made with the Commission.

1. West Texas Utilities Company

[Docket No. ER91-275-000]

Take notice that on February 22, 1991, West Texas Utilities Company (WTU) tendered for filing an Amendment, dated February 6, 1991, to the Transmission Service Agreement, dated April 25, 1990, between WTU and Brazos Electric Power Cooperative of Texas, Inc. (Brazos).

The Transmission Service Agreement, accepted for filing by Commission order

of August 8, 1990, provides that neither party may assign the Transmission Service Agreement without the prior written consent of the other party. The Amendment permits Brazos to assign, transfer, mortgage or pledge the Agreement under certain limited circumstances to create a security interest in the United States acting through the Rural Electrification Administration (REA).

WTU requests waiver of the notice requirement in order that the Amendment may become effective as of January 1, 1990, the effective date of the underlying Transmission Service Agreement.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER91-188-000]

Take notice that on February 22, 1991, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to various agreements between WP&L and Citizens Power and Light Corporation.

WP&L requests expedited consideration of the filing and an effective date of May 1, 1990. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. ER91-262-000]

Take notice that on February 22, 1991, Central Power and Light Company (CPL) tendered for filing an Amendment, dated February 4, 1991, to the Transmission Service Agreement, dated April 26, 1990, between CPL and Brazos Electric Power Cooperative of Texas, Inc. (Brazos).

The Transmission Service Agreement, accepted for filing by Commission order of August 8, 1990, provides that neither party may assign the Transmission Service Agreement without the prior written consent of the other party. The Amendment permits Brazos to assign, transfer, mortgage or pledge the Agreement under certain limited circumstances to create a security interest in the United States acting through the Rural Electrification Administration (REA).

CPL requests waiver of the notice requirement in order that the Amendment may become effective as of January 1, 1990, the effective date of the underlying Transmission Service Agreement.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER91-276-000]

Take notice that on February 25, 1991, San Diego Gas & Electric Company (SDG&E) tendered for filing a change of rates for transmission service as embodied in the following SDG&E Agreements with Southern California Edison Company (Edison), which reflects an increase in the rate of return authorized by the California Public Utilities Commission (CPUC) from 10.86% for 1990 to 10.91%, effective January 1, 1991.

1. Short Term Firm Transmission Service Agreement, Rate Schedule FERC 58;

2. Interruptible Transmission Service Agreement, Rate Schedule FERC 59; and

3. Firm Transmission Service Agreement, Rate Schedule FERC 60.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of January 1, 1991.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: March 15, 1991, in accordance with Standard Paragraph E end of this notice.

5. Florida Power & Light Company

[Docket No. ER91-277-000]

Take notice that Florida Power & Light Company (FPL), on February 25, 1991, tendered for filing a document entitled Joint Ownership Party Allocation Agreement between Florida Power & Light Company and Jacksonville Electric Authority (Agreement).

FPL states that the Agreement establishes limits on the parties' rights to import power at the Florida Southern Interface using the Joint Ownership Party's Individual Base Import Allocation and Individual Supplemental Import Allocation, by allocating these Allocations between the parties. FPL requests the waiver of § 35.3 of the Commission's Regulations be granted and that the Agreement be made effective on April 1, 1991. FPL states a copy of the filing was served on Jacksonville Electric Authority.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91-278-000]

Take notice that on February 26, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Revised Exhibit B dated October 1, 1990 to the May 29, 1981 Transmission Agreement (PacifiCorp Rate Schedule FERC No. 213), between PacifiCorp, Deseret Generation & Transmission Co-operative (Deseret), and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with Article 12 (ii) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

PacifiCorp respectfuly requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of October 1, 1990 be assigned, this date being consistent with the provisions of Article (12 (ii) of the Transmission Agreement.

Copies of this filing were supplied to Deseret, Bridger Valley and the Wyoming Public Service Commission.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Company

[Docket No. ER91-158-000]

Take notice that on February 8, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing the first supplement to the Power Supply Agreement (Agreement), dated December 13, 1990, between PP&L and the Borough of Blakely (Blakely), which was filed in the above referenced proceeding on December 17, 1990, entitled "Charges for Blakely Alternate Supply" (First Supplement). The First Supplement clarifies the basis on which Blakely will be charged by PP&L for the alternate supply of electric service to be provided to Blakely under the Agreement.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of January 1, 1991.

PP&L states that a copy of its filing was served on the Borough of Blakely and the Pennsylvania Public Utility Commission.

Comment date: March 15, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. El Paso Electric Company

[Docket No. ES91-16-000]

Take notice that on February 25, 1991, El Paso Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act for authority to issue and sell up to $50 million principal amount of new First Mortgage Bonds and up to $25 million principal amount of new Second Mortgage Bonds in April 1991. Also, Applicant requested authorization to exempt the issuance of Bonds from compliance with competitive bidding and certain negotiated placement requirements.

Comment date: March 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5606 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1315-000, et al.]

Natural Gas Pipeline Co. of America, et al. Natural Gas Certificate Filings

March 1, 1991.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Co. of America

[Docket No. CP91-1315-000]

Take notice that on February 22, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-1315-000 an application pursuant to section 7(c) of the Natural Gas Act to construct and operate compressor facilities at its North Lansing storage field (North Lansing) in Harrison and Greg Counties, Texas and to increase the certificated capacity and peak day withdrawal rate of North Lansing to enable it to provide a firm storage service of Mid-Con Marketing Corp. (MidCon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that MidCon has requested firm storage service from Natural and would pay the cost of the facilities required to provide the requested service. MidCon would execute a firm storage service contract for a term of five years, it is stated. Natural states that it would provide the service under its Rate Schedule FSS. Natural asserts that it would not seek to include the cost of the facilities in its cost-of-service.

In order to provide the storage service for MidCon, Natural proposes to construct and operate one 3,000 horsepower and one 6,000 horsepower compressor unit to provide a total of 30,000 compressor horsepower for the injection of gas into North Lansing. Natural estiamtes the cost of the proposed facilities would be $12,114,000 which will be financed from funds on Natural. Natural states that it would be reimbursed for the costs of the facilities by MidCon.

Natural also requests that the certificated capacity of North Lansing be increased from 144,000,000 Mcf to 156,000,000 Mcf and that the certificated peak day withdrawal volume be increased from 740,000 Mcf per day to 950,000 Mcf per day. Natural states that current geological data indicates that the proposed increase in capacity can be achieved and that the proposed increase in the daily withdrawal rate can be accomplished with the increase in storage capacity and the nine injection/withdrawal wells authorized in Docket No. CP89-2081-000 (52 FERC ¶ 61,190) (1990)).

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP91-1293-000]

Take notice that on February 20, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-1293-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing El Paso to increase the maximum allowable operating pressure (MAOP) of certain facilities located in the Permian Basin, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it is continually reviewing its system in order to maximize the effectiveness and efficiency of its overall operations. As a result of the review of the operation of its facilities in the Permian Basin area, El Paso states that it has determined that additional efficiencies in throughput can be obtained to facilitate either the receipt and/or delivery of additional gas on its system as well as permitting increased receipt and delivery flexibility between other pipeline companies. El Paso therefore proposes to increase the MAOP of approximately 171.64 miles of pipeline segments on its interstate pipeline system, identified as follows:

Goldsmith Project

1. Uprate approximately 25.6 miles of 16-inch pipeline (Goldsmith line), 25.6 miles of 20-inch pipeline (Goldsmith 1st loop line) and 25.6 miles of 20-inch pipeline (Goldsmith 2nd loop line) which lines originate at Phillips 66 Natural Gas Company's (Phillips) Goldsmith plant in Ector County, Texas and terminate at a point on El Paso's mainline in Winkler County, Texas. El Paso proposes to increase the MAOP form 580 to 936 p.s.i.g. which would increase throughput from the Phillips' plant by 85 MMcf per day.

2. Uprate approximately 3.10 miles of 30-inch pipeline originating in Lea County, New Mexico, extending to El Paso's Keystone mainline compressor station in Winkler County, Texas. El Paso proposes to increase the MAOP from 580 to 936 p.s.i.g.

3. Uprate approxiamtely 0.46 mile of 12¾-inch pipeline which begins and ends in Winkler County, Texas, terminating at the Sid Richardson Carbon & Gasoline Company's (Sid Richardson) Keystone plant. El Paso states that even though no increase in volumes will result from increasing the MAOP of this line from 580 to 936 p.s.i.g., the increase is necessary to match the MAOP of the Goldsmith lines.

El Paso states that the increased operating pressure and concomitant increased throughput is necessary to accommodate additional gas from present and anticipated interconnections with other pipelines, processing plants, and compressor stations.

Gomez Project

Uprate approximately 12.0 miles of 24-inch pipeline (Gomez Field loop line) commencing at El Paso's Waha plant in Reeves County, Texas and terminating in the Gomez Field in Pecos County, Texas. El Paso proposes to increase the MAOP from 1110 to 1123 p.s.i.g. El Paso states that the increase in MAOP would permit it to transport additional volumes of natural gas presently available to El Paso from the Mobil Coyanosa Field and other nearby sources, would permit El Paso to transport up to 200 MMcf per day to the Waha plant utilizing the Gomez Field loop line and would also permit El Paso to lower the pressure loss between the 24-inch Puckett to Waha line when natural gas from the Mobile Oil Corporation Coyanosa plant is not being delivered into El Paso's pipeline system.

Ozona Plant Line Project

Uprate approximately 17.35 miles of 8⅝-inch pipeline commencing at El Paso's Sutton County line in Crockett County, Texas and terminating at Shell Wester E & P, Inc.'s (Shell) Ozona plant in Crockett County, Texas. El Paso proposes to increase the MAOP from 797 to 1318 p.s.i.g. which would increase the deliverability of this line from approximately 13 MMcf to 78 MMcf per day. El Paso states that the increase in deliverability is based upon the desire of Valero Hydrocarbons, L.P. and other parties for additional transportation through the Ozona line. El Paso states that it would also install a pressure limiter monitor system, under § 2.55(a) of the Commission's Regulations, at the terminal to provide pressure protection for El Paso's 20-inch Sutton County line which operates at the lower MAOP of 815 p.s.i.g.

Dumas Line Project

Uprate approximately 25.30 miles of 30-inch pipeline commencing at El Paso's Plains compressor station in Yoakum County, Texas to an intersection with its existing 20-inch Goldsmith-Dumas line in Gaines County, Texas. El Paso proposes to increase the MAOP from 580 to 624 p.s.i.g. which is estimated to increase throughput from 384 to 460 MMcf per day and would provide added flexibility and efficiency to its pipeline system.

Upton County Line Project

Uprate approximately 36.63 miles of 20-inch pipeline originating where El Paso's McElroy Crane line intersects with its Upton County line in Crane County, Texas and terminating at El Paso's Benedum plant in Upton County, Texas. El Paso proposes to increase the MAOP from 780 to 936 p.s.i.g. which is estimated to increase throughput from 191 to 262 MMcf per day and would provide added flexibility efficiency to its pipeline system. El Paso states that it would also install, under § 2.55(a) of the Commission's Regulations, a pressure limiter operator valve at the junction of the 20-inch and 24-inch segments of the Upton County line to protect the 780 p.s.i.g. MAOP of the downstream 24-inch line.

As part of this proposal, El Paso asserts that it will be required to replace any segment of pipeline that does not satisfy the applicable strength and safety specifications under the higher pressure testing. Although it does not anticipate replacing any pipeline, El Paso requests such authorization as may be necessary from the Commission to permit these replacements. El Paso states that since all construction is anticipated to take place on its existing rights-of-way, the environmental impact associated with the uprate and any replacement will be negligible and does not constitute a significant environmental undertaking. El Paso states that the estimated cost of uprating the facilities, including an estimated cost of replacing facilities where necessary, is $2,002,260 which will be financed from internally generated funds.

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of the notice.

3. Amerada Hess Corp.

[Docket No. CP91–1314–000]

Take notice that on February 21, 1991, Amerada Hess Corporation (AHC), 218 West Sixth Street, Tulsa, Oklahoma 74119, filed on behalf of its wholly-owned subsidiary Tioga Gas Plant, Inc. (TGP), in Docket No. CP91–1314–000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the expansion of certain integrated gathering facilities and service will be engaged in production or gathering of natural gas and thus exempt from the Commission's rate and certificate jurisdiction under the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

AHC states that it is primarily engaged in the exploration, development, production and refining of hydrocarbons, including natural gas. The facilities in question are located, or to be located, in the Tioga Fields in North Dakota. It is stated that the Tioga gathering system is owned by TGP, and the system collects production from over 550 wells through approximately 800 miles of pipeline with diameters ranging from 2 to 30 inches. AHC states that the pipes spread across the production area in a web-like manner, and as a result, gas frequently flows north, south, east, and west within the space of four square miles.

According to AHC, there are low pressure wells producing gas as low as 7 p.s.i.g. and high pressure wells, producing gas up to 1250 p.s.i.g. connected to the system. In order to permit the low pressure gas to flow into the system with higher pressure gas, the Tioga gathering system also includes compression facilities at nine sites totaling 25,170 horsepower (hp). At present, AHC states that almost all production from the fields is processed at TGP's Tioga Gas Processing Plant before being tendered for sale to or transportation by Williston Basin Interstate Pipeline Company (WBI), or returned for lease fuel of gas lift purposes.

It is stated that the expansion of the Tioga gathering network would be located parallel to existing gathering facility rights of way until approximately 4.4 miles upstream of the projected point of interconnection with the proposed expansion of Northern Border Pipeline Company (Northern Border) in Docket No. CP91–967–000.

AHC states that volumes of gas flowing into the proposed facilities will: include gas received directly from individual wells; include well production not of pipeline quality; be used in part to perform functions integrally involved in the production of hydrocarbons; be interconnected with existing gathering facilities at several points stretching over the length of the proposed facilities; require additional compression, as well as, ultimately, treatment in amine and dehydration units, before such gas can be introduced into an interstate pipeline; and be utilized as lease fuel.

AHC states that the gathering system expansion, when fully operational, will consist of approximately 9 miles of 3-inch pipeline, 16.5 miles of 4-inch pipeline, 6.5 miles of 5-inch pipeline, 15 miles of 6-inch pipeline, 7 miles of 8-inch pipeline, and 60.5 miles of 10-inch pipeline. In addition, it is stated that the proposed facilities will be integrally involved in the operation of existing gathering lines.

It is stated that the expansion will provide gas lift volumes necessary for the production of crude oil as well as

provide for lease fuel throughout almost its entire length. Moreover, it is stated that the expansion alleviates the need to separately replace existing gathering facilities, will reduce the level of maintenance otherwise necessary and will increase production of crude oil from existing wells and allow wells previously disconnected wells to be reconnected.

AHC avers that the proposed facilities will also allow the reactivation of facilities in the Hawkeye Field that were abandoned because of gas previously available for gas lift was not economical. However, it is stated that the proposed facilities will furnish gas at a cost, a volume and a quality suitable for use as gas lift. Consequently, AHC submits that 22 miles of currently unutilized line in the Hawkeye Field will be reactivated. Additionally, AHC states that approximately 10 uneconomical Hawkeye Field wells can be reconnected due to available gas lift volumes, thereby increasing domestic crude oil production by approximately 200 barrels per day (bbl/d). Thus, AHC believes that between the Hawkeye wells to be reconnected and the impact upon presently connected wells, the system expansion could increase secure domestic crude oil production by more than 1000 bbl/d.

It is stated that the system expansion also will utilize gathering equipment already in place, and operation of the expanded system depends on compression at its southern end which would permit introduction of volumes of gas into Northern Border's mainline at a prescribed pressure of 1400 p.s.i.g. AHC states that the Cherry Creek Field compressor previously utilized for field compression will be overhauled in place to provide 700 hp of compression consistent with Northern Border's requirements. Further, the gathering system expansion is also designed to accommodate a second compressor at the southern end, which may commence operation as soon as a year after the expansion is constructed in order to assure that the volumes of gas can meet Northern Border's pressure specifications.

As part of the system expansion, AHC states that the three existing compressors will be removed and two new compressors will be installed to serve both the existing Tioga gas lift lines and the proposed facility. Nothwithstanding such compression totaling 2100 hp), AHC states that at no point on the gathering system will pressure meet the standards prescribed for shippers on Northern Border's expanded mainline transmission system.

AHC states that application of the Farmland Industries, Inc. (Farmland) primary function test to the subject facilities shows that they are engaged in production and gathering. It is stated that the gathering system expansion is in the midst of and consistent with a web-like pattern that is commonly associated with gathering lines and the expansion is totally within the producing area. Moreover, AHC submits that wells are located along most of the gathering system expansion, and as reserves are developed, additional wells will feed into the system in these areas. It is further stated that only 4.4 miles of the gathering system expansion will be downstream of the last point of interconnection with existing gathering facilities, which is well within the Commission's standards for gathering. AHC also states that the length and diameter of the gathering system expansion are also consistent with gathering status.

Comment date: March 22, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP91-1355-000]

Take notice that on February 26, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-1355-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service of Virginia Electric Power Company, a distributor, under the blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that, pursuant to an agreement dated June 29, 1990, under its Rate Schedule ITS, it proposes to transport up to 11,727 MMBtu per day equivalent of natural gas. Equitrans indicates that the gas would be transported from Pennsylvania and West Virginia, and would be redelivered in Pennsylvania and West Virginia. Equitrans further indicates that it would transport 11,727 MMBtu on an average day and 727,074 MMBtu annually.

Equitrans advises that service under § 284.223(a) commenced January 8, 1991, as reported in Docket No. ST91-6946-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Algonquin Gas Transmission Co.

[Docket No. CP91-1222-000]

Take notice that on February 11, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-1222-000, as supplemented on February 22, 1991, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tenngasco Corporation under the certificate issued in Docket No. CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on February 13, 1991. By its supplement filed on February 22, 1991, Algonquin has changed (corrected) the quantities to reflect that the peak and average quantities would be 1,000,000 MMBtu per day and that the corresponding annual quantity would be 365,000,000 MMBtu.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket Nos. CP91-1348-000, CP91-1349-000 and CP91-1350-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket Start Up Date
CP91-1348-000 (2-25-91)	EnMark Gas Corp. (Intrastate)	46,350 46,350 16,917,750	LA, TX	MS, LA, TX	10-1-88 ITS Interruptible	ST91-06693 1-7-91
CP91-1349-000 (2-25-91)	Dehi Gas Pipeline Corp. (Intrastate)	103,000 103,000 37,595,000	LA, TX, OK	LA, TX, MS	2-23-88 ITS Interruptible	ST91-06692 1-7-91
CP91-1350-000 2-25-91)	Bishop Pipeline Corp. (Intrastate)	41,200 41,200 15,038,000	TX, LA, MS	LA, TX, MS, AL, LA.	1-26-87 ITS Interruptible	ST91-06662 1-16-91

7. Colorado Interstate Gas Co.

[Docket No. CP91-1313-000]

Take notice that on February 21, 1991, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-1313-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company, a marketer, under the blanket certificate issued in Docket No. CP86-589, et al. pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that, pursuant to an agreement dated November 10, 1990, under its Rate Schedule TI-1, it proposes to transport up to 10,000 Mcf per day of natural gas. CIG indicates that the gas would be transported form Rvarious, and would be redelivered in Weld County, Colorado. CIG further indicates that it would transport 10,000 Mcf on an average day and 3.650,000 Mcf annually.

CIG advises that service under Section 284.223(a) commenced December 29, 1990, as reported in Docket No. ST91-6423-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Florida Gas Transmission Co.

[Docket No. CP91-1307-000]

Take notice that on February 21, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1307-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ft Pierce utilities Authority, an end user, under the blanket certificate issued in Docket No. CP89-555-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that, pursuant to an agreement dated February 23, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas. FGT indicates that the gas would be transported form Rvarious, and would be redelivered in Dvarious. FGT further indicates that it would transport 18,750 MMBtu on an average day and 9,125,000 MMBtu annually.

FGT advises that service under § 284.223(a) commenced February 1, 1991, as reported in Docket No. ST91-6930-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Florida Gas Transmission Co.

[Docket Nos. CP91-1352-000, CP91-1353-000 and CP91-1354-000]

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-555-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1352-000 (02-26-91)	Ft Pierce Utilities Authority (End User)	14,000 10,500 5,110,000	Various	Various	02-23-90 ITS-1 Interruptible	ST91-6929-000 02-02-91
CP91-1353-000 (02-26-91)	Transco Energy Marketing Company (Marketer).	40,000 30,500 14,600,000	Various	Various	01-22-91 ITS-1 interruptible	ST91-7025-000 01-29-91

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1354-000 (02-26-91)	Reedy Creek Improvement (End-user)	2,586 1,940 943,726	Various	Orange County, Fla.	12-01-90 ITS-1 Interruptible	ST91-6980-000 02-06-91

10. United Gas Pipe Line Co.

[Docket Nos. CP91-1376-000, CP91-1377-000 and CP91-1378-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points [1]	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1376-000 (2-27-91)	Laser Marketing Co. (Marketer)	618,000 618,000 225,570,000	Various	Various	10-1-88 ITS Interruptible	ST91-7031 1-28-91
CP91-1377-000 (2-27-91)	Graham Energy Marketing Corp. (Marketer)	123,600 123,600 45,114,000	Various	Various	11-1-88 ITS Interruptible	ST91-7009 1-25-91
CP91-1378-000 (2-27-91)	Bishop Pipeline Corp. (Intrastate)	41,200 41,200 5,038,000	Various	Various	1-26-87 ITS Interruptible	ST91-7007 1-31-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

11. Natural Gas Pipeline Co. of America

[Docket No. CP91-1294-000]

Take notice that on February 20, 1991, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91-1294-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of facilities required to receive and transport up to 600.5 MMcf/d of additional volumes along Natural's Amarillo mainline east of its compressor station 109 (C.S. 109), as well as certain related delivery facilities. Such application is filed as an alternative to that part of Northern Border Pipeline Company's (Northern Border) application at Docket No. CP91-967-000 proposing the construction of a new 231-mile 30-inch pipeline along with from two to four compressor stations between Harper, Iowa (where C.S. 109 is located) and Tuscola, Illinois.

The facilities for which Natural is requesting authority are divided into two separate cases: (a) The Base Case which assumes delivery of the total 600.5 MMcf/d to ANR Pipeline Company (ANR) plus new delivery facilities proposed to be constructed near Joliet, Illinois; and, (b) the Alternative Case which assumes delivery of the total 600.5 MMcf/d to Panhandle Eastern Pipeline Corporation (Panhandle) through the use of delivery facilities proposed to be constructed near Tuscula, Illinois. Both cases utilize the same facilities to receive and transport gas eastward from Natural's existing C.S. 109 at Harper, Iowa.

The facilities proposed to be constructed are described as follows:

I. Receipt and Transport Facilities Common to Both Cases:
- 114.39 miles of 36-inch pipeline loops.
- 8,000 additional horsepower at existing C.S. 199.
- 8,000 additional horsepower at existing C.S. 110.

II. Base Case Delivery Facilities:
- 1 8-inch tap and dual 12-inch taps on Natural's Amarillo Mainline in Kendall County, Illinois.
- Proposed Compressor Station 115 in Kendall County, Illinois, with 13,800 horsepower.
- A triple 16-inch meter station in Kendall County, Illinois.

III. Alternative Case Delivery Facilities:
- 7,200 additional horsepower at C.S. 311 in Piatt County, Illinois.
- 15 miles of 30-inch pipeline in Piatt, Moultrie and Douglas Counties, Illinois (Tuscola Lateral).
- A quadruple 12-inch meter station in Douglas County, Illinois.

The estimated cost of facilities is $95,984,000 for facilities common to both cases, $24,692,000 for the base case deliveries and $21,768,000 for the Alternative Case Delivery facilities. The cost of facilities required will be financed from funds on hand.

Natural will utilize its effective rates pursuant to Rate Schedules ITS and FTS for transportation service performed by means of the facilities proposed in this application.

The Commission advises all interested parties that Staff is holding a Technical Conference with respect to Northern Border Docket No. CP91-967-000 on March 14, 1991, at 10 a.m. Issues related to this application may be discussed at that conference.

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Florida Gas Transmission Co.

[Docket Nos. CP91-1343-000, CP91-1344-000, CP91-1345-000, CP91-1346-000 and CP91-1347-000]

Take notice that on February 25, 1991, Florida Gas Transmission Company (Applicant), 1400 Smith Street, Houston, Texas 77002, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No.[1] (date filed)	Shipper name	Peak day,[2] average day, annual	Receipt points [3]	Delivery point	Start up date, rate schedule, service type	Related docket, contract date
CP91-1343-000-(2-25-91)	City of Leesburg	7,200 5,400 2,628,000	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6934-000 2-23-90.
CP91-1344-000-(2-25-91)	Orlando Utilities Commission.	157,947 118,460 57,650,655	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6933-000 2-23-90.
CP91-1345-000-(2-25-91)	City of Vero Beach, Florida.	25,000 18,750 9,125,000	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6928-000 2-23-90.
CP91-1346-000-(2-25-91)	Citizens Gas Supply Corporation.	800,000 600,000 292,000,000	TX, LA, MS, AL, FL, OTX, OLA.	TX, LA, MS, AL, FL, OLA.	2-02-91, ITS-1, Interruptible.	ST91-6932-000 2-23-90.
CP91-1347-000-(2-25-91)	Enron Gas Processing Company.	150,000 112,500 54,750,000	TX, LA, MS, AL, FL, OLA, OTX.	TX, LA, MS, OLA, AL, OTX.	2-02-91, ITS-1, Interruptible.	ST91-6935-000 2-23-90.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5605 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1052-000, et al.]

Mississippi River Transmission Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation

[Docket No. CP91-1052-000]

February 27, 1991.

Take notice that on January 29, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1052-000 an application pursuant to section 7(b) of the Natural

Gas Act for permission and approval to abandon firm gas sales service performed by MRT for Olin Corporation (Olin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes to abandon the firm gas sales service that MRT provided to Olin pursuant to an Industrial Fuel Contract dated May 19, 1976, (agreement). MRT states that the agreement, with an initial term ending July 31, 1978, provides for Olin a maximum daily volume of 10,000 Mcf under a one-part (volumetric) rate. After initiating efforts to renegotiate the agreement in April, 1989, MRT served Olin with written notice, on November 2, 1989, that MRT was terminating the agreement effective May 1, 1990, it is indicated. MRT states that since the effective date of the termination, Olin has purchased gas from MRT on only one day and that since Olin has not agreed to a new sales contract, MRT is unable to charge any demand or reservation fees to compensate MRT for standing ready to meet its certificate obligation to provide firm sales service. MRT also states that in spite of protracted negotiations since April, 1989, MRT and Olin have been unable to reach an agreement on a new sales contract.

Further, MRT states that pursuant to § 284.10 of the Commission's Regulations, Olin has elected to convert a total of 3,000 MMBtu of its firm sales service to firm transportation service. Because MRT is uncertain whether the Commission would permit automatic abandonment of converted firm sales volumes, MRT requests specific authorization to abandon the firm sales associated with Olin's conversion, as well as its other firm sales obligations to Olin. No facilities are to be abandoned, it is stated.

Comment date: March 20, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. South Georgia Natural Gas Company

[Docket No. CP91-1334-000]

February 27, 1991.

Take notice that on February 22, 1991, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1334-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of twelve shippers under its blanket certificate issued in Docket No. CP90-2125-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by South Georgia and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
City of Adel, Georgia (LDC)	317 317 115,705	Alabama	Georgia	1-1-91, FT, Firm	ST91-6727-000, 1-1-91.
City of Americus, Georgia (LDC)	1,500 1,500 547,500	Alabama	Georgia	1-1-91, FT, Firm	ST91-6719-000, 1-1-91.
City of Ashburn, Georgia (LDC)	250 250 91,250	Alabama	Georgia	1-1-91, FT, Firm	ST91-6718-000, 1-1-91.
City of Bainbridge, Georgia (LDC)	825 825 301,125	Alabama	Georgia	1-1-91, FT, Firm	ST91-6729-000, 1-1-91.
City of Blakely, Georgia (LDC)	350 350 127,750	Alabama	Georgia	1-1-91, FT, Firm	ST91-6730-000, 1-1-91.
City of Cairo, Georgia (LDC)	750 750 273,750	Alabama	Georgia	1-1-91, FT, Firm	ST91-6728-000, 1-1-91.
City of Camilla, Georgia (LDC)	470 470 171,550	Alabama	Georgia	1-1-91, FT, Firm	ST91-6716-000, 1-1-91.
City of Fitzgerald, Georgia (LDC)	972 354,780	Alabama	Georgia	1-1-91, FT, Firm	ST91-6721-000, 1-1-91.
City of Moultrie, Georgia (LDC)	1,400 1,400 511,000	Alabama	Georgia	1-1-91, FT, Firm	ST91-6717-000, 1-1-91.
City of Quitman, Georgia (LDC)	606 606 221,190	Alabama	Georgia	1-1-91, FT, Firm	ST91-6724-000, 1-1-91.
City of Thomasville, Georgia (LDC)	1,500 1,500 547,500	Alabama	Georgia	1-1-91, FT, Firm	ST91-6732-000, 1-1-91.
City of Vienna, Georgia (LDC)	304 304 110,960	Alabama	Georgia	1-1-91, FT, Firm	ST91-6725-000, 1-1-91.

3. South Georgia Natural Gas Company

[Docket No. CP91-1337-000]

February 27, 1991.

Take notice that on February 22, 1991, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1337-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of three shippers under its blanket certificate issued in Docket No. CP90-2125-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by South Georgia and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Town of Havana, Florida (LDC)	300 300 109,500	Alabama	Florida	1-1-91, FT, Firm	ST91-6722-000, 1-1-91.
City of Jasper, Florida (LDC)	280 280 102,200	Alabama	Florida	1-2-91, FT, Firm	ST91-6712-000, 1-3-91.
City of Quincy, Florida (LDC)	1,050 1,050 383,250	Alabama	Florida	1-1-91, FT, Firm	ST91-6723-000, 1-1-91.

4. United Gas Pipe Line Company

[Docket No. CP91-1331-000, Docket No. CP91-1332-000]

February 27, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket no. ([2] date filed)	Applicant	Shipper name	Peak day [1], Avg. annual	Points of		Start up date, rate, schedule	Related dockets
				Receipt	Delivery		
CP91-1331-000 2/22/91	United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478.	Mobil Natural Gas Inc.	51,500 51,500 18,797,500	Offshore LA, TX	LA, MS, AL, KS	ITS, Interruptible 1/16/91.	CP88-6-000, ST91-6660-000.
CP91-1332-000 2/22/91	United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478.	Midcon Marketing Corporation.	150,174 150,174 54,813,510	LA	FL,MS	FTS, Firm 1/30/91	CP88-6-000, ST91-6803-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Viking Gas Transmission Company

[Docket No. CP91-1316-000, Docket No. CP91-1317-000, Docket No. CP91-1318-000]

February 27, 1991.

Take notice that Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90-273-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

[4] These prior notice requests are not consolidated.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual dt	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-1316-000 (2-22-91)	Unigas Energy, Inc. (Marketer).	75,000 75,000 27,375,000	WI, MN, ND	WI, MN, ND	12-19-90, IT-2, Interruptible.	ST91-6988, 2-5-91.
CP91-1317-000 (2-22-91)	Hadson Gas Systems, Inc. (Marketer).	200,000 200,000 73,000,000	WI, MN, ND	WI, MN, ND	11-15-90, IT-2, Interruptible.	ST91-6987, 1-25-91.
CP91-1318-000 (2-22-91)	Kaztex Energy Management, Inc. (Marketer).	25,000 25,000 9,125,000	WI, MN, ND	WI, MN, ND	12-18-90, IT-2, Interruptible.	ST91-6922, 1-12-91.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP91-1326-000, Docket No. CP91-1327-000, Docket No. CP91-1328-000, Docket No. CP91-1329-000, Docket No. CP91-1330-000]

February 27, 1991.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-1326-000 (2-22-91)	Interline Natural Gas, Inc. (Marketer).	3,000 3,000 1,095,000	WY	WY	1-7-91, PT, Interruptible.	ST91-6748, 1-22-91.
CP91-1327-000 (2-22-91)	Amgas, Inc. (Marketer)	100 50 18,250	CO, IL, KS, MI, OH, OK, TX, WY.	IL	12-13-91, PT, Interruptible.	ST91-6746, 1-4-91.
CP91-1328-000 (2-22-91)	Manville Sales Corporation (End-user).	12,000 12,000 4,380,000	CO, IL, KS, MI, OH, OK, TX, WY.	OH	4-30-90, PT, Interruptible.	ST91-6747, 1-15-91.
CP91-1329-000 (2-22-91)	Amgas, Inc. (Marketer)	150 75 27,375	CO, IL, KS, MI, OH, OK, TX, WY.	IL	12-13-90, PT, Interruptible.	ST91-6745, 1-4-91.
CP91-1330-000 (2-22-91)	Martin Exploration Management Company (Producer).	30,000 17,000 6,205,000	CO	KS	7-20-90, PT, Interruptible.	ST91-6791, 1-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Mississippi River Transmission Corporation

[Docket No. CP91-1351-000]

February 27, 1991.

Take notice that on February 25, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1351-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing, a marketer, under the blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT states that, pursuant to an agreement dated February 4, 1991, under its Rate Schedule ITS, it proposes to transport up to 250,000 MMBtu per day equivalent of natural gas. MRT indicates that the gas would be transported from Arkansas, Louisiana, Texas, and Illinois, and would be redelivered in Louisiana. MRT further indicates that it would transport 250,000 MMBtu on an average day and 91,250,000 MMBtu annually.

MRT advised that service under § 284.223(a) commenced November 1, 1990, as reported in Docket No. ST91-4994.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Northern Natural Gas Company, Florida Gas Transmission Company, Columbia Gulf Transmission Company

[Docket No. CP91-1319-000, Docket No. CP91-1320-000, Docket No. CP91-1321-000, Docket No. CP91-1322-000, Docket No. CP91-1323-000, Docket No. CP91-1324-000, Docket No. CP91-1325-000]

February 27, 1991.

Take notice that on February 22, 1991, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. [2]	Applicant	Shipper name	Peak day [1] average, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-1319-000	Northern Natural Gas Company, 1400 Smith St., Houston, TX 77251-1188.	Amoco Energy Trading Corporation.	25,000 18,750 9,125,0900	OK, IA, TX, SD, NM, MN, WI, NE, KS.	KS, SD, TX, MN, OK, NE, WI, MI, IA.	1-29-91, IT-1	CP86-435-000 ST91-6895-000
CP91-1320-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	City of Sunrise, Florida.	15,000 11,250 5,475,000	TX, FL, LA, AL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6931-00
CP91-1321-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Consolidated Minerals, Inc..	7,349 5,512 2,682,385	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6927-000
CP91-1322-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Georgia-Pacific Corporation.	25,323 18,992 9,242,895	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6926-000
CP91-1323-000	Northern Natural Gas Company, 1400 Smith St, Houston, TX 77251-1188.	Enron Gas Marketing, Inc.	500,000 375,000 182,500,000	OK, IA, TX, SD, KS, MN, NM, NE, WI.	KS, MN, TX, NE, WI, MI, IA, OK, SD.	1-22-91, IT-1	CP86-435-000 ST91-6788-000
CP91-1324-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Florida Power and Light Co..	662,898 497,174 241,957,770	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6925-000
CP91-1325-000	Columbia Gas Transmission Company, P.O. Box 683, Houston, TX 77001.	Polaris Pipeline Co.	45,000 15,000 5,475,000	Off LA, LA	LA, TN, MS	1-10-91, ITS-1, ITS-2.	CP86-239-000 ST91-6945-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Arkla Energy Marketing Company LIDO-Atlantic Trading Company

[Docket Nos. CI86-377-005 and CI86-378-005, Docket No. CI89-312-002] [7]

February 28, 1991.

Take notice that On February 22, 1991, LIDO-Atlantic Trading Company of 1801 California Street, suite 3500, Denver, Colorado 80202, and on February 25, 1991, Arkla Energy Marketing Company of 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI86-377-004, CI86-378-004 and CI89-312-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket Nos. CI86-377-005 and CI86-378-005 requests extension for an unlimited term, and also requests amendment of its blanket certificate to include authorization to make sales for resale of gas purchased under any existing or subsequently approved interstate natural gas pipeline blanket certificate authorizing interruptible sales of surplus system supply. Applicant in Docket No. CI89-312-002 requests that the Commission extend its blanket certificate.

Comment date: March 20, 1991, in accordance with standard Paragraph J at the end of this notice.

10. LaSER Marketing Company Columbia Gas Development Corp.

[Docket No. CI85-673-008, Docket No. CI89-332-002] [8]

February 28, 1991.

Take notice that on February 26, 1991, LaSER Marketing Company of P.O. Box 3327, Houston Texas 77253 and Columbia Gas Development Corporation of P.O. Box 1350, Houston, Texas 77056 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI85-673-007 and CI89-332-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket No. CI85-673-008 requests extension for a three-year term, and also requests amendment of its blanket certificate to include authorization to make sales for resale of imported gas and liquified natural gas. Applicant in Docket No. CI89-332-002 requests extension for an unlimited term.

Comment date: March 20, 1991, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with refernce to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5607 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[7] This notice does not provide for consolidation for hearing of the several matters covered herein.

[8] This notice does not provide for consolidation for hearing of the several matters covered herein.

[RP91-103-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on February 28, 1991, tendered for filing various revisions to its FERC Gas Tariff, First Revised Volume No. 1 with a proposed effective date of April 1, 1991.

Alabama-Tennessee states that alternative proposals have been made to revise certain provisions of its tariff which would enable it to flowthrough the recovery of take-or-pay settlement costs allocated to it by its upstream supplier, Tennessee Gas Pipeline Company, in compliance with the Commission's directives in Order Nos. 528 and 528-A.

Alabama-Tennessee states that copies of the filing have been mailed to Alabama-Tennessee's jurisdictional customer, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make a protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inpsection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5613 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-21-000 and TM91-8-21-000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1991.

Tenth Revised Sheet No. 26
Tenth Revised Sheet No. 26A
Tenth Revised Sheet No. 26B
Tenth Revised Sheet No. 26C
First Revised Sheet No. 26D
Ninth Revised Sheet No. 163

Columbia states that the sales rates set forth on Tenth Revised Sheet No. 26 reflect an overall decrease of 4.39¢ per Dth in the Commodity rate, and a decrease of $.482 per Dth in the Demand rate. In addition, the transportation rates set forth on Tenth Revised Sheet No. 26C reflect a decrease in the Fuel Charge component of .13¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) Unrecovered Purchased Gas Cost Surcharges to be effective during the 12-month period commencing May 1, 1991;

(3) Current Transportation Cost Rate Adjustments;

(4) Unrecovered Transportation Cost Surcharges;

(5) A surcharge adjustment to provide for the recovery, over the 12-month period commencing May 1, 1991, of carrying charges related to take-or-pay reimbursements paid by Columbia to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the terms of a Commission approved settlement in Docket No. RP83-5-000; and

(6) A Transportation Fuel Charge Adjustment.

Columbia states that copies of this filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5614 Filed 3-8-91; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective May 1, 1991.

FERC Gas Tariff, Second Revised Volume No. 1

Primary Tariff Sheets

Fifteenth Revised Sheet No. 8
Fourth Revised Sheet No. 160
First Revised Sheet No. 228
Second Revised Sheet No. 232
First Revised Sheet No. 527
First Revised Sheet No. 530
First Revised Sheet No. 531
First Revised Sheet No. 532
First Revised Sheet No. 533
First Revised Sheet No. 534
First Revised Sheet No. 535
First Revised Sheet No. 536
First Revised Sheet No. 537
First Revised Sheet No. 538
First Revised Sheet No. 539
First Revised Sheet No. 540
Original Sheet No. 540A

Alternate Tariff Sheet

Alternate Fifteenth Revised Sheet No. 8

Pursuant to Section 154.305 of the Commission's Regulations and section 15 of the General Terms and Conditions of FGT's Gas Tariff, FGT submits the above-referenced tariff sheets as part of FGT's annual PGA filing to be effective May 1, 1991.

FGT states that the current adjustment reflects FGT's projected cost of gas for the period May 1, 1991 through July 31, 1991. FGT anticipates a decrease from the $2.7530 per MMBtu saturated reflected in FGT's last scheduled filing in Docket No. TQ91-3-34 effective February 1, 1991 to $2.1807 per MMBtu saturated in the instant filing.

FGT also requests the Commission grant permanent waiver of § 154.305(b)(1) of its Regulations to permit FGT to recover producer demand charges on an "as-billed" basis. Alternatively, FGT requests demand charges on an "as-billed" basis. Alternatively, FGT requests waiver of § 154.305(b)(1) of the Regulations to permit FGT to recover on an as-billed basis, producer demand charges under a specific gas purchase contract for the life of the underlying contract. In support of these requests for waiver, FGT has filed a separate "Petition for Waiver". In the event the Commission denies such request, FGT has also submitted an alternate tariff sheet which reflects the reclassification of producer demand payments to the commodity component of the sales rates in conformance with the current regulations.

FGT states that the Surcharge Adjustments set forth on both the primary and alternate tariff sheets reflect the amortization of costs accumulated during the period January 1-December 31, 1990. FGT requests a waiver of the Commission's Regulations to permit FGT to transfer the commodity portion December 31, 1990 ending balance in Account 191 to FGT's current deferral period which commenced January 1, 1991 and to continue computing carrying charges pursuant to § 154.305(h). In the event the Commission grants such waiver, FGT further seeks permission to refile the tariff sheets to remove the Surcharge Adjustment.

FGT also states that it has filed certain schedules in accordance with FERC Form No. 542-PGA (Revised). FGT

has submitted a nine-track magnetic tape containing such schedules.

FGT further states that it has also filed certain other tariff sheets to reflect changes in the receipt point listing set forth in Rate Schedule PTS-1, the Index of Entitlements and the Index of Requirements.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5615 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1364-000 and CP91-1365-000]

Southern Natural Gas Co. Application

March 4, 1991.

Take notice that on February 26, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35203, filed in Docket Nos. CP91-1364-000 and CP91-1365-000 applications with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a portion of its firm sales to Mississippi Valley Gas Company (Mississippi Valley) and United Cities Gas Company (United Cities) respectively, all as more fully set forth in the applications which are open to public inspection.

In Docket No. CP91-1364-000, Southern states that it and Mississippi Valley executed a new service agreement dated October 1, 1990 (Agreement) for the sale and purchase of natural gas in quantities of up to 73,064 Mcf per day which amount is less than the past amount Southern was obligated to serve Mississippi. As a result, Southern hereby requests authority to abandon 10,000 Mcf per day of firm sales service relinquished by Mississippi Valley, effective October 1, 1990, Southern explains.

In Docket No. CP91-1365-000, Southern states that it and United Cities excecuted a new service agreement dated January 2, 1991 (Agreement) for the sale and purchase of natural gas in quantities of up to 51,000 Mcf per day which amount is less than the contract demand which was converted to firm transportation. As a result, Southern hereby requests authority to abandon 10,000 Mcf per day of firm sales relinquished by United Cities, effective January 1, 1991, Southern explains.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 25, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5621 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-101-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991.

Fifth Revised Sheet No. 14D
Fifth Revised Sheet No. 14E
Fifth Revised Sheet No. 14F
Fifth Revised Sheet No. 14G
Second Revised Sheet No. 124
First Revised Sheet No. 125
Original Sheet No. 125A
Original Sheet No. 125B.

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by Tennessee Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP91-29-000, *et al.* A portion of these charges were previously subject to a fixed charge flowthrough recovery mechanism authorized in Texas Gas' Docket No. RP88-230-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisiditional customers, interested state commissions and each person listed on the official service list previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5609 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-102-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991.

First Revised Sheet No. 14H
First Revised Sheet No. 14I
First Revised Sheet No. 14J
First Revised Sheet No. 14K
First Revised Sheet No. 128
Original Sheet No. 129
Original Sheet No. 130
Original Sheet No. 131

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by United Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP89-147-000, *et al.* These charges were previously subject to a fixed charge flow-through recovery mechanism authorized in Texas Gas' Docket No. RP90-64-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdicational customers, interested state commissions and each person listed on the official service previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5610 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-100-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991:

Eighth Revised Sheet No. 14
First Revised Sheet No. 14A
First Revised Sheet No. 14B
First Revised Sheet No. 14C
First Revised Sheet No. 122
First Revised Sheet No. 123
Original Sheet No. 123A
Original Sheet No. 123B

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by United Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP88-27-000, *et al.* These charges were previously subject to a fixed charge flow-through recovery mechanism authorized in Texas Gas' Docket No. RP88-177-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions and each person listed on the official service list previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5611 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-107-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Williams Natural Gas Company (WNG) on February 28, 1991 tendered for filing First Revised Sheet Nos. 8-8C, 257, and 259-264 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective March 31, 1991.

WNG states that the above referenced tariff sheets are being submitted to implement a revised methodology for allocating the fixed charge portion of WNG's buyout and buydown costs pursuant to Commission Order Nos. 528 and 528-A. Specifically, WNG seeks to revise the allocation percentages applicable to the fixed charges which WNG renders to its firm sales customers.

WNG has also included additional take-or-pay settlement costs totaling $8.2 million, of which WNG proposes to absorb 25%, recover 50% through a volumetric surcharge on all throughput, and recover 25% through direct billing.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5612 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-104-000]

Transwestern Pipeline Co.; Proposed Change in FERC Gas Tariff

March 4, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its F.E.R.C. Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1991:

Effective April 1, 1991:

1st Revised Sheet No. 5C
1st Revised Sheet No. 5D
2nd Revised Sheet No. 5D(i)
1st Revised Sheet No. 5D(ii)
4th Revised Sheet No. 87
5th Revised Sheet No. 88
5th Revised Sheet No. 89
5th Revised Sheet No. 90
4th Revised Sheet No. 90A

Transwestern states that it is filing the above-referenced tariff sheets in order to modify its take-or-pay, buy-out, and buy-down merchanism ("TCR" mechanism), specifically to revise its allocation methodology under its mechanism for direct billing a portion of its Transition Costs (the "TCR Fee"). Such reallocation, Transwestern states, is necessary for compliance with the Commission's Order Nos. 528 and 528-A. Transwestern states that such reallocation is based upon each customer's contract demand quantity under all firm rate schedules as of the date of the original TCR filing, with each small customer's allocation based on its actual annual volumes for the twelve-month period ending August 31, 1988, and with the allocation being reduced by fifty percent (50%) in compliance with Order No. 528-A (the difference being reallocated to remaining customers).

Transwestern states that it has obtained the agreement of Southern California Gas Company and the Public Utilities Commission of the State of California to make this filing.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective April 1, 1991.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5616 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-106-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1991:

Effective April 1, 1991

83rd Revised Sheet No. 5
1st Revised Sheet No. 5D(iii)
Original Sheet No. 5E(ii)
47th Revised Sheet No. 6
5th Revised Sheet No. 87
6th Revised Sheet No. 88 -
6th Revised Sheet No. 89
6th Revised Sheet No. 90
5th Revised Sheet No. 90A
Original Sheet No. 91

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay, buy-out and buy-down mechanism ("TCR") in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs ("Transition Costs"), consistent with Order Nos. 528 and 528-A. Transwestern has paid a total of $10,977,543.28 in Transition Costs ("TCR Amount Five") and is revising certain tariff sheets and requesting authority thereby to begin recovery of a portion of such amounts. Transwestern has elected to absorb twenty-five percent (25%) of such costs, directly bill another twenty-five percent (25%), and recover the remaining fifty percent (50%) through a volumetric surcharge. These Transition Costs include: (1) Amounts paid pursuant to a producer settlement following an arbitration award and (2) amounts paid which qualify for TCR recovery under Transwestern's Litigation Exception, for which two amounts (1) and (2) recovery has not yet been sought by Transwestern in any previous filings, as well as (3) amounts paid, plus carrying costs, under producer pricing settlements for which Transwestern originally filed to recover under its Purchased Gas Adjustment tariff provisions. Such Transition Costs (with the exception of the Litigation Exception amounts) were paid by Transwestern prior to both its acceptance (on June 30, 1989) of a certficate authorizing, and the implementation (on October 1, 1989) of, its Gas Inventory Charge ("GIC").

Transwestern states that it has obtained the agreement of Southern California Gas Company and the Public Utilities Commission of the State of California to make this filing, with the sole exception of the amount paid under the above-noted producer settlement following an arbitration award.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective April 1, 1991.

Trnswestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 of the Commission' Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the propceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5617 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Adjustment

March 4, 1991.

Take notice that on February 28, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its

FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Twenty Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective April 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5618 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-4-51-001, TQ91-6-51-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

March 4, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on February 28, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1:
First Revised Volume No. 1
Substitute Thirty-Fourth Revised Sheet No. 57(i)
Substitute Thirty-Fourth Revised Sheet No. 57(ii)
Substitute Twentieth Revised Sheet No. 57(v)

Item 2:
First Revised Volume No. 1
Fifth Thirty-Fifth Revised Sheet No. 57(i)
Fifth Thirty-Fifth Revised Sheet No. 57(ii)
Twenty-First Revised Sheet No. 57(v)

The tariff sheets in Item 1 were filed to reflect the appropriate current purchased gas cost adjustment for Great Lakes' quarterly PGA for the period February 1, 1991 through April 30, 1991.

The tariff sheets in Item 2 were filed to reflect revised current PGA rates for the months of February 1, 1991 through April 30, 1991. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas TransCanada Pipeline Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements so as to permit the tariff sheets in Item 1 and Item 2 to become effective February 1, 1991, as described, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5619 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-8-000]

South Georgia Natural Gas Co.; Proposed Changes To FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-First Revised Sheet No. 4 and Eighth Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets are being filed pursuant to the Purchased Gas Cost Adjustment (PGA) provision set out in Section 14 of South Georgia's FERC Gas Tariff with a proposed effective date of April 1, 1991.

South Georgia states that Seventy-First Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from April 1, 1991, through June 30, 1991, reflects a decrease in jurisdictional revenues of approximately $1,450,000 which is attributable to a decrease in the demand component of $8.06 per Mcf and a decrease in the commodity component of $.256 per MMBtu from South Georgia's quarterly PGA filing in Docket No. TQ91-3-8-000. Eighth Revised Sheet No. 43, Index of Purchasers, reflects the maximum daily quantity level submitted by the City of Jasper, Florida, after a conversion from firm sales service to firm transportation service in accordance with § 84.10 of the Commission's Regulations.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5620 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed, Week of January 25 Through February 1, 1991

During the week of January 25 through February 1, 1991, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions

inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 5, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 25 through February 1, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 30, 1991	Texaco/College Square Texaco, Hardin, KY	RR321-49	Request for modification/rescission in the Texaco refund proceeding. If granted: The Jan. 4, 1991 Decision and Order (Case Nos. FF321-10614 & RF321-11869) would be modified regarding the firm's Application for Refund submitted in the Texaco Inc. special refund proceeding.
January 31, 1991	BB Fuels, Inc., Ventura, CA	LEE-0022	Exception to the Reporting Requirements. If granted: BB Fuels, Inc., would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of January 25 through February 1, 1991]

Received	Name of firm	Case No.
12/27/90	Caveman Oil & Fuel, Inc.	RF315-10115
12/27/90	Allis-Chalmers Corporation	RF315-10116
01/25/91 thru 2/1/91	Crude oil refund applications received	RF272-86293 thru RF272-86396
1/25/91 thru 2/1/91	Gulf Oil Refund applications received	RF300-15382 thru RF300-15498
1/25/91 thru 2/1/91	Texaco Oil Refund applications received	RF321-13016 thru RF321-13152
01/28/91	S & W Oil Company	RF315-10124
01/29/91	Diamond Oil Company	RF329-2
01/29/91	Cool Fuel, Incorporated	RF329-3
01/30/91	Odessa L.P.G. Transport, Inc.	RF326-224

[FR Doc. 91-5681 Filed 3-8-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 18 through February 22, 1991

During the week of February 18 through February 22, 1991 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Lowry Coalition, 2/21/91, LFA-0095

The Lowry Coalition filed an Appeal from a determination issued by the Albuquerque Operations Office of a Freedom of Information Request. The applicant had sought records concerning the deposit of hazardous waste into the Lowry Landfill. In its determination, the Operations Office identified and released to the Coalition, 49 documents pertaining to 18,260 gallons of waste from DOE's Rocky Flats facility that had been deposited in the landfill. The Coalition argued that additional documents must exist. In support of this position, the Coalition cited a document issued by the EPA which alleges that Rockwell International, a prior operator of the Rocky Flats facility, had deposited over 200,000 gallons of waste in the Landfill. Under these circumstances, the DOE found that the matter should be remanded for an additional search for responsive documents. Accordingly, the Appeal was granted.

Refund Applications

American Home Products Corp., Wyeth Laboratories, Inc., 2/20/91, RF272-656, RD272-656, RF272-29776 and RD272-29776

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to American Home Products Corporation (AHPC), a pharmaceutical and food company that used the petroleum products in its business operations. A consortium of states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicants' refund claim. The DOE found that the states' filings only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to AHPC is $89,984. In addition, because AHPC included the gallonage claim of its subsidiary, Wyeth Laboratories, the DOE dismissed a separate Application for Refund which had been filed by Wyeth, and a related states' Motion for Discovery.

Bradford Dyeing Association, Inc., 2/19/91, RF272-5346 and RD272-5346

The DOE issued a Decision and Order concerning an Application for Refund filed by a textile finishing firm in the subpart V crude oil proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an

economist stating that, in general, textile firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, determing that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $16,035.

City of Springfield, 2/19/91, RF272–61828

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City of Springfield (Springfield) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Springfield filed on behalf of all of its municipal buildings and vehicles. Phillip P. Kalodner, counsel for utilities, transporters and manufacturers filed objections to this Application. The DOE found Mr. Kalodner's objections to Springfield's eligibility unconvincing and granted the city a refund of $22,130.

City of Virginia Beach, 2/22/91, RC272–115

The DOE issued a Decision and Order concerning an Application for Refund that the City of Virginia Beach (Virginia Beach) filed in the subpart V crude oil special refund proceeding being disbursed by the DOE under 10 CFR part 205. The DOE determined that the initial refund granted was incorrect. The correct refund amount should have been $12,099. This Supplemental Order rescinded the prior Decision and Order, Case No. RF272–58282.

Cooper Tire & Rubber Co., 2/22/91, RF272–10651 and RD272–10651

Cooper Tire & Rubber Company (Cooper) is a manufacturer of tires and rubber. It filed an Application for Refund as an end user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application filed by Cooper, provided evidence concerning the tire and rubber industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Cooper had been able to pass on the crude oil overcharges to its customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Cooper were injured by crude oil overcharges. Humana was unable to pass through its alleged overcharges. The DOE granted Cooper Tire & Rubber Company a refund of $24,516 based on its approved purchases of petroleum products and denied the Motion for Discovery filed by the States.

Exxon Corp. Blue Star Exxon, 2/21/91, RF307–210 amd RF307–7183

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order finalizing a Proposed Decision and Order (PDO) concerning two Applications for Refund that were filed by Blue Star Exxon and its owner, Robert E. Lee in the Exxon refund proceeding. In the final Decision and Order, the DOE determined that both applications should be denied because Mr. Lee had not shown that he owned the stations during the price control period or that he was otherwise entitled to receive a refund for purchases made by Blue Star during that period.

H.P. Hood, Inc., 2/20/91, RF272–70478, RD272–70478

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to H.P. Hood (Hood) based on its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products to manufacture and distribute food products. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 32 states and two territories (the States) filed a statement of Objection and a Motion for Discovery with respect to Hood's Application. The DOE found that the states' filing was insufficient to rebut the presumption of injury. Therefore, Hood's Application for Refund was granted and the State's Motion for Discovery was denied. The refund granted to Hood was $19,584.

J.H. Rudolph & Co., 2/22/91, RF272–344, RD272–344

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to J.H. Rudolph & Co., a road construction company that used the petroleum products in its business operations. A consortium of states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's refund claim. The DOE found that the states' filings did not refer to whether the applicant was able to pass through crude oil overcharges, but only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to J.H. Rudolph & Co. is $113,213.

Rance B. Patterson, 2/21/91, RF272–30026

The DOE issued a Decision and Order concerning an Application for Refund filed by a tractor-trailer operator in the subpart V crude oil proceeding. The applicant was unable to provide the OHA with specific figures detailing the amount of his petroleum purchases. Since the applicant had failed to provide any evidence to establish that he had purchased petroleum products during the crude oil price control period, the OHA determined that his application should be denied.

Rissler & McMurry Co., et al., 2/22/91, RF272–8737, et al., and RD272–8737, et al.

Rissler and McMurry Company and nine other road construction and heavy equipment firms filed Applications for Refund as end-users of refined petroleum products in the subpart V crude oil special refund proceeding. A groups of states and two territories of the United States (the States) filed objections to the Applications, including material concerning the construction industry (in some cases, the road construction industry) as a whole. In eight of the cases, the States also filed Motions for Discovery. After considering that material, the DOE determined that the States had failed to produce convincing evidence to show that any of the Applicants had been able to pass on any crude oil overcharges to their customers. The DOE also found that the States' submissions failed to address the individual situations of the Applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users, such as these Applicants, were injured by crude oil overcharges. The DOE granted refunds that totalled $224,256, based on a total of 280,319,848 gallons of approved purchases. The DOE denied the Motions for Discovery filed by the States.

Shell Oil Co./Flanders Valley Shell, Inc., 2/22/91, RF315–8752 and RF315–9133.

The DOE issued a Decision and Order concerning competing applications for refund submitted by Dorothy M.

Krumpfer (RF315–8752) and Elisabeth K. Joy (RF315–9133), respectively the former wife and widow of Warren W. Krumpfer, deceased owner of Flanders Valley Shell, Inc. During the refund period, Dorothy and Warren Krumpfer equally divided all of the corporate stock. In 1986, the Krumpfers entered into a divorce, pursuant to which all of Mrs. Krumpfer's stock and interest in Flanders Valley was transferred to Mr. Krumpfer. We held that with this transaction, Mrs. Krumpfer transferred her right to a refund. Her application was therefore denied. Mr. Krumpfer died in 1989, having never sold any of the corporation's stock. Upon his death, all of Mr. Krumpfer's interest in Flanders Valley, including the right to a refund, was transferred to Ms. Joy, his surviving spouse. Ms. Joy received a refund of $1,339 ($999 principal and $340 interest).

Texaco Inc./R&L Texaco, 2/22/91, RF321–13253.

On October 1, 1990, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by R&L Texaco, a retailer of Texaco products. That refund was based upon R&L's claim that it operated the retail outlet from September 1971 to November 1977, and the volume of purchases at that location between March 1973 and November 1977. Subsequently, another applicant filed an application for refund for the same retail location for the period beginning October 26, 1976, and submitted documentary evidence to support its claim. Accordingly, the DOE found that R&L should repay with interest, that portion of its refund attributable to purchases after October 26, 1976. The total repayment ordered was $204 ($167 principal and $37 interest).

Valley Asphalt Corp., Meyer Construction Co., 2/22/91, RF272–25379, RD272–25379, RF272–26482, and RD272–26482.

Valley Asphalt Corp. and Meyer Construction Co. each filed an application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. Both firms were involved in road construction and the manufacture of asphalt pavement products. Each firm demonstrated the volume of its claim by consulting invoices, financial statements, and asphalt plant production records or by making reasonable estimates. A group of state governments filed statements of objection to the firms' claims, and provided econometric evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that either firm had been able to pass on the crude oil overcharges to its customers, and found that the States' econometric evidence failed to properly address the individual situations of the Applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Valley Asphalt Corp. and Meyer Construction Co. were injured by crude oil overcharges. The DOE granted Valley Asphalt Corp. a refund of $85,097 based on its approved purchases of 106,370,703 gallons of petroleum products, and granted Meyer Construction Co. a refund of $35,645 based on its purchases of 44,556,822 gallons. The States' related Motions for Discovery were denied.

Virginia Fibre Corp., 2/22/91, RF272–42090

Virginia Fibre Corporation is involved in the paper production industry. Virginia filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, and provided evidence concerning the paper industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that Virginia had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Virginia were injured by crude oil overcharges. The DOE granted Virginia a refund of $68,505, based on its approved purchases of 85,631,225 gallons of petroleum products.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
American Jet Aviation	RR272–62	02/21/91
Atlantic Richfield Co./ Tennessee Valley Authority.	RF304–4039	02/22/91
Canada Leasing Corp. *et al.*	RF272–62967	02/20/91
City of Thomasville Municipal Airport.	RF272–70487	02/22/91
Exxon Corporation/ Eastern Air Lines, Inc.	RF307–6099	02/20/91
Gulf Oil Corp./B & W Gulf *et al.*	RF300–11701	02/21/91
Gulf Oil Corp./ Eckerdt, Inc. *et al.*	RF300–11190	02/22/91
Gulf Oil Corp./Hilltop Auto Laundry *et al.*	RF300–11315	02/20/91
Gulf Oil Corp./ Human's Gulf *et al.*	RF300–11742	02/22/91
Loomis Armored, Inc	RF272–71660	02/22/91
Murphy Oil Corp./ Wallace Spur Station *et al.*	RF309–562	02/21/91
Petroleum Carriers, Inc. *et al.*	RF272–72620	02/20/91
Texaco Inc./Bela's Texaco Inc. *et al.*	RF321–802	02/22/91
Texaco Inc./Bob's Texaco *et al.*	RF321–2200	02/21/91
Texaco Inc./Bud's Texaco *et al.*	RF321–1880	02/21/91
Texaco Inc./City of Buffalo.	RF321–13654	02/21/91
Texaco Inc./ Freeman's Texaco *et al.*	RF321–256	02/21/91
Texaco Inc./Jim's Texaco.	RF321–1106	02/21/91
James H. Carlisle	RF321–7963	
James H. Carlisle	RF321–7964	
Texaco Inc./Simon's Texaco *et al.*	RF321–500	02/21/91
Tri County Asphalt Corporation.	RF272–114	02/21/91

Dismissals

The following submissions were dismissed:

Name and Case No.

Apache Powder Company; RF272–59421
Atascadero Unified; RF272–81480
Axtell Cooperative Grain Co.; RF272–84718
Big T Distributing Corp.; RF321–12782
Brewer Schools; RF272–85926
Campus Arco of Eugene; RF304–11314
Daniels McKown Oil Co.; RF300–12218
Flagg Fertilizer; RF321–4770
Gallia County, Ohio; RF272–86094
Gulf Air, Inc.; RF272–59414
J.F. Cleckley & Company; RF272–54186
J.F. Cleckley & Company; RD272–54186
Jack P. Tyke Gulf Service; RF300–11413
Jack P. Tyke Gulf Service; RF300–11412
Johnson-Bates Drilling Company; RF320–0002
Lakeville Community School District; RF272–78561
Lydall, Inc.; RF272–78574
Miami County Engineer's Office; RF272–85938
Milford-Whitinsville Regional Hospital; RF272–85955
New Hampton Community School District; RF272–81201
Orange-Ulster Boces; RF272–79853
Pan Am Equities, Inc.; RF272–52767
Pittsford Town School District; RF272–85620
Ron's Texaco; RF321–12631

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of

Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 5, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-5682 Filed 3-8-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Proposed Firm Power Rate Adjustment—Loveland Area Projects: Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Firm Power Rate Adjustment—Loveland Area Projects: Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project.

SUMMARY: The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program—Western Division (Criteria) was published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the Pick-Sloan Missouri Basin Program—Western Division (P-SMBP-WD) and Fryingpan-Arkansas Project (Fry-Ark), commonly referred to as the Loveland Area Projects (LAP), and called for the establishment of a blended rate for LAP firm power sales.

The fiscal year (FY) 1990 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program and the Fry-Ark show that existing power rates are not adequate to meet repayment requirements. To meet those requirements, the rates for the firm power are proposed to be increased in two steps. The first step will be based upon the FY 1990 PRS for P-SMBP and Fry-Ark. The second step will be based upon a FY 1991 PRS for the P-SMBP and FY 1990 PRS for Fry-Ark. The composite rate for firm power is proposed to increase in FY 1992 by 2.4 mills/kilowatthour (kWh). The composite rate for firm power is proposed to increase in FY 1993 by .89 mills/kWh. The chart below summarizes the proposed rate adjustments.

FIRM POWER RATE

Class of power	Existing rate October 1, 1990	Proposed rates	
		October 1, 1991	October 1, 1992
Firm capacity ($/kW-month)	$2.15	$2.46	$2.58
Firm energy (mills/kWh)	8.39	9.59	10.03
Composite	16.77	19.17	20.06

FURTHER INFORMATION: Brochures explaining the background for the LAP firm power rate will be distributed to all LAP customers and other interested parties. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following completion of the consultation and comment period and review of public comments, the Western Area Power Administration (Western) will develop the proposed rates and submit them to the Deputy Secretary of the Department of Energy (DOE) to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission (FERC). It is anticipated that the first step of the rates will be placed in effect on the first day of the first full billing period beginning on or after October 1, 1991, and the second on the first day of the first full billing period beginning on or after October 1, 1992.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in Western's Loveland Area Office.

Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, Telephone: (303) 490-7201.

DATES: The consultation and comment period will begin on March 11, 1991, and will end not less than 90 days later or on June 1, 1991, whichever is the later.

The public information forum, during which Western will explain the need for the proposed LAP firm power rate and answer questions, will be held on March 25, 1991, at 10 a.m. at the Holiday Inn, 10 East 120th Avenue, Northglenn, Colorado.

The public comment forum during which comments for the record concerning the proposed rate increase will be accepted and will be held on April 16, 1991, at 10 a.m. at the Holiday Inn, 10 East 120th Avenue, Northglenn, Colorado.

Individuals planning to speak at either forum are requested to send their name and organization affiliation to the Loveland Area Office address noted above so that they are received by April 9, 1991. Other individuals will be allowed to comment after the individuals requesting time have spoken.

SUPPLEMENTARY INFORMATION: Power rates for the LAP are established pursuant to the DOE Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887; and the other acts specifically applicable to the project system involved.

By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN-10-89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis

to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835). Power rate adjustments for the LAP firm power rate are conducted consistent with 10 CFR part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality regulations (40 CFR part 1500–1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western will evaluate the proposed rate adjustments and prepare the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, to publish a proposed rule, Western is required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the LAP firm power relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of this Act. Since the rate for LAP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on Paperwork Burdens of the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to the **Federal Register** notice for the interested public to participate in the development of the LAP firm power rate. There is no requirement that members of the public participating in the development of the rate supply information about themselves to the Government. It follows that the LAP firm power rate is exempt from the Paperwork Reduction Act.

Determination under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, March 1, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91–5683 Filed 3–8–91; 8:45 am]

BILLING CODE 6450–01–M

Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate adjustment—Pick-Sloan Missouri Basin program.

SUMMARY: The fiscal year (FY) 1990 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program (P–SMBP) shows that existing power rates are not adequate to meet repayment requirements. To meet those requirements the composite rate for firm power is proposed to be increased in FY 1992 by 1.39 mills/kilowatthour (kWh). A FY 1991 PRS which incorporates certain assumed values has also been completed and indicates the need for an additional increase in the composite rate of 0.91 mills/kWh in FY 1993. The Western Area Power Administration (Western) is proposing to seek approval of a two-step rate adjustment. The first step will be based on the FY 1990 PRS and the second step will be based on a FY 1991 PRS.

The Eastern Division (ED) and Western Division (WD) of the P–SMBP will each adjust their respective revenues to meet the required increases. The rate to provide revenue for the combined P–SMBP–WD and Fryingpan-Arkansas Project (Fry-Ark) is designated as the Loveland Area Projects (LAP) rate. The LAP rate will include the P–SMBP–WD revenue requirement combined with the revenue requirement for the Fry-Ark, and a blended rate will be designed.

The proposed rate increase reflects: (1) Changes of the future projections of operation and maintenance expenses, (2) increased deficits, and (3) the inclusion of purchased power expenses and reduced surplus sales revenues for 5 future years to reflect continuing drought conditions.

Eastern Division

The Eastern Division proposed rate adjustment would, over 2 years, increase the overall capacity charge for firm power service by $0.49/kilowatt-month (kW-month) and increase the overall energy charge by 1.52 mills/kWh. There is no change proposed to the existing 3.38 mills/kWh additional charge for firm energy in excess of 60 percent monthly load factor because the regional cost of energy has remained relatively stable over the past several years, and is expected to increase only slightly in the near future. Over 2 years, the proposed rate adjustment would also increase the peaking capacity charge by $2.94/kW-season and any energy associated with peaking power deliveries by 1.52 mills/kWh. The table below summarizes the proposed changes in rates.

P–SMBP–ED

[Rate Changes]

Class of power	Existing rate (FY 1991)	Proposed rate	
		(FY 1992)	(FY 1993)
Firm Power Service:			
Firm capacity (kW)	$2.25/kW-month	$2.57/kW-month	$2.74/kW-month.
Firm energy (kWh)	5.57 mills/kWh	6.49 mills/kWh	7.09 mills/kWh.
Composite mills/kWh	9.86	11.25	12.16.
Additional charge for firm energy in excess of 60-percent monthly load factor.	3.38 mills/kWh	3.38 mills/kWh	3.38 mills/kWh.

P-SMBP-ED—Continued

[Rate Changes]

Class of power	Existing rate (FY 1991)	Proposed rate	
		(FY 1992)	(FY 1993)
Firm Peaking:			
Power Service:			
Peaking Capacity (kW)	$13.50/kW-season	$15.42/kW-season	$16.44/kW-season.
Peaking energy (kWh)	5.57 mills/kWh	6.49 mills/kWh	7.09 mills/kWh.

Western Division

A separate rate adjustment to the LAP rate will be processed by Western's Loveland Area Office which will include the revenue requirements for the Western Division shown below:

	(FY 1992)	(FY 1993)
P-SMBP Western Division:		
Existing Revenue Requirement	$23,271,480	$26,101,520
Additional Revenue Requirement	$2,830,040	$1,852,760
New P-SMBP-Western Division Revenue Requirement	$26,101,520	$27,954,280
Fryingpan-Arkansas Project:		
Fryingpan-Arkansas Revenue Requirements	$13,933,200	$13,933,200
Total LAP Revenue Requirements	$40,034,720	$41,887,480

FURTHER INFORMATION: A brochure explaining the need for a rate increase will be distributed to all P-SMBP customers and other interested parties shortly after publication of this notice. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rates and submit them to the Deputy Secretary of Energy to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission (FERC). It is anticipated that the first step of the rates will be placed in effect on the first day of the first full billing period beginning on or after October 1, 1991, and the second on the first day of the first full billing period beginning on or after October 1, 1992.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in Western's Billings Area Office. Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107-5800, Telephone: (406) 657-6532.

DATES: The consultation and comment period will begin March 1, 1991 and will end not less than 90 days later or on June 1, 1991, whichever is the later.

Public information forums, during which Western will explain the need for —the proposed rate increase and answer questions, will be held at the following places and times:

March 25, 1991—9 a.m.—Sheraton Hotel, Billings, MT
March 25, 1991—2 p.m.—Holiday Inn, Northglenn, CO
March 26, 1991—8 a.m.—Holiday Inn Airport, Sioux Falls, SD
March 26, 1991—1:30 p.m.—Holiday Inn, Fargo, ND

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following places and times:

April 16, 1991—9 a.m.—Holiday Inn, Northglenn, CO
April 17, 1991—2 p.m.—Ramkota Inn Airport, Sioux Falls, SD

Individuals planning to speak at either the March or April forums are requested to send their names and organization affiliation to the Billings Area Office address noted above 1 week before each meeting so a speaker list can be prepared. Other individuals will be allowed to comment after the individuals requesting time have spoken.

SUPPLEMENTARY INFORMATION: Power rates for the P-SMBP are established pursuant to the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887; and other acts specifically applicable to the project system involved.

By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN-10-89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) The authority, on a nonexclusive basis, to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 CFR 7835). Power rate adjustments for the P-SMBP firm power rate are conducted consistent with 10 CFR part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and DOE guidelines published in the Federal

Register on December 15, 1987 (52 FR 47662), Western will evaluate the proposed rate adjustment and prepared the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, to publish a proposed rule, Western is required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P-SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Since the rate for P-SMBP power is of limited applicability and is being set in accordances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the P-SMBP rate. There is no requirement that members of the public participating in the development of the P-SMBP rate supply information about themselves to the Government. It follows that the P-SMBP rates are exempt from the Papework Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, March 1, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-5684 Filed 3-8-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3912-7]

Science Advisory Board; Drinking Water Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on April 4-5, 1991 at the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015. This meeting will start at 8:30 a.m. on April 4th and will adjourn no later than 1 p.m. April 5th.

The main purpose of this meeting will be to review health criteria documents for cyanogen chloride, chlorinated acids, alcohols, aldehydes, and ketones.

Documentation for this meeting is available from the Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC, 20460 by March 22, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: March 4, 1991.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 91-5670 Filed 3-8-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 5, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0395.

Title: Automated Reporting and Management Information Systems (ARMIS), Sections 43.21 and 43.22.

Report Number: FCC Report 43-04.

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly and annually.

Estimated Annual Burden: 1,050 responses; 313 hours average burden per response; 328,650 hours total annual burden.

Needs and Uses: The ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions and to enhance the Commission's ability to quantify the effects of alternative policy proposals. ARMIS is needed to administer our accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return. It collects financial and operating data from the Tier 1 and those Class A local exchange carriers with annual revenues over $100 million.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5704 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Martime Commission, 1100 L Street NW, room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224–010896–005.

Title: Maryland Port Administration/ Moller Steamship Line, Inc. (Maersk) Terminal Agreement.

Parties: Maryland Port Administration, Moller Steamship Line, Inc. (Maersk).

Synopsis: The Agreement provides that the term of the basic agreement will continue on a month to month basis for 60 days beginning March 1, 1991, pending final negotiations of a long term lease.

Dated: March 5, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5633 Filed 3–8–91; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–058.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Kawaski Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to withdraw an independent action rate or service item on 48 hours' notice if the Agreement adopts a common rate or service item applicable to the same shipment which results in a lower cost to the shipper or consignee than the independent action.

Agreement No.: 232–011321.

Title: Maersk/Sea-Land Pacific Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space from one another and to agree upon sailing schedules, service frequency, ports to be served, port rotation, operation of feeder services and the type and size of vessels to be operated in the trade between the United States and the Far East in the Japan/Malaysia range.

By Order of the Federal Maritime Commission.

Dated: March 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5591 Filed 3–8–91; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on March 1, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5.

Agreement No.: 224–200271–001.

Title: International Longshoremen's Association Assessment Agreement.

Parties: International Longshoremen's Association, AFL–CIO (ILA), Carriers Container Council, Inc. (Carrier).

Synopsis: The agreement amends the Carrier—ILA Container Freight Station Trust Fund basic assessment agreement to reflect the promotion of employment opportunities by the development of apprenticeship and training programs for ILA employees, to which the parties may agree in collective bargaining.

By Order of the Federal Maritime Commission.

Dated: March 5, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5632 Filed 3–8–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Mitsui Manufacturers Bank, Los Angeles, CA; Public Meeting

Background

On December 14, 1990, the Board of Governors of the Federal Reserve System ordered a public meeting on the issues regarding the record of performance of Mitsui Manufacturers Bank, Los Angeles, California ("MMB"), under the Community Reinvestment Act ("CRA"). This public meeting was ordered in connection with an application by MMB's parent company, The Mitsui Taiyo Kobe Bank, Limited, Tokyo, Japan ("Mitsui Taiyo Kobe"), under section 3 of the Bank Holding Company Act ("BHC Act") to convert Taiyo Kobe Bank and Trust Company, New York, New York ("TKBTC" and the "TKBTC Application"), from a nonbank trust company back into a bank pursuant to the interstate banking laws of New York and California. In its prior approval of Mitsui Taiyo Kobe's application to acquire TKBTC as a nonbank trust company, the Board noted that MMB had not implemented in all respects the type of CRA program outlined in the Joint Agency Policy Statement regarding the CRA, 54 FR 13,742 (1989) ("Agency CRA Statement"), and that there were significant issues raised regarding the adequacy of MMB's CRA performance. *The Mitsui Bank, Limited*, 76 Federal Reserve Bulletin 381, 384 - 85 (1990) ("*Mitsui Bank*").

In *Mitsui Bank*, the Board stated its intent to hold a public meeting on MMB's CRA performance unless the record developed over several months in the Board's view resolved the issues regarding MMB's CRA performance. After considering the record in this application, the Board concluded that a public meeting was appropriate and approved the order for a public meeting in *Mitsui Manufacturers Bank*, 77 Federal Reserve Bulletin 109 (1991) ("Public Meeting Order").

The Public Meeting Order specified that all persons wishing to give testimony at the public meeting should file certain information with the Board not later than January 15, 1991. On the basis of these requests, and taking into account the interests of the persons requesting to appear, the Public Meeting Order directed the Presiding Officer to schedule a date for the public meeting, to choose an appropriate location in California for the public meeting, and to schedule times for persons wishing to testify at the public meeting. The Presiding Officer was also given the authority and discretion to conduct the public meeting and to prescribe all procedures incidental thereto to ensure that the public meeting proceeds in a fair and orderly manner.

Public Meeting Date and Scheduling

After considering these requests, the Presiding Officer has determined that the public meeting on the CRA issues raised in the TKBTC Application will be held on March 21, 1991, at the Robert Pitts Westminster Neighborhood Center, 1827 E. 103rd Street, Los Angeles, California, 90002, beginning at 9:00 a.m.

Attached to this notice is an agenda scheduling persons and groups who have indicated that they wish to give testimony. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if they so request to the Presiding Officer no later than March 1, 1991.

All persons testifying and persons not testifying at the public meeting may file written submissions with the Board through April 8, 1991. Persons not listed in the attached agenda may be permitted to give testimony at the public meeting in the discretion of the Presiding Officer if time permits at the conclusion of the schedule of witnesses.

Purpose and Procedures

The purpose of the public meeting is to receive additional information regarding the record of performance of MMB under the CRA. The CRA requires the appropriate federal financial supervisory agency to "assess [an] institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of [the] institution." 12 U.S.C. 2903. The Board, as a federal financial supervisory agency, is required to take this record into account in its evaluation of an application under section 3 of the BHC Act.

In this regard, the Agency CRA Statement provides guidance regarding the types of policies and procedures that the federal financial supervisory agencies believe that financial institutions should have in place in order to fulfill their responsibilities under the CRA. In addition, the Agency CRA Statement provides guidance regarding the procedures that these agencies will use during the application process to review an institution's CRA compliance and performance. The Agency CRA Statement also suggests that decisions by agencies to allow financial institutions to expand will be made pursuant to an analysis of that institution's overall CRA performance, and will be based on the actual record of performance of the institution. In considering the TKBTC Application, the Board will take into account the information developed in this public meeting, the examinations of MMB's record by the Federal Deposit Insurance Corporation, MMB's primary supervisor, and the Board's own analysis of the record.

The Public Meeting Order specified that the public meeting is to be convened under the Board's policy statement regarding informal meetings in § 262.25(d) of the Board's Rules. This policy statement provides that the purpose of a public meeting is to elicit information, to clarify factual issues related to an application, and to provide testimony. 12 CFR 262.25(d). In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to this public meeting. In conducting the public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. Individuals or groups may be represented by counsel. The public meeting will be transcribed and information regarding procedures for obtaining a copy of the transcript will be announced at the public meeting. Persons desiring a transcript may also write to the Presiding Officer regarding its cost and availability.

Testimony at the public meeting will be presented to a panel consisting of the Presiding Officer, Griffith L. Garwood, Director of the Division of Consumer and Community Affairs, Federal Reserve Board; Shawn McNulty, Program Manager, Compliance, Division of Consumer and Community Affairs, Federal Reserve Board; Robert deV. Frierson, Legal Division, Federal Reserve Board; and W. Gordon Smith, Vice President, Federal Reserve Bank of San Francisco. These panel members may question witnesses, but no cross examination of witnesses will be permitted.

Questions may be submitted in advance to the Presiding Officer for consideration by the panel members. These questions will be forwarded to the participant possessing the requested information. Participants receiving these questions may supply the requested information to the Presiding Officer to the extent relevant to the public meeting. Any information supplied before the meeting will be available to any person upon request.

Persons testifying at the public meeting should address, to the extent possible, the following issues:

(i) the activities conducted by MMB to ascertain the credit needs of its communities, including the extent of its efforts to communicate with members of its communities regarding the credit services being provided by MMB;

(ii) the extent of participation by MMB's board of directors in formulating policies and reviewing MMB's performance with respect to the purposes of the CRA;

(iii) the extent of MMB's marketing and special credit-related programs to make members of its communities aware of the credit services offered by MMB;

(iv) the types of credit MMB makes available to its communities, including the extent of MMB's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its communities, including analyses of data under the Home Disclosure Mortgage Act, or the purchase of any such loans originated in its communities;

(v) the extent of MMB's participation in governmentally-insured, -guaranteed, or -subsidized loan programs for housing, small businesses, or small farms;

(vi) the delineation of MMB's service areas, including low- and moderate-income areas, and analyses of MMB's geographic distribution of credit extensions, credit applications, and credit denials;

(vii) the record of MMB concerning the opening and closing of branches and providing services at branches;

(viii) the extent of MMB's participation, including investments, in local community development and redevelopment projects or programs;

(ix) an operational description of MMB's current CRA program, including personnel, and a description of training and any special skills possessed by MMB's CRA personnel and loan officers; and

(x) any evidence of prohibited discriminatory credit practices by MMB.

The Board noted in *Mitsui Bank* that MMB had undertaken a review of its CRA program to meet the credit needs of its communities and had committed to make certain revisions in that plan. MMB's progress in meeting these commitments would be a relevant consideration for participants appearing at the public meeting. Accordingly, a description of MMB's current CRA program, which may omit confidential business plans, should be submitted to the Presiding Officer by March 11, 1991. This material will be supplied to any person upon request to the Presiding Officer.

By order of the Presiding Officer, effective February 20, 1991.

Griffith L. Garwood,

Presiding Officer.

Agenda

Mitsui Public Meeting

9:00 - 9:30—Mitsui Manufacturers Bank
9:30 - 10:30—**Panel One**
The Greenlining Coalition
The New York Community Reinvestment Alliance
10:30 - 10:45—**Break**
10:45 - 11:45—**Panel Two**
Center for Community Change
Communities for Accountable Reinvestment
Consumers Union/California Reinvestment Committee
Ward Economic Development Corporation
11:45 - 11:45—**Panel Three**
Los Angeles City Council Member
Adams Avenue Business Association
City-County Reinvestment Task Force
Civic Center Barrio Housing Corporation
Normal Heights Community Development Corporation
1:00 - 2:00—**Lunch**
2:00 - 3:15—**Panel Four**
Black Employees Association (Los Angeles)
City of West Hollywood
Esperanza Community Housing Corporation
Fair Housing Congress of Southern California
Fair Housing Program (Riverside)
3:15 - 3:30—**Break**
3:30 - 4:45—**Panel Five**
S.C.L.C. of Greater Los Angeles
Coalition for Economic Survival
Concerned Citizens of South Central Los Angeles
Little Tokyo Service Center
West Hollywood Community Housing Corporation

02/20/91 - Revised

[FR Doc. 91-4561 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

BB&T Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Albemarle Savings and Loan Association, Elizabeth City, North Carolina, and thereby engage in traditional deposit taking and loan making activities of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5629 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

First-Citizens BancShares, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First-Citizens BancShares, Inc., Raleigh, North Carolina; to engage *de novo* through its subsidiary, First Federal Savings Bank, Hendersonville, North Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5630 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

Sandwich Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

The 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 indicated for that application 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.

Comments regarding this application must be received not later than April 1, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Sandwich Bancorp, Inc., Sandwich, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Sandwich Co-Operative Bank, Sandwich, Massachusetts.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5631 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet April 17–19, 1991, at the 57 Park Plaza Hotel in Boston, MA. Reservations: (617) 482–1800.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SL), Washington, DC 20401. Telephone (202) 275–1125.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: March 4, 1991.

Robert W. Houk,

Public Printer.

[FR Doc. 91–5677 Filed 3–8–91; 8:45 am]

BILLING CODE 1505-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 96–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, March 14–15, 1991, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on March 14 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 14 from 9:30 a.m. to recess and on March 15 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301–496–5708, will provide a summary of meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892, Tel. 301–496–0944, will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5711 Filed 3–8–91; 8:45 am]

BILLING CODE 4140-01-M

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Visual Impairment Due to Cataracts in the Aging Eye

A public meeting will be held on clinical practice guidelines for Visual Impairment Due to Cataracts in the Aging Eye. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material in the August 28, 1990 **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

The public meeting to address guidelines for Visual Impairment Due to Cataracts in the Aging Eye will be held on April 8, as follows:

April 8, 1991, Noon to 3 p.m.

Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on Decembeer 19, 1989, added a new Title IX to the Public Health Service Act (the Act) (42 U.S.C. 299–299c–6) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within the Agency, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act (42 U.S.C. 299b-1) directs the Forum to arrange for the development and periodic review and updating of:

Clinically relevant guidelines that may be used by physicians, educators and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act also provides for the development of initial guidelines standards, performance measures, and review criteria that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures; and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics have been selected for initial guideline development:

1. Visual Impairment due to Cataract in the Aging Eye,
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia,
3. Urinary Incontinence in the Adult,
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores,
5. Delivery of Comprehensive Care in Sickle Cell Disease,
6. Management of Acute Post-Operative Pain,
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

To meet the requirement for assuring the development of guidelines, the Forum has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include assessment of the available scientific evidence and clinical consensus and determination of the scope of the guideline.

Thus far, public meetings of panels to solicit information and comments from interested parties have been held with reespect to benign prostatic hyperplasia, depression, pain management, pressure sores, and urinary incontinence.

Arrangements for April 8 Public Meeting on Visual Impairment Due to Cataracts in the Aging Eye

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the Forum at the address set out below by March 22 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to the Forum by March 22. If more requests to make oral statements are received than can be accommodated between Noon and 3 p.m. on April 8, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Lawrence E. Williams, Acting Director,
Forum for Quality and Effectiveness in Health Care,
Agency for Health Care Policy and Research,
Parklawn Building, rm 18A46,
5600 Fishers Lane,
Rockville, MD 20857,
phone 301–443–8754,
fax 301–443–0007.

Dated: March 5, 1991.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

[FR Doc. 91–5697 Filed 3–8–91; 8:45 am]

BILLING CODE 4160-90-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9 a.m. and ends at 4:30 p.m. on Thursday, March 21, 1991, begins at 9 a.m. and ends at 4:30 p.m. on Friday, March 22, 1991.

Place: On Thursday, March 21, and Friday, March 22, from 9 a.m. to 4:30 p.m., in the Gemini Conference Room of the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Meeting is open to the public.

Contact person: Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC 20201 (202) 619–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. app. 1, sec. 10, 1976) that the Council will hold its third meeting for FY 91 on March 21 and 22, 1991, from 9 a.m. to 4:30 p.m. respectively at the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

The agenda will include: The Council's regular business meeting during the morning session on March 21 from 9 a.m. to 12 noon. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will be devoted to work sessions of the Council's Committee on Mental Health and the Elderly, and Task Force on the National Eldercare Campaign.

On Friday, March 22, 9 to 12 noon, the morning session will be devoted to reports of the two committees and discussion of future activities. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will focus on the development of meeting topics and agenda for the remainder of calendar year 1991.

Dated: March 4, 1991.

Ingrid C. Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 91–5592 Filed 3–8–91; 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Social Security Disability Program Demonstration; SSA Case Management Project

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) announces the Social Security Disability Program Case Management Project (the Project). The Project will test ways to increase opportunities for Social Security Disability Insurance (SSDI) beneficiaries and for applicants for and recipients of Supplemental Security Income (SSI) payments based on disability or blindness to receive the services they need to return to work or work for the first time. The Project (known as Project NetWork) will demonstrate a method of case management service delivery that is new to the Social Security Administration (SSA). It will focus on vocational assessment, rehabilitation, and placement into competitive employment. Certain provisions of the Social Security Act (the Act) and of the implementing regulations will be waived to conduct the Project. The Project will be conducted under the authority of section 505(a) of Public Law 96–265 (the Social Security Disability Amendments of 1980), as amended, and section 1110(b) of the Act. We are publishing this notice to comply with 20 CFR 404.1599(e) and 20 CFR 416.250(e) which provide for publication of a notice in the **Federal Register** before placing certain demonstration projects in operation.

FOR FURTHER INFORMATION CONTACT: Jack Baumel, Social Security Administration, Office of Disability, 560 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 965–9834.

SUPPLEMENTARY INFORMATION:

Background

The project will be conducted under section 505(a) of Public Law 96–265, as amended, and section 1110(b) of the Act which provide authority to waive certain provisions of the Act to carry out certain experiments and demonstration projects. Section 505(a) of Public Law 96–265, as amended by Public Law 99–272, section 12101, and by Public Law 101–239, section 10103, directs the Secretary of Health and Human Services (the Secretary) to develop and carry out experiments and demonstration projects designed to (1) encourage disabled beneficiaries to return to work and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505(a)(3) of Public Law 96–265, as amended, authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII of the Act insofar as necessary to carry out these experiments and demonstration projects. In addition, section 1110(b) of the Act authorizes the Secretary to waive any of the requirements, conditions, or limitations of title XVI of the Act to carry out experimental, pilot or demonstration projects which are likely to assist in promoting the objectives or facilitate the administration of the SSI program.

For purposes of the Project, we are waiving sections 222(a) and 1615(a) of the Act, which require that SSDI beneficiaries and disabled or blind SSI recipients be referred to State vocational rehabilitation (VR) agencies. The waiver of these provisions will permit SSA to make direct referrals of beneficiaries and recipients to private or public VR organizations other than the State VR agencies.

In addition, we are waiving sections 225(b)(1) and 1631(a)(6)(A) of the Act which permit the continuation of SSDI benefit payments and SSI payments based on disability or blindness, respectively, to certain individuals who medically recover if they are participating in an approved VR program under an appropriate State VR plan. Specifically, section 225(b) and 1631(a)(6) provide for continuation of benefit payments despite an individual's medical recovery if the individual is participating in an approved VR program under a State plan, and the Commissioner determines that continuation or completion of the program will increase the likelihood that the individual may be permanently removed from the disability rolls. The waiver of sections 225(b)(1) and 1631(a)(6)(A) will permit the application of these benefit continuation provisions for a period of up to 24 months to individuals enrolled in the Project who medically recover while participating in a rehabilitation program under the Project. This waiver will only be needed until November 1, 1991, due to a provision of the Omnibus Budget Reconciliation Act of 1990 under which SSDI and SSI beneficiaries who medically recover while participating in an approved non-State VR program are extended the same benefit continuation rights as those who medically recover while participating in a State VR program.

Section 222(c) of the Act provides a "period of trial work" of 9 months' duration which offers title II disability beneficiaries the opportunity to test their ability to work without losing benefits; the 9 months need not be consecutive. Section 222(c)(4)(A) of the Act and the implementing regulations at 20 CFR 404.1592(a) require that any month in which beneficiary renders "services" must be counted in determining his or her 9-month TWP. Under the demonstration project, for title II disability beneficiaries who are entitled to a TWP of 9 months' duration or less, the requirement in section 222(c)(4)(A) of the Act and 20 CFR 404.1592(a) will be waived for the purpose of excluding work activity and earnings resulting from an individual's employment for up to 12 months while he or she is a project participant in counting a title II disability beneficiary's TWP months.

Section 5112 of the Omnibus Budget Reconciliation Act of 1990, effective January 1, 1992, provides that a disabled beneficiary will have exhausted his or her TWP if services were performed in any 9 months within a rolling period of 60 consecutive months. Once this occurs, the TWP is closed for that period of disability. This section also repeals the preexisting provision that precluded a TWP in subsequent periods of disability.

Section 223(d)(4) of the Act requires the Secretary to prescribe by regulations criteria for determining when services performed by an individual or earnings from services demonstrate an individual's ability to engage in SGA for purposes of the disability program under title II of the Act. The criteria for determining whether an individual is engaged in SGA are set forth in 20 CFR 404.1571–404.1576. For purposes of the demonstration project, section 223(d)(4) of the Act and 20 CFR 404.1571–404.1576 will be waived insofar as necessary to exclude a title II disability beneficiary's work activity, and earnings from employment while a project participant, from consideration in determining whether the beneficiary is engaged in SGA for purposes of determining continuing entitlement to benefits based on disability under section 202 (d), (e) and (f) and section 223 of the Act and continuing entitlement to benefit payments under section 223(e) of the Act.

Lastly, work activity for disabled or blind SSI recipients who participate in the project will not occasion a continuing disability or blindness review. Therefore, it is necessary to waive section 1619(a)(2) of the Act, which requires a determination with regard to whether an individual continues to have a disabling impairment, no later than 12 months

after the first month, for which an SSI recipient qualifies for a benefit under the section 1619(a) provision. For an individual who first qualifies for section 1619(b) status after being in regular SSI benefit status (section 1611), the requirement of a determination as to whether he or she continues to be blind or disabled will also be waived. In addition, it is necessary to waive for a 12-month period the application of section 1631(j)(2) of the Act to participants in the project. Section 1631(j)(2) requires the performance of continuing disability reviews for certain individuals with significant earned income who have been or are eligible for a section 1619 status.

We are publishing this notice to comply with 20 CFR 404.1599(e) and 20 CFR 416.250(e), which provide for publication of a notice in the **Federal Register** before placing certain demonstration projects in operation.

Overall Objectives

SSA wishes to encourage its disabled or blind beneficiaries and recipients in returning to competitive employment. SSA's focus is on significantly improved integration and use of VR and other employment program resources providing for more employment opportunities; better mechanisms for identifying and referring candidates for rehabilitation and other employment services; more effective incentives for rehabilitation and employment; increased access to employment service systems and networks; and more effective and efficient employment intervention for beneficiaries.

Description of the Project

The project will last for 30 months, including a 6-month pilot phase, and will provide intensive case management to SSDI beneficiaries and/or applicants for or recipients of SSI payments based on disability or blindness who are serviced by certain SSA field offices in the Dallas-Ft. Worth metropolitan area. The Project will demonstrate a new method of service delivery that (1) creates a new field case management function to ensure access to appropriate rehabilitation and employment services; (2) actively promotes the use of work incentives through aggressive marketing and outreach activities; and (3) encourages SSA applicants and beneficiaries to receive services from all sources including other public and private providers.

Authority: Sec. 505(a) of Public Law 96–265 (the Social Security Disability Amendments of 1980), as amended by sec. 12101 of Public Law 99–272 and sec. 10103 of Public Law 101–239; and sec. 1110(b) of the Social Security Act.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance; 13.807-Supplemental Security income.

Dated: February 28, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91–5655 Filed 3–8–91; 8:45 am]

BILLING CODE 4190–29–M

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: April 24–25, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building, room 703A, 200 Independence Av., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 24 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

This is the eigtht in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public to the extent that space is available. All meetings will be announced in the **Federal Register.** If you are interested in the Project but cannot attend the meeting on April 24–25, 1991, please call the Project Staff at (301) 965–3571 so we may notify you of future meetings.

We welcome written comments that identify programs and recommend improvements concerning any SSI programmatic or procedural issue. Written comments should be submitted to the Project Staff.

A summary of the meeting will be available at no charge. The transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: March 1, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–5593 Filed 3–8–91; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3225]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Insurance of Adjustable Rate Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is part of a disclosure statement lenders must furnish to borrowers to state that the interest rate on the mortgage may change, to identify the index used and the frequency of adjustments, and to provide a hypothetical payment schedule showing increases over the first five years.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	20,000		1		.07		1,400

Total Estimated Burden Hours: 1,400.

Status: Extension.

Contact: Dorothy Kelley, HUD, (202) 708–2676; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

Proposal: Survey of New Mobile Home Placements.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The mobile home placement data is collected from dealers and is needed to monitor trends in this type of low-cost housing. HUD uses the statistics produced to formulate policy, draft legislation, and evaluate programs.

Form Number: C–MH–9A, and C–MH–9B.

Respondents: Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Questionnaire	4,000		2		0.5		4,000

Total Estimated Burden Hours: 4,000.

Status: Extension.

Contact: Connie Casey, HUD, (202) 708–1060; David Fondelier, Census, (301) 763–5731; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

Proposal: Pre-Foreclosure Sale Demonstration Program.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Defaulting mortgagors with stagnant or declining property values can qualify to sell their homes at current fair market value to third-party buyers. HUD pays the shortfall between proceed and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing cost.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Applicants	13,040		1.027		.669		8,959

Total Estimated Burden Hours: 8,959.
Status: Extension.
Contact: Joseph Bates, HUD, (202) 708–3680; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

[FR Doc. 91–5652 Filed 3–8–91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3226]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed froms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 1, 1991.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 et. seq., authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses NCBCS forms 301 and 302 to calculate and collect monitoring inspection fees for manufacturing housing units.
Form Number: NCSBCS forms 301 and 302.
Respondents: Businesses or other for-profit.
Frequency of submission: Monthly and on occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Recordkeeping	262		48		47		5,910

Total Estimated Burden Hours: 5,910.
Status: Extension.
Contact: Patricia McDuffie, HUD, (202) 708–0584; Wendy Sherwin, OMB, (202) 395–6880.

Dated: March 1, 1991.

Proposal: Request for Approval of Escrow Funds.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The form is used by the mortgagor to request release of funds from the Escrow Agreement for offsite facilities, construction changes, or construction costs not paid at final endorsement. HUD needs the information to analyze the requested amounts and to authorize approval.
Form Number: HUD–92464.
Responsents: Businesses or Other For-Profit and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information collection	12,000		1		1.5		18,000

Total Estimated Burden Hours: 18,000.
Status: Reinstatement.
Contact: Kerry J. Mulholland, (202) 708–1223; Wendy Sherwin, OMB, (202) 395–6880.

Dated March 1, 1991.

[FR Doc. 91–5654 Filed 3–8–91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3227]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paper work Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 4, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Manufactured Home Construction and Safety Act Reporting Requirements.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of lables and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form Number: None.

Respondents: Individuals or Households, State or local governments, and businesses or other for-profit.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
SAA Reports	34		12		1		408
IPIA Reports	16		12		1		192
Consumer Information Cards	240,000		1		.48		115,200
State Plans	2		1		160		320
Consumer Manuals	240,000		1		.08		19,300
Labels and Notices	240,000		1		.30		72,000
Recordkeeping	240,000		1		.16		38,400

Total Estimated Burden Hours: 245,820.

Status: Reinstatement.

Contact: Donald R. Fairman, HUD, (202) 708-0718; Wendy Sherwin, OMB, (202) 395-6880.

Dated March 4, 1991.

[FR Doc. 91-5653 Filed 3-8-91; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I-91-159]

Draft Environmental Impact Statement: East Falls, Niagara Falls, NY Redevelopment Project/ Manufacturers MegaMall

The Department of Housing and Urban Development gives notice that the City of Niagara Falls, NY has prepared a Draft Environmental Impact Statement (EIS) for the East Falls Redevelopment Project/Manufacturers MegaMall as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies, and private organizations are invited to comment on the Draft Environmental Impact Statement concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited are comments on the draft EIS and the major issues identified in the appendix.

Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective until May 1, 1991.

Dated: March 1, 1991.

Richard H. Broun,

Director, Office of Environment and Energy.

Appendix

A Draft Environmental Impact Statement has been completed and accepted for the proposed action described below. Comments on the Draft EIS are requested and will be accepted by the contact person until May 1, 1991. A public hearing on the Draft EIS will be held on March 27, 1991 at 7 p.m. at Niagara Falls, City Hall, 745 Main St., Niagara Falls, New York. The purpose of the hearing is to solicit comments from the public on the Draft EIS and particularly on the Environmental Impact Issues identified below.

Title of Action: East Falls Street Redevelopment Project/Manufacturers MegaMall.

Description of Action: This Draft Environmental Impact Statement examines the social, economic and environmental impacts on the City of Niagara Falls and its environs of a proposed amendment of the East Falls Street Redevelopment Project. This project is located in a portion of Niagara Falls generally bounded by Niagara Street, Portage Road, Buffalo Avenue and Quay Street/8th Street. Within this approximately 135 acre areas, a redevelopment effort including acquisition of 518 properties, relocation of 348 house holds and 44 business/non-residential uses and the demolition of 250 structures is proposed. Re-use of the area is the Manufacturers MegaMall and out parcel development for approximately 1,450,000 square feet of commercial retail space including the re-use of three existing buildings, a 150 room hotel and supporting amenities.

Location: City of Niagara Falls, Niagara County, New York.

Potential Environmental Impacts: The project will create additional traffic and consequent roadway congestion and associated air pollution and noise, loss of 348 units of occupied housing, increased water runoff, loss of structures of historic or architectural interest, displacement of 44 businesses, demolition of 250 primary structures with related increased noise and dust levels, and other related impacts revealed in the EIS.

Copies of the Draft EIS may be obtained from:

Contact Person: David Brooks.

Address: City Hall, 745 Main Street, Niagara Falls, NY 14302.

Phone No.: (716) 286-4460.

[FR Doc. 91-5675 Filed 3-8-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-00-4212-13; C-50854]

Realty Action—Exchange; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of public lands in Moffat County, Colorado, as preliminarily suitable for disposal out of Federal ownership by exchange.

SUMMARY: Pursuant to sections 205, 206, 209, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Managementl, Little Snake Resource Area, has identified lands administered by the Bureau of Land Management, including federal surface and federal subsurface estates, within the following-described areas as preliminarily suitable for exchange. This action is in response to a land exchange proposal developed between the Bureau of Land Management and the Visintainer Sheep Company.

Sixth Principal Meridian, Colorado

T. 9 N., R. 89 W.,
Sections 17, 18, 19, 20, 21, 28, 29, and 30
T. 8 N., R. 90 W.,
Sections 6, 7, 8, 9, 10, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, and 36
T. 8 N., R. 91 W.,
Sections 1, 2, 3, 4, 10, and 11
T. 9 N., R. 91 W.,
Sections 5, 6, 7, 8, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, and 35
T. 10 N., R. 91 W.,
Sections 28, 29, 30, 31, and 32
T. 8 N., R. 92 W.,
Section 3: Lots 5, 6, 11, and 12
T. 9 N., R. 92 W.,
Sections 11, 12, 13, 14, 22, 23, 25, 26, 27, 34, and 35
T. 8 N., R. 93 W.,
Sections 4, 5, 6, 7, and 8
T. 8 N., R. 94 W.,
Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 28, 29, 30, 31, and 32
T. 10 N., R. 94 W.,
Section 31: S½SE¼
Section 32: SW¼SW¼
T. 8 N., R. 95 W.,
Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and 32
T. 9 N., R. 95 W.,
Section 35: SE¼

The lands being considered for exchange within the above-described areas contain approximately 14,324 acres of federal surface/subsurface and 38,974 acres of federal subsurface. The publication of this notice in the **Federal Register** will segregate the federal lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and the land use decision, a Notice of Realty Action shall be published to specify the selected public lands and the offered private lands proposed for exchange.

FOR FURTHER INFORMATION: Additional information concerning the lands proposed for exchange is available for review in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625 and the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Dated: March 1, 1991.

William J. Pulford,

District Manager, Craig District.

[FR Doc. 91-5637 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-JB-M

[OR-015-4212-14: G-1-123; OR 46818]

Oregon: Realty Action; Direct Sale of Public Land in Lake County

The following land is suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value of $17,920.00. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register:**

T.26S., R.15E, W.M., Oregon
Section 29: E1/2
Containing 320.00 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

The land is being offered to Sam Dinsdale of Fort Rock, Oregon, using direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate in this case as the designated purchaser is an adjoining landowner who uses the subject

property in conjunction with his existing farm/ranch operation.

The terms, conditions and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.
2. All oil/gas and geothermal resources will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.
3. Patent will be issued subject to all valid existing rights and reservations of record.
4. The sale will be subject to:
   a. Such rights for public road purposes as Lake County, Oregon, or its successor in interest may have pursuant to right-of-way OR 41684. Act of October 21, 1976, 43 U.S.C. 1761.
   b. Such rights for electric power transmission line purposes as Midstate Electric Coop. Inc., or its successors in interest may have pursuant to rights-of-way OR 37311 and OR 43668. Act of October 21, 1976, 43 U.S.C. 171.

If the land identified in this notice is not sold to the designated purchaser within 90 days of offering the sale will automatically terminate and the land withdrawn from the market.

Detailed information concerning the sale, including the reservations, sale procedures, conditions, planning and environmental documents, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 26, 1991.

Judy E. Nelson,

District Manager.

[FR Doc. 91-5649 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-33-M

[UT-020-4212-13; U-66672]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; U-66672; Exchange of Public and Private Lands in Tooele County, Utah.

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 October 21, 1976 (43 U.S.C. 1716):

Salt Lake Meridian, Utah

Description	Acres
T. 2 S., R. 8 W	
Sec. 31: All	639.92
T. 2 S., R. 9 W	
Sec. 33: E½	320.00
Sec. 34, 35: All	1,280.00
T. 3 S., R. 8 W	
Sec. 6-7, 18-19: All	2,560.86
Sec. 30: N½	320.76
T. 3 S., R. 9 W., SLM, UT	
Sec. 1, 3: All	1,280.00
Sec. 4: E½	320.00
Sec. 9: E½	320.00
Sec. 10-15: All	2,560.00
Sec. 16: E½	320.00
Sec. 21: E½	320.00
Sec. 22-24: All	1,920.00
Sec. 25: N½	320.00
Sec. 26: N½	320.00
Sec. 27: N½	320.00
Sec. 28: NE¼	160.00

The area described contains 13,281.54 acres total in Tooele County, Utah. There are to be no lands excepted from those described above.

The legal description and acreage of the above public lands may change following the publishing of a new survey plat. However, the exterior boundary locations of the subject lands will not change.

In exchange for these lands, the United States will acquire state lands within the State of Utah of equal value.

SUPPLEMENTARY INFORMATION: Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws. The land will remain open to mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first. Following an appraisal, full equalization of value will be achieved by acreage adjustment or by a payment to the United States by the State of Utah 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. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1980 (43 U.S.C. 945).

2. Those rights for water transmission purposes granted to Skull Valley Company, its successors or assigns, serial No. U-31320, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: Jim Stobaugh, BLM Salt Lake District, Pony Express Resource Area, 2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 977-4300, for information relating to this exchange.

DATE: For a period up to and including April 25, 1991, interested parties may submit comments to the District Manager, Salt Lake District Office, Bureau of Land Management at the above address.

Dated: March 4, 1991.

Deane H. Zeller,

District Manager.

[FR Doc. 91-5627 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

National Register of Historic Places; Brandy Station Battlefield and Related Locations

ACTION: Determination of Eligibility.

On February 28, 1991, the Keeper of the National Register of Historic Places determined that the following property is eligible for listing on the National Register of Historic Places: Brandy Station Battlefield and Related Locations, located in Culpeper County, Virginia. This property is composed of three discontiguous areas centered on Kelly's Ford, Stevensburg, and an area northeast of Brandy Station.

Carol D. Shull,

Chief, Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 91-5625 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; General Motors Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 6, 1991 a proposed Consent Decree in *United States* v. *General Motors Corp.*, Civil Action No. C87-880Y, was lodged with the United

States District Court for the Northern District of Ohio. The proposed Consent Decree concerns the General Motors Corp.'s manufacturing facility located in Lordstown, Ohio. The proposed Consent Decree requires defendants General Motors Corp. to reduce its emissions of Volatile Organic Contaminants at its Lordstown facility in compliance with the Clean Air Act, 42 U.S.C. 7401, *et seq.* Furthermore, the consent decree also requires General Motors Corp. to pay the United States a civil penalty of $1,500,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Motors Corp.*, D.J. Ref. 90-5-2-1-1071.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5664 Filed 3-8-91; 8:45am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Belleville, IL

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on February 25, 1991, a proposed Consent Decree in *United States and the State of Illinois* v. *City of Belleville, Illinois* was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against defendant Belleville for violations of the Clean Water Act at its wastewater treatment plant #1 in Belleville, Illinois.

The consent decree requires Belleville to upgrade its combined sewer overflow systems, to complete implementation of its pretreatment program, and to pay a civil penalty of $130,000 for past violations of the Clean Water Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *City of Belleville, Illinois*, D.J. Ref. 90-5-1-1-3218

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois, or at the Region V office of the United States Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.86 (six cents per page reproduction cost) payable to the Treasury of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5644 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Huron Dressed Beef Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 22, 1991 a proposed consent decree in *United States* v. *Huron Dressed Beef Company*, Civil Action No. 91-4029 was lodged with the United States District Court for the District of South Dakota. The action was brought under sections 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987, 33 U.S.C. 1319(b) and (d), for unpermitted discharges of wastewater effluent from defendant's Huron, South Dakota beef processing facility.

The proposed consent decree requires the defendant to pay civil penalties in the amount of $125,000.00. In addition, the consent decree requires the defendant to undertake remedial measures at the facility to control unpermitted wastewater discharges, unless facility operations change or shut-down.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dressed Beef Company*, DOJ Ref. No. 90-5-1-1-3477.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of South Dakota, 135 Federal Building & U.S. Courthouse, 400 S. Phillips Avenue, Sioux Falls, South Dakota 57102 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5642 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act, Newaygo, MI

In accordance with Departmental policy as set forth in 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Newaygo, Michigan*, Civil Action No. 1:90-CV-1076, has been lodged with the United States District Court for the Western District of Michigan on February 22, 1991. The proposed consent decree resolves a civil action brought by the United States alleging that the City of Newaygo (City) has failed to treat adequately the discharges from its wastewater treatment plant, in violation of its National Pollutant Discharge

Elimination System (NPDES) permit and the Clean Water Act. The proposed consent decree requires the City to adhere to an enforceable schedule for achieving compliance with its NPDES permit and the Clean Water Act, and to pay a civil penalty for its past non-compliance. The State of Michigan is a party to this action pursuant to statutory requirement.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *City of Newaygo, Michigan*, DJ 90-5-1-1-3612.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, Federal Building, room 399, 110 Michigan NW., Grand Rapids, Michigan, 49503, and at the Region V office of the Environmental Protection Agency, 230 S. Dearborn, Chicago, Illinois, 60604. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5643 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Petroleum Environmental Research Forum

Notice is hereby given that, on February 7, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants of Petroleum Environmental Research Forum ("PERF") Project No. 87-05, titled "Microbiological Degradation of Petroleum Oily Sludges", have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of seven parties to the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the PERF advised that BP America, Inc.; Coastal Oil Company; Exxon Research and Engineering; Murphy Oil USA, Inc.; Phillips Petroleum; Texaco Refining and Marketing, Inc.; and Unocal Science and Technology Division have become parties to the Project.

No other changes have been made in either the membership or planned activity of the group research project.

On December 30, 1988, a notice was published in the **Federal Register**, Vol. 53, No. 251, page 53079, describing Project No. 87-05 and identifying the participants of this Project. The objective of this Project is to conduct research and development toward establishing a commercially feasible process for the microbiological degradation of petroleum oily sludges.

Information regarding this Project may be obtained from Chevron Corporation, P.O. Box 7141, San Francisco, California 94120-7141.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5645 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-45]

Ahmed M. Elmariah, M.D.; Revocation of Registration

On January 23, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed M. Elmariah, M.D. (Respondent) of 1018 Harrison Avenue, Panama City, Florida 32401, proposing to revoke his DEA certificate of Registration, AE7267392, and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of Florida.

Respondent, proceeding *pro se*, requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On July 10, 1990, the Government filed a motion for summary disposition on the ground that Respondent was no longer authorized to practice medicine in the State of Florida, and, consequently, was no longer authorized to handle controlled substances in that state. With the motion, Government counsel attached a copy of the Florida Department of Professional Regulation, Board of Medicine, final order revoking Respondent's medical license in that state. Respondent responded by requesting an extension of time in which to address the merits of the motion, stating that he was disabled. Respondent was granted a twenty-one day extension of time in which to file a response to the motion for summary disposition; however, the only documents filed by the Respondent were in the form of a Motion for Rehearing and to Alter or Amend. No documents were filed to address the issue of whether the Respondent was licensed to handle controlled substances in the State of Florida. On September 14, 1990, in her Opinion and Recommended Decision, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied, based upon his lack of state authorization to handle controlled substances. On October 30, 1990, the administrative law judge transmitted the record to the Administrator. After a careful review of the entire record in this matter, the Administrator adopts the administrative law judge's opinion and recommended decision.

The Administrator finds that on December 21, 1989, the Florida Department of Professional Regulation, Board of Medicine, revoked Respondent's license to practice medicine. Therefore, Respondent is no longer authorized to handle controlled substances in the State of Florida.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled sustances. See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein. Due to the fact that nothing in the record contradicts the Government's evidence that Respondent's Florida medical license has been revoked, the Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Florida. Without the appropriate state authority to handle controlled substances, Respondent is not currently

entitled to possess a DEA Certificate of Registration.

In cases such as this, where a Respondent is not authorized to handle controlled substances in the state in which he conducts his practice, a motion for summary disposition is properly entertained and must be granted. It is well settled that when no question of fact exists, or when the material facts are agreed, a plenary adversary administrative proceeding is not required, even though the statute prescribes a hearing. In such situations, the rationale is that Congress did not intend for the Agency to perform the meaningless task of conducting a hearing when no issues remain in dispute. See, *United States* v. *Consolidated Mines and Smelting Company, Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.*, Docket No. 77–29, 43 FR 11873 (1978).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration, AE7267392, previously issued to Ahmed M. Elmariah, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied. This order is effective April 10, 1991.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91–5596 Filed 3–8–91; 8:45 am]

BILLING CODE 4410–09–M

Lloyd L. Miller, M.D.; Revocation of Registration

On March 16, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lloyd L. Miller, M.D., P.O. Box 293, Southfield, Michigan 48037, proposing to revoke his DEA Certificate of Registration, AM2980856, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Miller's felony conviction on May 17, 1988, in the United States District Court for the Eastern District of Michigan for distribution of Percodan by prescription in violation of 21 U.S.C. 841(a)(1).

The Order to Show Cause was sent to Dr. Miller by registered mail and was returned to DEA unclaimed with a notation that Dr. Miller had moved and left no forwarding address. DEA Investigators made numerous attempts to locate Dr. Miller. The Order to Show Cause was again forwarded by registered mail, return receipt requested, to a new location, 32 Archway Cresant, Weston, Ontario, Canada. The return receipt indicates that the Order to Show Cause was received on June 13, 1990. More than thirty days have elapsed since its receipt and Dr. Miller has neither requested a hearing nor submitted a written statement on the issue raised in the Order to Show Cause. In accordance with 21 CFR 1301.54(d) and 1301.54(e), the Administrator concludes that Dr. Miller has waived his opportunity for a hearing in this matter and enters his final order based upon the information contained in the DEA investigative file.

The Administrator finds that on or about October 23, 1987, in the Eastern District of Michigan, Dr. Miller unlawfully prescribed three hundred dosage units of Percodan, a Schedule II controlled substance, to an individual for no legitimate medical reason and in violation of 21 U.S.C. 841(a)(1) and 21 CFR 1306.04(a). Dr. Miller pled guilty in the United States District Court for the Eastern District of Michigan, on February 23, 1988, to one count of distribution of Percodan by prescription in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances.

The Administrator also finds that on October 6, 1989, the Michigan Department of Licensing, Board of Medicine, revoked Dr. Miller's license to practice medicine. On February 9, 1989, the Department of Health and Human Services excluded Dr. Miller from participation in the Medicare program and any state health care program, for a period of five years. Each of these actions constitutes a separate ground for revocation of a DEA registration. 21 U.S.C. 824(a)(3) and 824(a)(5).

Based upon his felony conviction relating to controlled substances, the Administrator concludes that a lawful basis exists for the revocation of Dr. Miller's registration, and for the denial of any pending applications for renewal. 21 U.S.C. 824(a)(2). No evidence of explanation or mitigating circumstances has been offered on behalf of Dr. Miller. Therefore, the Administrator concludes that Dr. Miller's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration, AM2980856, previously issued to Lloyd L. Miller, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of Dr. Miller's registration be, and they hereby are, denied. This order is effective March 11, 1991.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91–5597 Filed 3–8–91; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–51]

Alan H. Olefsky, M.D., Plantation, FL; Hearing

Notice is hereby given that on June 7, 1990, the Drug Enforcement Administration, Department of Justice, issued to Alan H. Olefsky, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, B01163257, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on March 21, 1991, commencing at 9:30 a.m., at the U.S. District Court, 219 South Dearborn Street, Courtroom Number 1669, Chicago, Illinois.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91–5598 Filed 3–8–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly

of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before April 25, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Health and Human Services, Centers for Disease Control, Center for Infectious Diseases (N1–442–91–5). Specimen Handling and Testing Database (electronic data, input forms and printouts).
2. United States Information Agency, Bureau of Educational and Cultural Affairs (N1–306–89–10). Routine and facilitative records of the Office of Cultural Centers and Resources.
3. Department of Justice, Federal Bureau of Investigation (N1–65–91–7). Posters which do not document the primary mission of the FBI and/or are acquired from outside sources.
4. Federal Maritime Commission (N1–358–91–1). Revisions of comprehensive records schedule.
5. Tennessee Valley Authority, Medical Services (N1–142–90–13). Routine administrative and facilitative records created by the agency's Live Well employee fitness program.
6. Tennessee Valley Authority, Chief Financial Officer (N1–142–91–1). Plant journal vouchers used in posting activities to the general, plant and depreciation ledger systems.

Dated: March 1, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–5678 Filed 3–8–91; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91–25)]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Synthecon, Inc., of Friendswood, Texas, an exclusive, royalty-bearing, revocable license to practice the inventions described in U.S. Patent Application Serial No. 07/213,558, filed June 30, 1988, entitled "Bioreactor Cell Culture Vessel," which is assigned to NASA, and U.S. Patent No. 4,988,623, entitled "Rotating Bio-Reactor Cell Culture Apparatus," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on January 29, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Councel (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by May 10, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2430.

Dated: March 1, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91–5647 Filed 3–8–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 27–28, 1991 from 9 a.m.–6 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington DC 20506.

Portions of this meeting will be open to the public on March 27 from 11:15 a.m.–6 p.m. and March 28 from 9 a.m.–6 p.m. The topics will be an overview of Arts Endowment and Dance Program activities, field issues, Dance Program budget, and FY 93 guidelines.

The remaining portion of this meeting on March 27 from 9 a.m.–11:15 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for fiscal assistance under

the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or protions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433

February 28, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-5648 Filed 3-8-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-328]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-79 issued to the Tennessee Valley Authority (the licensee) for operation of Sequoyah Nuclear Plant, Unit 2, which is located in Hamilton County, Tennessee.

The proposed amendment, in the licensee's letter dated February 14, 1991, would modify section 3/4.5.1.1, Cold Leg Injection Accumulators, of the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs). The change would reduce the required boron concentration for one of the four cold leg injection accumulators from between 2,400 and 2,700 parts per million (ppm) boron to between 1,900 and 2,700 ppm boron. This would reduce the frequency at which the Unit 2 cold leg accumulator No. 3 is being removed from service for periodic draindowns and refills. This periodic evolution has been necessary as a result of a continuing small reactor coolant inleakage into the accumulator on the order of 0.1 to 0.2 gallon per minute. The licensee requested an expedited review so that this relief may be implemented as soon as possible. The change would be only for the current Unit 2 Cycle 5 operation. Unit 2 is scheduled to shut down for the Unit 2 Cycle 5 refueling outage in early October 1991.

Before 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.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission's proposed determination is based on the licensee's evaluation of the proposed amendment against the criteria in 10 CFR 50.92(c). The licensee concluded in its application that the proposed amendment did not represent a significant hazards consideration because the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The change of boron concentration requirements for a cold leg injection accumulator (CLA) cannot increase the probability of an accident because the CLA only provides accident mitigation functions and the boron concentration of a CLA cannot initiate any design basis accident. The consequences of an accident will not be increased as demonstrated in Westinghouse Electric Corporation's Safety Evaluation Check List (SECL) 90-631. This SECL evaluates all affected design basis accidents and varifies the acceptability of having one CLA at 1,900 parts per million (ppm) boron concentration with respect to the safety analysis. Additionally, if no changes were implemented, the CLA availability for accident mitigation would be reduced and thereby increase the possibility that the consequences of an accident could be increased. Therefore, this change will reduce the possibility that the consequences of an accident will be increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed. CALA boron concentration changes cannot create any accident. The CLA boron concentration requirements in the TS are for accident mitigation purposes only and therefore would not contribute to the creation of any accident previously analyzed or not.

3. Involve a significant reduction in a margin of safety. The decrease from 2,400- to 1,900-ppm boron concentration for one CLA does not impact any margin of safety. This boron reduction is acceptable because extra conservatism exists in the present CLA boron concentration TS requirements. The changes to increase the minimum CLA boron concentration to 2,400 ppm employed the strategy to select the highest possible boron concentration to bound SQN Cycle 5 design changes and accommodate future fuel reloads. This provides CLA boron concentrations well above that required for the margin of safety. This decrease in CLA boron concentration reduces the available margin of the 180-ppm, mixed mean sump boron concentration to maintain the core subcritical by approximately 5 ppm. Therefore, additional conservation exists in CLA boron concentration that will allow the reduction to 1,900-ppm boron without affecting the required margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's determination. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may be also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 10, 1991, 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 written petition for leave to intervene. Request 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. 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, designated by the Commission or by the Chairman of the 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 on an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity 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 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the content at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until he expiration of the 30-day notice period. However, should circumstances change during the notice period such that future to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide an opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 30555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Frederick J. Hebdon, Director, Project Directorate II-4: (petitioners name and telephone number), (date petition was mailed), (plant name), and (publication data 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 the General Counsel, Tennessee Valley Authority, 400 West Summit Drive, E11

B33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings 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 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).

For further details with respect to this action, see the application for amendment dated February 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 50th day of March 1991.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5676 Filed 3-8-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance for SF3104 and SF3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accrodance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the clearance of an information collection. SF3104, Application for Death Benefits, provides several types of death benefits payable upon the death of Federal employees, former employees and annuitants covered by the Federal Empolyee's Retirement System (FERS), SF3104A (attached to SF3104), request information from the survivor which is used by OPM to determine entitlement to a survivor annuity supplement (supplementary annuity). SF3104B is used by the deceased empolyee's former employing agency in death-in Service cases, to supply the survivor's application for death benefits (SF3104).

The number of responsdents for SF3104 is 2,442 and we estimate it takes 60 minutes to fill out the form. The annual burden is 2,442 hours. The number of respondents for SF3104B is 1,484 and we estimate it takes 60 minutes to fill out the form. The annual burden is 1,484 hours. The total burden is 3,926.

For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be recieved on or before April 10, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., room 6410, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ronald Rabbu (202) 606-0623.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-5696 Filed 3-8-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

International Gam Technology
Common Stock, $.005 Par Value (File No. 7-6600)

Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6601)

Luxottica Group, SPA
American Depository Receipt (File No. 7-6602)

Oregon Steel Mills, Inc.
Common Stock, $.01 Par Value (File No. 7-6603)

Unifi, Inc.
Common Stock, $.10 Par Value (File No. 7-6604)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5601 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

American Exploration Company
Common Stock, $.05 Par Value (File No. 7-6605)

Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6606)

Martech USA, Inc.
Common Stock, $.01 Par Value (File No. 7-6607)

Parker & Parsley Petroleum Company
Common Stock, $.01 Par Value (File No. 7-6608)

Visx, Incorporated
Common Stock, $.01 Par Value (File No. 7-6609)

Western Energy Management, Inc.
Common Stock, $.01 Par Value (File No. 7-6610)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments

concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5603 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6611)
Martech USA, Inc.
Common Stock, $.01 Par Value (File No. 7-6612)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5602 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28937; File No. SR-PHLX-90-04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Foreign Currency Option Quote Spread Parameters

On July 31, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend Exchange rule 1014(c)(ii) and Floor Procedure Advice F-6 in order to revise the quote spread parameters in effect during all trading segments for option contracts on the British pound, German mark, Swiss franc, Australian dollar, European Currency Unit ("ECU"), and Japanese yen.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 28383 (August 28, 1990), 55 FR 36375. No comments were received on the proposed rule change.[3]

Under the proposal, Exchange rule 1014(c)(ii) will be amended to narrow the Exchange's maximum quote spread parameters for options on the British pound by (i) Reducing, from $.0020 to $.0015, the maximum difference between the bid and the offer for option contracts where the bid is $.0250 or less; (ii) reducing, from $.0040 to $.0025, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0250 but does not exceed $.0750; and (iii) reducing, from $.0060 to .0035, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0750. In addition to narrowing the quote spread parameters, the proposal revises the contract bid price in each of the three categories, so that the first category will include option contracts for which the bid is $.0250 or less, rather than $.0200 or less; the second category will include option contracts where the bid is greater than $.0250, rather than $.0200, but does not exceed $.0750, rather than $.0800; and the third category will include contracts where the bid exceeds $.0750 rather than $.0800.

For option contracts on the German mark and the Swiss franc, Exchange rule 1014(c)(ii) is amended to narrow the Exchange's maximum quote spread parameters by (i) Reducing, from $.0008 to $.0006, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0040 but does not exceed $.0160; and (ii) reducing, from $.0012 to $.0008, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0160.

For option contracts on the Australian dollar and the ECU, Exchange rule 1014(c)(ii), as amended, will broaden the Echange's maximum quote spread parameters by (i) Increasing, from $.0004 to $.0005 the maximum difference between the bid and the offer for option contracts where the bid is $.0050 or less; (ii) increasing, from $.0008 to $.0010 the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0050 but does not exceed $.0200; and (iii) increasing, from $.0012 to $.0015 the difference between the bid and the offer for option contracts where the bid exceeds $.0200. In addition to broadening the quote spread parameters, the proposal will change the contract bid price in each of the three categories so that the first category will include option contracts where the bid is $.0050 or less, rather than $.0040 or less; the second category will include option contracts where the bid exceeds $.0050, rather than $.0040, but does not exceed $.0200, rather than $.0160; and the third category will include option contracts where the bid exceeds $.0200 rather than $.0160. The Exchange believes that it is appropriate to widen its quote spread parameters for ECU and Australian dollar options so that they correspond to the levels in the over-the-counter ("OTC") market for options. In addition, the PHLX notes that trading volume on the Exchange in Australian dollar and ECU options has been significantly less than the volume in more actively traded currencies, including the German mark and the Swiss franc.

For option contracts on the French franc, Exchange rule 1014(c)(ii), as amended, will narrow the Exchange's maximum quote spread parameters by (i) reducing, from $.0002 to $.00015, the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1990).

[3] By letter dated October 3, 1990, the Exchange requested that the Commission delay consideration of its proposal pending Commission action on another PHLX proposed rule change, File No. SR-PHLX-90-39, dealing with priority and parity rules governing foreign currency options. See letter from Philip Lin, Law Clerk, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated October 3, 1990.

maximum difference between the bid and the offer for option contracts where the bid is $.00250 or less; (ii) reducing, from $.00040 to $.00025, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.00250 but does not exceed $.00750; and (iii) reducing, from $.00060 to $.00035 the maximum difference between the bid and the offer for option contracts where the bid exceeds $.00750. In addition to narrowing the quote spread parameters, the proposal will change the contract bid price in each of the three categories, so that the first category will include option contracts where the bid is $.00250 or less, rather than $.0020 or less; the second category will include option contracts where the bid exceeds $.00250, instead of $.0020, but does not exceed $.00750, rather than $.0080; and the third category will include option contracts where the bid exceeds $.00750 rather than $.0080.

For option contracts on the Japanese yen, Exchange rule 1014(c)(ii), as amended, will narrow the Exchange's quote spread parameters by (i) Reducing, from $.000008 to $.000006, the maximum difference between the bid and the offer for option contracts where the bid is greater than $.000040 but does not exceed $.000160; and (ii) reducing, from $.000012 to $.000008, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.000160.

The proposal makes corresponding changes in option quote parameters listed in PHLX Floor Procedure Advice F-6.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] Specifically, the Commission finds that the narrowing of the quote spread parameters for options on the British pound, German mark, Swiss franc, French franc and Japanese yen is consistent with section 6(b)(5) in that it will promote just and equitable principles of trade and the public interest by helping the PHLX to provide a more efficient and competitive market for foreign currency options. The Commission believes that narrowing the maximum allowable bid-ask differential will result in improved price continuity and tighter, more liquid markets.

In addition, the Commission believes that, due to the unique characteristics of the foreign currency options market, it is acceptable for the Exchange to widen its quote spread parameters for ECU and Australian dollar options to mirror quote spreads typically experienced in the OTC market for ECU and Australian dollar options. The foreign currency options market in the United States is overwhelmingly institutional and is spread among three locations: the PHLX, the futures exchanges, and the OTC market. Of the three, the OTC market is perhaps the largest. Unlike the market for options on stocks, for foreign currency options the OTC market provides a constant competitive market that, in some respects, is the primary market.

Currently, in comparison to the OTC foreign currency options market, which imposes no market making obligations, the PHLX subjects its foreign currency options market makers to stricter and more burdensome requirements for, among other things, quote spread parameters. The imposition on PHLX market makers of qoute spread parameters narrower than those typically experienced in the OTC market may, in turn, constrain market making support and participation on the Exchange because PHLX market makers are placed at a competitive disadvantage vis-a-vis OTC market participants. With the latitude to set quote spread that match the OTC market, PHLX market markers may be more apt to compete with the OTC market and trade in these options, thereby enhancing market depth and liquidity.

In sum, the benefits to investors to be derived through a more viable Exchange market in these options outweighs the costs to investors imposed by wider maximum quote spread parameters.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PHLX-90-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5604 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1990).

SMALL BUSINESS ADMINISTRATION

Small Business Incubators; Solicitation of Proposals

AGENCY: Small Business Administration.

ACTION: Notice of solicitation of proposals.

SUMMARY: Section 308 of Public Law 101-574, the Small Business Administration Reauthorization and Amendment Act of 1990, enacted November 15, 1990, states "the sense of Congress that small business incubators can play a constructive role in rural development". The law requests that the National Association of Development Companies, Certified Development Companies (CDCs) authorized under title V of the Small Business Investment Act of 1958, 15 U.S.C. 661 *et. seq.*, and other interested parties develop proposals under which CDCs "located in rural areas could establish, operate or otherwise cooperate with small business incubators for startup small business". Proposals should include recommendations regarding needed Federal assistance, both monetary and legislative.

DATES: Proposals must be submitted by May 15, 1991.

ADDRESSES: One copy of the proposal should be mailed to each of the following:

The U.S. Small Business Administration, 409 3rd St. SW., 8th floor, Washington, DC 20416, Attn: Office of Economic Development.

United States Senate, Senate Committee on Small Business, Washington, DC 20510.

United States House of Representatives, House Committee on Small Business, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Economic Development, (202) 205-6485.

SUPPLEMENTARY INFORMATION: This is a solicitation for ideas and comments only. No funds are currently appropriated, nor is there any guarantee that they will be available at any future date. Responses to this solicitation will however provide a foundation for evaluating and planning future support(s) which may be offered for rural small business incubators. Proposals should be kept brief and to the point.

Respondents should describe their experience in operating an incubator or provide analysis based on research. Comments are solicited regarding local perceptions—pro or con—about the need for, and desirability of incubators, including both those with fixed facilities or those without walls.

Comments are also solicited with respect to types and levels of financial assistance required or anticipated to be

required for (a) incubator facility fixed assets, (b) incubator facility operations and administrative support for sponsoring organizations, and (c) equity, quasi-equity or loan funds to assist incubator tenants. Comments should also be provided with respect to existing or probable cooperative relationships with other local economic development entities including Small Business Development Centers and state agencies.

The above is provided as an example of information desired, but should not limit the creativity of respondents.

Authority: Section 308 of Pub. L. 100-574.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91-5663 Filed 3-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville will hold a public meeting from 9:30 a.m. to 3 p.m. on Thursday, March 28, 1991, at the University of Louisville, Shelby Campus, Founders Union Building, room 211, Shelbyville Road, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William Federhofer, District Director, U.S. Small Business Administration, 600 Dr. Martin Luther King, Jr. Place, room 188, Louisville, Kentucky 40202-2254, telephone (502) 582-5971.

Dated: March 5, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-5662 Filed 3-8-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1356]

Bureau of Diplomatic Security; Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: The Comprehensive Anti-Apartheid Act of 1986 (CAAA) (Pub. L. 99-440), provides that no U.S. Government department or agency may intercede with any foreign government or foreign national regarding the export marketing activities of any U.S. national employing more than 25 persons in South Africa that is not implementing the fair labor principles specified in the CAAA. The CAAA and regulations issued by the Secretary of State (22 CFR parts 60-65, § 62.1) require U.S. nationals meeting certain criteria to register with the Department of State. The form being reviewed enables affected U.S. nationals to comply with the law. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Bureau of African Affairs.
Title of information collection—South Africa and Fair Labor Standards Application for Registration.
Frequency—On occasion.
Form No.—DSP-95.
Respondents—U.S. individuals and firms operating in South Africa.
Estimated number of respondents—10.
Average hours per response—1 hour.
Total estimated burden hours—15.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: February 27, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-5646 Filed 3-8-91; 8:45 am]

BILLING CODE 4710-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Reno Cannon International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Washoe County Airport Authority for Reno Cannon International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone: 415/876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Reno Cannon International Airport are in compliance with applicable requirements of part 150, effective February 22, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Washoe County Airport Authority. The specific maps under consideration are the 1989 and 1994 Noise Exposure Maps located after page I-8 in the submission. The FAA has determined that these maps for Reno Cannon International Airport are in compliance with applicable requirements. This determination is effective on February 22, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not

constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303.

Mr. Robert C. White, Executive Director, Airport Authority of Washoe County, Box 12490, Reno, Nevada 89510.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on February 22, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 91-5651 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must indentify the petition docket number involved and must be received on or before March 31, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10) Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 26, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23465.

Petitioner: Everts Air Fuel, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a) [old § 91.31(a)].

Description of Relief Sought: To extend Exemption No. 4296, as amended, which allows the operation of Douglas DC-6 cargo-only aircraft, N151 and N251CE, at a 5 percent increase of zero fuel weight and landing weight.

Docket No.: 26443.

Petitioner: Alaska Air Carriers Association.

Sections of the FAR Affected: 14 CFR 135.129.

Description of Relief Sought: To allow petitioner's members to operate aircraft having 19 seats or fewer without meeting the requirements of the exit row seating regulation.

Docket No.: 26462.

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

Sections of the FAR Affected: 14 CFR 91.13.

Description of Relief Sought: To allow petitioner to operate in a manner necessary to conduct law enforcement stops of suspect aircraft.

Docket No.: 26475.

Petitioner: Flets Field Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought: To allow trained crewmembers and line service personnel to remove and reinstall cabin seats and stretchers in petitioner's Cessna 441 Conquest airplane when certificated mechanics are not available.

Docket No.: 26478.

Petitioner: Department of the Air Force, Director of Operations of the Headquarters Tactical Air Command.

Sections of the FAR Affected: 14 CFR 91.209.

Description of Relief Sought: To allow petitioner to conduct counternarcotics training without external lighting in certain Air Traffic Control Assigned Airspace.

Dispositions of Petitions

Docket No.: 25830.

Petitioner: Eastern Metro Express.

Sections of the FAR Affected: 14 CFR 135.225.

Description of Relief Sought/Disposition: To extend Exemption No. 5054, which allows petitioner's pilots to take off under instrument flight rules without complying with applicable instrument procedures and minimums at Myrtle Beach Air Force Base.

Grant, February 14, 1991, Exemption No. 5054A

Docket No.: 26359.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

Description of Relief Sought/ Disposition: To allow petitioner to comply with the alternate airport and fuel requirements contained in the Federal Aviation Regulations for domestic air carriers.

Partial Grant, December 27, 1990, Exemption No. 5264

[FR Doc. 91-5650 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 5, 1991.

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, Public Law 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1051.

Form Number: None.

Type of Review: Extension.

Title: Definition of Functional Currency.

Description: The regulation, in providing rules for determining the functional currency of a foreign entity, permits an election to use the United States dollar as functional currency in situations where the entity is operating in a hyperinflationary country. This election is permitted by regulatory authority provided in section 987(b)(3) and is needed to reflect accurately the amount of income earned by these entities. Without the election, much of the income would represent inflationary amounts.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Response: 1 hour, 15 minutes.

Frequency of Response: One time election.

Estimated Total Reporting Burden: 1,025 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 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-5600 Filed 3-8-91; 8:45 am]

BILLING CODE 4830-01-M

[No. 27-05]

Organization and Functions of the Office of the Assistant Secretary (Economic Policy)

Date: March 4, 1991.

1. Purpose. This directive describes the organization and functions of the Office of the Assistant Secretary (Economic Policy).

2. The Assistant Secretary (Economic Policy) reports through the Under Secretary for Finance and Deputy Secretary to the Secretary. The incumbent is responsible for the following functions.

a. Develops and maintains an ecomomic research capability that is consistent with the Department's policy and responsibilities.

b. Provides the Secretary, the Deputy Secretary, and the Under Secretary for Finance with substantive advice and recommendations on the economic policy actions that fall within their spheres of responsbility or interest.

c. Conducts research in those areas of economic activity necessary to provide a continuous appraisal of the current state and future course of the United States economy.

d. Analyzes and evaluates, in-depth, the economic consequences of developments, and of alternative policy and legislative proposals, in a wide range of economic and national security areas.

e. Carries out the Department's statutory and traditional responsibilities for the collection, maintenance and analysis of information from the Department's international financial reporting systems, including the Department's functions under 31 U.S.C. 5315 and the International Investment and Trade in Services Survey Act, Public Law 94-472 (1976), as amended.

f. Provides the Department with the capability to carry out sophisticated quantitative analysis of international financial information.

3. Organization Structure. The Assistant Secretary (Economic Policy) supervises the Deputy Assistant Secretary (Policy Analysis), the Deputy Assistant Secretary (Policy Coordination), the Director, Office of Data Management, and the Director, Office of Foreign Investment Studies. The Office of Policy Analysis reports to the Deputy Assistant Secretary (Policy Analysis). The Office of Financial Analysis and the Office of Economic Analysis report to the Deputy Assistant Secretary (Policy Coordination).

4. The Deputy Assistant Secretary (Policy Analysis) is responsible for the following functions.

a. Acts for the Assistant Secretary in that official's absence, as assigned.

b. Plans, monitors, and evaluates research efforts, including establishing and achieving time and quality targets.

c. Advises on the policy requirements for research, and on the policy implications of research results.

d. Directs and closely supervises research efforts conducted by the Office of Policy Analysis.

(1) The Office of Policy Analysis is responsible for the following functions.

(a) Conducts in-depth economic evaluations and analyses of developments and issues that affect specific areas of the United States economy, i.e., labor, prices, social security, fiscal policy, regulatory reform, and energy. The results are used for:

1. Formulating Treasury positions on legislative or administrative proposals;

2. Continually appraising current developments in each area;

3. Providing sector inputs to macroeconomic forecasts; and

4. Providing research and policy analysis relating to the economic and budgetary conditions of regions, States and localities, including evaluation of trends in the State and local sector of the economy, with particular reference to the impacts of Federal grant, tax and budget policies and other Federalism issues.

(b) Analyzes the effects on the U.S. economy (output, prices, Federal budget, and financial markets) of energy development and programs.

(c) Monitors and assesses the economic effects of changing energy technologies.

(d) Evalutes the effects of Government programs in developing new technologies, or in modifying the use of older technologies.

(e) Analyzes and evaluates national security issues, as assigned.

5. The Deputy Assistant Secretary (Policy Coordination) is responsible for the following functions.

a. Acts for the Assistant Secretary in that official's absence as assigned.

b. Plans, monitors, and evaluates research efforts, including establishing and achieving time and quality targets.

c. Advises on the policy requirements for research, and on the policy implications of research results.

d. Directs and closely supervises research efforts conducted by the Office of Financial Analysis and the Office of Economic Analysis. These two subordinate offices have the following specific functions.

(1) The Office of Financial Analysis is responsible for the following functions.

(a) Maintains a continuously updated appraisal of the current state of the economy and the significance of monetary and financial developments.

(b) Projects important macroeconomic variables such as Gross National Product, the unemployment rate and the inflation rate in order to provide staff support for the Treasury in its interagency economic forecasting activities.

(c) Monitors Federal Reserve policy and reports on its significance for the economy.

(d) Provides a continuing flow of economic and financial inflation designed to keep the Secretary and other senior policy officials fully informed on current developments and adapts the form of presentation, as appropriate to meet the needs of the Secretary.

(e) Prepares information memoranda on the economy for the Secretary, in advance of his regular weekly meetings with the Chairman of the Federal Reserve System and for other occasions, such as meetings of the Quadriad, which is comprised of the Department of the Treasury, the Federal Reserve Board, the Office of Management and Budget, and the Council of Economic Advisers;

(f) Provides economic briefing information on the U.S. domestic economy to support the activities of senior Treasury officials in their appearances at domestic and international meetings and provides staff support for congressional testimony by the Assistant Secretary (Economic Policy) and others, and represents the Treasury at interagency meetings concerned with the domestic economy.

(g) Conducts special intensive studies of selected features of economic and financial developments upon request or upon the initiative of the office.

(2) The Office of Economic Analysis is responsible for the following functions.

(a) Undertakes research studies, either self-initiated or at the request of the Assistant Secretary or the Deputy Assistant Secretary; such studies have a substantial policy-relevant orientation, and take the form of research papers, action or briefing memoranda.

(b) Serves on Treasury or interagency task forces at the request of the Assistant Secretary on issues related to the office's area of responsibility.

(c) Applies econometric and statistical techniques to the analysis of economic policy issues; the analysis addresses a wide range of topics and utilizes the developed expertise of the office in both microeconomic and macroeconomic analysis; projects can be either short-term or long-term with the major unifying characteristics being the econometric content and policy relevance.

(d) Provides independent assessment of major developments and issues in monetary policy for the Assistant Secretary, taking into account economic and financial conditions domestically and abroad.

(e) Maintains professional contact with other sectors of Government (e.g., Council of Economic Advisers, Congress, Federal Reserve Board and regional Federal Reserve Banks), universities and private-sector institutions.

(f) Surveys and appraises professional literature, as a means of monitoring current developments, maintaining knowledge of recent research and ideas, and anticipating new issues which will be of concern and importance to the Assistant Secretary or Deputy Assistant Secretary.

6. THE OFFICE OF DATA MANAGMENT is responsible for the following functions.

a. Collects and analyzes data, and prepares reports on foreign currency transactions required by statute or otherwise needed by the Department.

b. Manages the Department's regular data collection program for portfolio investment. Complies, analyzes and prepares for publication statistics on U.S. portfolio capital flows and other information related to international investment as required by law or traditional practice.

c. Analyzes and reports on U.S. portfolio investment abroad.

d. Collects, analyzes and prepares reports on statistics of foreign indebtedness to and contingent liabilities of the U.S. Government.

e. Prepares reports and submissions, based on reporting systems maintained by the office and related information, to other U.S. Government agencies and international organizations for the purposes of supporting national and international financial databases.

f. Designs and implements, in light of Department and Government requirements, computerized reporting and information systems on international financial data, and represents the Department in discussions of the design of international financial data bases.

g. Conducts such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment as determined by the Assistant Secretary. Provides capability for sophisticated computer based analysis of data systems.

7. The Office of Foreign Investment Studies is responsible for the following functions.

a. Conducts comprehensive benchmark surveys of foreign portfolio investment in the United States at least once every five years, which function includes:

(1) Determining the magitude and aggregate value of foreign portfolio investment in the United States;

(2) Determining the form of investments, types of investors, nationality of investors, and diversification of holdings, by economic sector;

(3) Submitting reports to the Congress, detailing and analyzing the findings of the surveys; and

(4) Providing reports and analyses based on the survey data to other Government agencies.

b. Conducts other surveys and studies related to foreign portfolio investment in the United States and provides reports and analyses to the Congress and other U.S. Government agencies, as appropriate.

8. The Assistant Secretary (Economic Policy) is authorized to reassign funcitons, programs and associated positions and resources among the subordinate offices as deemed necessary, consistent with existing administrative rules, regulations and procedures.

9. Cancellation. Treasury Directive 27-05, "Organization and Functions of the Office of the Assistant Secretary (Economic Policy)," dated November 16, 1989, is superseded.

10. Office of Primary Interest. Office of the Assistant Secretary (Economic Policy).

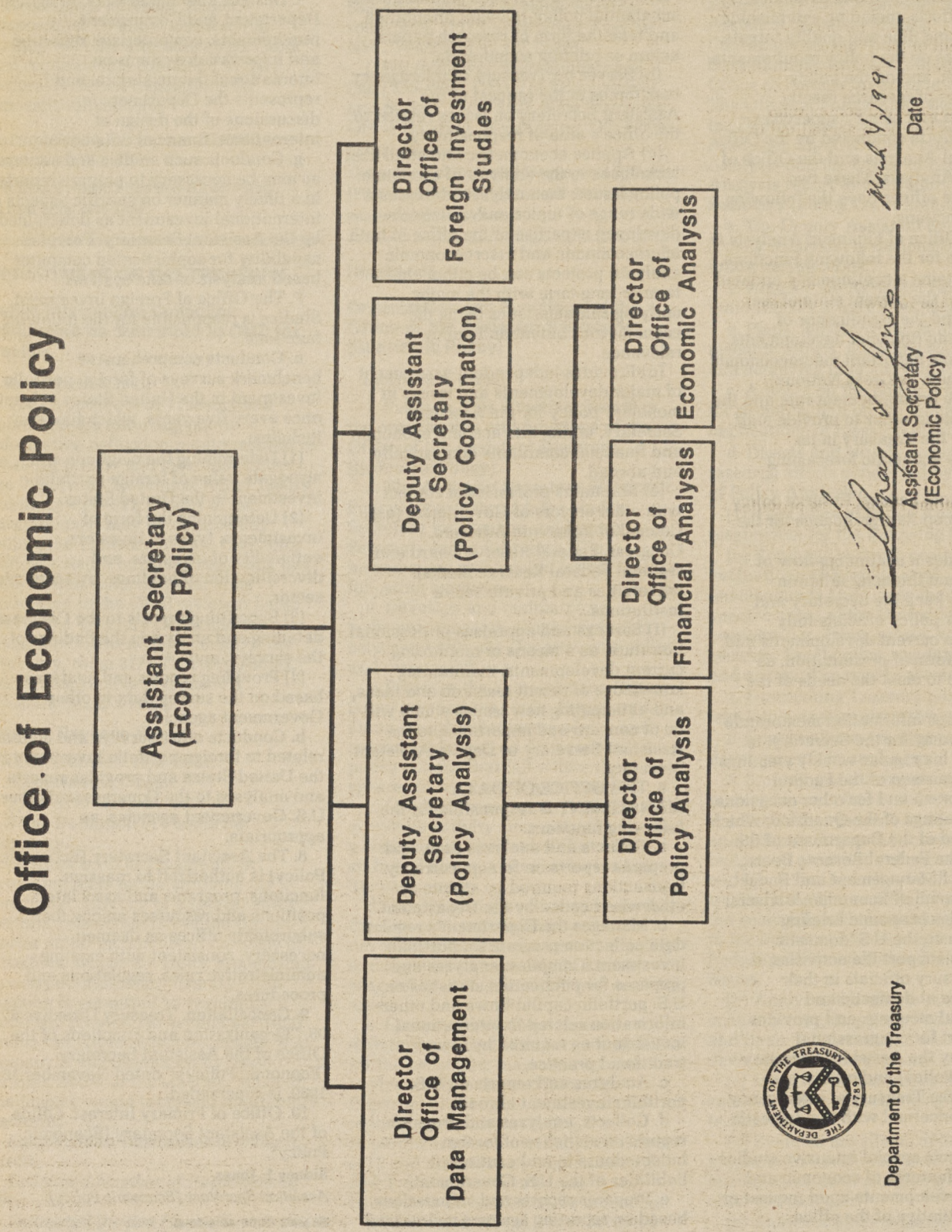
Sidney L. Jones,

Assistant Secretary (Economic Policy).

BILLING CODE 4810-25-M

TD 27-05
03-04-91

ATTACHMENT



[FR Doc. 91-5595 Filed 3-8-91; 8:45 am]

BILLING CODE 4810-25-C

U.S. Customs Service

Extension of Analyses for which Caleb Brett, U.S.A. Inc., A Customs Accredited Commercial Laboratory, Has Been Accredited To Perform

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

ACTION: Notice of additional analyses for which Caleb Brett, U.S.A., Inc., a Customs accredited commercial laboratory, has been accredited to perform.

SUMMARY: Caleb Brett, U.S.A., Inc., of Houston, Texas a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its commercial laboratory accreditation to include the following analyses: Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, percent by weight sulfur of petroleum products, percent by weight lead in gasoline, xylene isomer content of mixed xylenes and percent composition by weight of benzene, toluene and xylene.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses for certain products from Customs accredited commercial laboratories. Caleb Brett, U.S.A., Inc., which holds Customs accreditation in certain laboratory analyses, has applied to Customs to extend its accreditation to the performance of the additional analyses named above in its laboratories. Review of Caleb Brett, U.S.A., Inc., qualifications shows that the extension is warranted and, accordingly, has been granted. The extension, however, is limited to the analytical capabilities of each site.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229 (202–566–2446).

Dated: March 6, 1991.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–5669 Filed 3–8–91; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

SUBJECT: U.S. Advisory Commission on Public Diplomacy Meeting.

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on March 13, 1991 in room 800, 301 4th Street, SW., Washington, DC from 11 a.m. to 12:15 p.m.

There will be a panel discussion with USIA's Europe Public Affairs Officers in Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Yugoslavia, Bulgaria, Poland, and Mr. Csaba Chikes, Deputy Director, USSR, Eastern & Southern Europe.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 4, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91–5641 Filed 3–8–91; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1991

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Voluntary Standards/International Affairs Activities.

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the first quarter of fiscal year 1991.

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.

Dated: March 7, 1991.

Sadye E. Dunn,

Secretary.

[FR Doc. 91-5815 Filed 3-7-91; 2:19 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 6, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: March 13, 1991, 2:00 p.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 933rd Meeting—March 3, 1991, Regular Meeting (2:00 p.m.)

CAH-1.
Project No. 4720-019, City of Farmington, New Mexico

CAH-2.
Project No. 2801-012, Mary C. Heather and Joseph A. Guerrieri

CAH-3.
Project No. 6879-001, Southeastern Hydro-Power, Inc.

CAH-4.
Project No. 7941-003, Enviro Hydro, Inc.

CAH-5.
Omitted

CAH-6.
Docket No. UL89-11-001, Metropolitan District Commission of Boston

Consent Agenda—Electric

CAE-1.
Docket Nos. ER91-221-000 and ER90-54-001, People's Electric Cooperative

CAE-2.
Docket No. ER91-215-000, Commonwealth Atlantic Limited Partnership

CAE-3.
Docket No. ER91-26-000, PacifiCorp Electric Operations and Arizona Public Service Company

CAE-4.
Docket No. QF86-917-001, American Ref-Fuel Company of Bergen County

CAE-5.
Docket No. QF91-6-001, Georgetown Cogeneration, L.P.

CAE-6.
Docket Nos. QF88-202-003 and QF88-203-003, GEO East Mesa Limited Partnership (GEM 1 Facility, GEM 2 Facility)

CAE-7.
Docket No. ER90-482-001, West Texas Utilities Company

CAE-8.
Docket Nos. ER82-487-007 and ER83-301-001, Southern California Edison Company

CAE-9.
Docket No. ES91-4-001, Consumers Power Company

CAE-10.
Docket No. EL90-48-000, City of New Orleans Louisiana v. Entergy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power and Light Company, Mississippi Power and Light Company and System Energy Resources, Inc.

CAE-11.
Docket No. ES91-15-000, Gulf States Utilities Company

Consent Agenda—Oil and Gas

CAG-1.
Omitted

CAG-2.
Docket No. RP91-4-001, Texas Eastern Transmission Corporation

CAG-3.
Docket No. RP91-91-000, El Paso Natural Gas Company

CAG-4.
Docket No. RP91-88-000, Florida Gas Transmission Company

CAG-5.
Docket No. RP91-96-000, Bayou Interstate Pipeline System

CAG-6.
Docket Nos. RP90-153-001 and 003, El Paso Natural Gas Company

CAG-7.
Docket No. TQ91-4-11-000, United Gas Pipe Line Company

CAG-8.
Docket No. TA91-1-40-000, Raton Gas Transmission Company

CAG-9.
Docket Nos. TA88-2-15-000 and TA89-1-15-000, Mid Louisiana Gas Company

CAG-10.
Docket Nos. TQ90-4-49-000 and RP90-113-000, Williston Basin Interstae Company.

CAG-11.
Docket No. GT91-19-000, Williston Basin Interstate Pipeline Company

CAG-12.
Docket Nos. GT90-34-001, 002 and 003, Midwestern Gas Transmission Company

CAG-13.
Docket Nos. GT90-24-000 and 001, High Island Offshore System

CAG-14.
Docket Nos. RP87-62-010 and RP86-148-007, Pacific Gas Transmission Company

CAG-15.
Docket No. RP90-72-002, Carnegie Natural Gas Company

CAG-16.
Docket Nos. RP91-52-001 and RP91-53-001, Panhandle Eastern Pipe Line Company

CAG-17.
Docket No. RP91-54-001, Trunkline Gas Company

CAG-18.
Docket No. RP91-56-002, Williston Basin Interstate Pipeline Company

CAG-19.
Docket Nos. RP90-109-000, 005, PR87-62-000, 011, TQ91-1-86-000,003, TM91-1-86-003, Pacific Gas Transmission Company

CAG-20.
Docket Nos. TQ91-3-20-002 and TM91-3-20-002, Algonquin Gas Transmission Company

CAG-21.
Docket No. RP91-51-001, CNG Transmission Corporation

CAG-22.
Docket Nos. RP86-169-019, RP86-105-020 and RP87-25-008, ANR Pipeline Company

CAG-23.

Docket Nos. RP90-2-008 and 010, Williston Basin Interstate Pipeline Company

CAG-24.
Docket No. TQ91-2-17-001, Texas Eastern Transmission Corporation

CAG-25.
Docket No. PR91-2-000, Rhone-Poulence Pipeline Company

CAG-26.
Docket No. RM91-8-000, Qualifying Certain Tight Formation Gas for Tax Credit

CAG-27.
Docket No. GP88-27-002, Quintana Petroleum Corporation

CAG-28.
Docket No. GP88-26-002, Northern Pump Company, Danner No. A-1 Well

CAG-29.
Docket No. GP90-12-000, Colorado Interstate Gas Company

CAG-30.
Docket Nos. CP89-460-003 and CP90-1-001, Pacific Gas Transmission Company

CAG-31.
Docket Nos. CP90-1372-001, CP90-1373-001, CP90-1374-001 and CP90-1375-001, Altamont Gas Transmission Company

CAG-32.
Docket No. CP89-2174-001, Arkla Energy Resources a Division of Arkla, Inc.

CAG-33.
Docket Nos. CP87-57-010, 000, 011, CP87-166-008, CP87-316-006, CP87-386-006 and CP87-406-004, Florida Gas Transmission Company

CAG-34.
Docket No. CP91-568-000, Southern Natural Gas Company

CAG-35.
Docket No. CP91-507-000, Transwestern Pipeline Company

CAG-36.
Docket No. CP90-2095-000, Williams Natural Gas Company

CAG-37.
Docket No. CP90-1760-000, Texas Eastern Transmission Corporation and Texas Gas Transmission Corporation

CAG-38.
Docket No. CP89-877-000, El Paso Natural Gas Company

CAG-39.
Docket Nos. CP89-7-012 and CP89-710-004, Transcontinental Gas Pipe Line Corporation

CAG-40.
Docket Nos. CP91-928-000, CP91-1305-000 and CP91-1333-000, Colorado Interstate Gas Company

CAG-41.
Docket No. CP91-1203-000, ANR Pipeline Company

CAG-42.
Docket No. CP91-1213-000, Algonquin Gas Transmission Company

CAG-43.
Docket No. CP91-1218-000, Trunkline Gas Company

CAG-44.
Docket No. CP91-1273-000, United Gas Pipe Line Company

CAG-45.
Docket No. CP91-1366-000, Colorado Interstate Gas Company

CAG-46.
Docket No. CP91-1351-000, Mississippi River Transmission Corporation

CAG-47.
Docket No. CP91-705-000, City of Gainesville, Florida v. Florida Gas Transmission Company

CAG-48.
Docket Nos. CP89-1525-000 and 001, Northwest Pipeline Corporation
Docket No. CP88-833-000, Washington Natural Gas Company

Hydro Agenda

H-1.
Project No. 618-023, Alabama Power Company. Order on motion for extension of time and request for stay.

Electric Agenda

E-1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
(A) Docket No. CP91-446-000, Panhandle Eastern Pipe Line Company. Order on certificate application for GIC.
(B) Docket Nos. CP89-1281-007, 008 and TA90-1-26-002, Natural Gas Pipeline Company of America. Order on rehearing.

PR-2.
Docket No. RP89-185-005, Panhandle Eastern Pipe Line Company. Order on rehearing.

PR-3 through PR-43.
Omitted

PR-44.
Docket Nos. RP89-48-000, CP89-1126-000, RP89-222-000, 001, RP89-254-000, CP88-133-000, 001 and CP89-886-000, Transwestern Pipeline Company. Order on contested settlements and related request to amend blanket certificate.

III. Pipeline Certificate Matters

PC-1.
Docket No. CP88-194-003, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP89-7-003, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-195-004, PennEast Gas Services Company. Order on requests for rehearing.

PC-2.
Docket Nos. CP88-180-009 and 014, Texas Eastern Transmission Corporation
Docket No. CP88-185-003, Algonquin Gas Transmission Company. Order on requests for rehearing.

PC-3.
Docket Nos. CP87-131-005 and CP87-132-009, Tennessee Gas Pipeline Company. Order on request for rehearing.

PC-4.
Docket Nos. CP87-5-015, CP87-312-007, CP87-313-003, CP87-314-003, CP88-197-004 and CP88-388-004, CNG Transmission Corporation
Docket Nos. CP87-312-007 and 008, Texas Eastern Transmission Corporation
Docket No. CP87-554-011, Algonquin Gas Transmission Company. Order on request for rehearing.

PC-5.
Docket Nos. CP88-129-004 and CP88-163-002, Columbia Gas Transmission Corporation
Docket No. CP89-656-002, Algonquin Gas Transmission Company. Order o request for rehearing.

PC-6.
Docket Nos. CP87-5-005, CP87-92-005, CP88-197-003 and CP88-388-003, Texas Eastern Transmission Corporation and CNG Transmission Corporation
Docket Nos. CP87-312-005, CP87-313-002, CP87-314-002, CP88-128-003 and CP88-197-003, CNG Transmission Corporation
Docket No. CP87-554-002, Algonquin Gas Transmission Company
Docket No. CP89-6-002, Transcontinental Gas Pipe Line Corporation. Order on requests for rehearing.

PC-7.
Docket No. CP89-637-003, ANR Pipeline Company
Docket No. CP89-635-002, Columbia Gas Transmission Corporation
Docket No. CP89-661-002, Algonquin Gas Transmission Company. Order on requests for rehearing.

PC-8.
Docket No. CP88-171-002, Tennessee Gas Pipeline Company
Docket Nos. CP88-94-003 and CP88-194-005, National Fuel Gas Supply Corporation
Docket No. CP88-92-002, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-195-006, PennEast Gas Services Corporation, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP87-131-003 and CP87-132-004, Tennessee Gas Pipeline Company. Order on requests for rehearing.

PC-9.
Docket Nos. CP88-171-004 and 006, Tennesses Gas Pipeline Company
Docket No. CP89-712-001, CNG Transmission Corporation
Docket Nos. CP88-194-001 and CP88-94-004, National Fuel Gas Supply Corporation
Docket Nos. CP89-7-008, 009, CP88-92-003 and 004, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88-195-007 and 008, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation.
Docket No. CP89-711-001, Texas Eastern Transmission Corporation
Docket No. CP88-187-003, Algonquin Gas Transmission Corporation
Docket Nos. CP89-2205-002 and C89-710-001, Transcontinental Gas Pipe Line Corporation
Docket No. CP89-892-001, Great Lakes Transmission Company
Docket Nos. CP87-131—004 and 007, Tennessee Gas Pipeline Company. Order on requests for rehearing.

PC-10.

Docket No. CP90-187-001, Oklahoma-Arkansas Pipeline Company. Order on request of rehearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5582 Filed 3-7-91; 4:02 pm]

BILLING CODE 6717-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY:

Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on March 6, 1991, from 1:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD 703 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matters considered at the meeting were:

Closed Session*

- Pending Litigation Action; and
- Competition Study.

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*Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(9) and (10).

Dated: March 7, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5851 Filed 3-7-91; 3:53 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, March 14, 1991

March 7, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 14, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—*Title:* AT&T's Petition to Amend Carrier Selection Rules: Unauthorized Switching of Customers' Long Distance Service (RM-7245). *Summary:* The Commission will consider AT&T's petition to amend carrier selection rules to require written customer authorization for changes in a customer's long distance service.

2—Common Carrier—*Title:* Policies and Rules Concerning Interstate 900 Telecommunications Services. *Summary:* The Commission will consider whether to adopt a *Notice of Proposed Rule Making* regarding the provision of interstate 900 services.

3—Mass Media—*Title:* Evaluation of the Syndication and Financial Interest Rules (MM Docket No. 90-162). *Summary:* The Commission will consider whether to revise its Network Television Syndication and Financial Interest Rules.

4—Private Radio—*Title:* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Services (PR Docket No. 89-552, RM-6595). *Summary:* The Commission will consider whether to adopt rules based upon narrowband technology for private land mobile use in the 220-222 MHz band.

5—Chief Engineer and Common Carrier—*Title:* An Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (GEN Docket No. 89-554). *Summary:* The Commission will consider whether to adopt a *Supplemental Notice of Inquiry* in this proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: March 7, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5816 Filed 3-7-91; 2:20 pm]

BILLING CODE 6712-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 10:00 a.m. on March 13, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Reconsideration of Docket No. R90-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91-5788 Filed 3-7-91; 12:01 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provision of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 11, 1991.

A closed meeting will be held on Tuesday, March 12, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i), and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 12, 1991, at 2:30 p.m., will be:

Settlement of injunctive action.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272-2300.

Dated: March 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5795 Filed 3-7-91; 12:16 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 9405 March 6, 1991].

STATUS: Closed.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 28, 1991.

CHANGE IN THE MEETING: Deletion:

The following item was not considered at a closed meeting on Tuesday, March 5, 1991 at 2:30 p.m.

Opinion.

Commissioner Lochner, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272–2400.

Dated: March 6, 1991.

Johathan G. Katz,

Secretary.

[FR Doc. 91–5796 Filed 3–7–91; 12:16 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number (AMS-FV-89-201)]

Potatoes; Grade Standards

Correction

In rule document 91-4361, beginning on page 7553, in the issue of Monday, February 25, 1991, make the following correction:

§ 51.1565 [Corrected]

On page 7554, in § 51.1565, in **Table IV**, in the first column, in the third line "Sport," should read "Spot,".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.CP91-1167-000, et al.]

Southern Natural Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 91-4176 beginning on page 7358 in the issue of Friday, February 22, 1991, make the following correction:

On page 7360, in the second column, under entry number 7., in the first line of Docket lines, the second entry shoud read "CI87-433-004".

BILLING CODE 1505-01-D

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

Correction

In rule document 91-2091 beginning on page 3196 in the issue of Tuesday, January 29, 1991, make the following corrections:

1. On page 3199, in Section 1410.3(a):

a. In the first column, in the third paragraph, in the second line "association" should read "associations".

b. In the 3d column, in the 1st full paragraph, in the 11th line from the bottom "funding" should read "funded".

2. On page 3201, in the third column, in the eighth line from the top of the page "or" should read "on".

§ 1410.2 [Corrected]

3. On page 3202, in the second column, in § 1410.2(g)(1), the third paragraph designated "(ii)" should have read "(iii)".

§ 1410.4 [Corrected]

4. On page 3203, in the first column, in § 1410.4(a), in the third line "premiums" should read "premium".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-322]

Certain Microporous Nylon Membrane and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

Correction

In notice document 91-5251 appearing on page 9370 in the issue of Wednesday, March 6, 1991,, make the following correction:

In the middle column in ths heading to the document the subject was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In notice document 91-2674, beginning on page 4859, in the issue of Wednesday, February 6, 1991, make the following correction:

On page 4876, in the 2d column, in the 12th line from the bottom, "27" should read "±".

BILLING CODE 1505-01-D

Railroad Retirement Board

20 CFR Parts 302 and 348

RIN 3220-AA71

Qualified Employee; Miscellaneous

Corrections

In rule document 91-4017, beginning on page 6966, in the issue of Thursday, February 21, 1991, make the following corrections:

On page 6967, in the 1st column:

a. In the 1st line, "amount is computed" should read "amount computed".

b. In the 40th line, "railroad" should read "railway".

c. In the 45th line, "inquiry" should read "injury".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 90-AEA-13]

Proposed Alteration of Jet Routes J-42 and J-225

Correction

In proposed rule document 91-3159, beginning on page 5378, in the issue of Monday, February 11, 1991, make the following correction:

On page 5379, in the second column, in the sixth line from the bottom, "**[AMENDED]**" should read "**[REVISED]**".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

Correction

In proposed rule document 91-4292 beginning on page 7630, in the issue of Monday, February 25, 1991, make the following corrections:

1. On page 7630, in the third column, in the sixth line from the top of the page "or" should read "of".

§ 3.551 [Corrected]

2. On page 7631, in the first column, in § 3.551(d)(2), in the first line insert "neither" between "having" and "spouse".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AE09

Claims Based on Exposure to Herbicides Containing Dioxin (Soft-Tissue Sarcomas)

Correction

In proposed rule document 91-4293 beginning on page 7632 in the issue of Monday, February 25, 1991, make the following correction:

On page 7632, in the 3d column, in the 3d full paragraph, in the 12th and 13th lines the words "herbicides, we propose to remove the restrictions limiting the regulation to" were repeated. The 14th and 15th lines should be removed.

BILLING CODE 1505-01-D

federal register

Monday
March 11, 1991

Part II

Department of Education

Educational Partnerships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

DEPARTMENT OF EDUCATION

[CFDA No.: 84.228]

Educational Partnerships Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To encourage the creation of alliances between public elementary and secondary schools or institutions of higher education and the private sector in order to:

(1) Apply the resources of the private and nonprofit sectors of the community to the needs of the elementary and secondary schools or the institutions of higher education in that community to encourage excellence in education;

(2) Encourage businesses to work with educationally disadvantaged students and with gifted students;

(3) Apply the resources of communities for the improvement of elementary and secondary education or higher education; and

(4) Enrich the career awareness of secondary or postsecondary school students and provide exposure to the work of the private sector.

Deadline for Transmittal of Applications: 5/10 /91.

Deadline for Intergovernmental Review: 7/11/91.

Available Funds: $897,000.

Estimated Range of Awards: $100,000—$400,000 for the first year of the project.

Estimated Average Size of Awards: $224,000.

Estimated Number of Awards: 4.

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Applicants may plan to begin project activities in August of 1991.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (nonprocurement and Government-wide Requirements for Drug-Free Workplace (Grants)), and part 85 (Drug-Free Schools and Campuses).

Description of Program

The Educational Partnerships Program is authorized by the Educational Partnerships Act of 1988, title VI, subtitle A, chapter 5 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) (20 U.S.C. 5031–5039).

Eligible Applicants

Only eligible partnerships may receive grants under this program. An eligible partnership must include a local educational agency or an institution of higher education, or both, and one or more or any combination of the following:

(1) Business concerns;

(2) Community-based organizations;

(3) Nonprofit private organizations;

(4) Museums;

(5) Libraries;

(6) Educational television or radio stations;

(7) State agencies.

A consortium of eligible partnerships may apply for a grant.

Private elementary and secondary schools may participate as members of an eligible partnership, providing services to a local educational agency or institution of higher education. However, private schools may not receive services under this program.

Any member of the eligible partnership may serve as the applicant and fiscal agent for the project.

Definitions

"Elementary school" has the same meaning given that term under section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

"Institution of higher education" has the same meaning given that term by section 481(a)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)(1)).

"Secondary school" has the same meaning given that term under section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

Authorized Activities

An eligible partnership may use funds received under this program for one or more of the following activities:

(1) Model cooperative projects designed to apply the resources of the private and nonprofit sectors of the community to the elementary and secondary schools of the local educational agency or institutions of higher education in that community;

(2) Projects designed to encourage business concerns and other participants in the eligible partnership to work with educationally disadvantaged students or gifted students, or both, in elementary or secondary schools or institutions of higher education in the community;

(3) Projects designed to apply the resources of the community to the elementary or secondary schools or institutions of higher education in that community to improve the education of students in such schools;

(4) Projects designed to address the special educational needs of gifted and talented children in the elementary and secondary schools of the local educational agency which are conducted with the support of the private sector;

(5) Projects designed to enrich the career awareness of secondary or post-secondary students through exposure to officers and employers of business concerns and other agencies and organizations participating in the eligible partnership;

(6) Projects for statewide activities designed to carry out the purpose of this program including the development of model State statutes for the support of cooperative arrangements between the private and nonprofit sectors and local educational agencies or institutions of higher education within the State;

(7) Special training projects for staff designed to develop skills necessary to facilitate cooperative arrangements between the private and nonprofit sectors and local educational agencies or institutions of higher education, or both;

(8) Academic, internship projects, including where possible academic credit, involving activities designed to carry out the purpose of this program, as described in the "Purpose of Program" section of this notice; and

(9) Projects encouraging personnel assigned from business concerns and other participants in the eligible partnership to do tutorial and volunteer work in elementary and secondary schools or institutions of higher education.

Funding Requirements

The Federal share for each year of an assisted project shall be as follows:

(1) 90% for the first year;

(2) 75% for the second year;

(3) 50% for the third year; and

(4) 33⅓% for the fourth year.

Each eligible partnership must provide the remainder of the funds from non-Federal sources.The matching funds for the project may be in cash or in-kind support, fairly evaluated.

Funding Restriction

In determining which applications shall be funded, the Secretary will consider the total amount of funds requested in applications from any State, so that not more than a total of $1,000,000 will be awarded to a project or projects in any State.

Continuation of Project Activities

An applicant must provide an assurance that it will take such steps as may be available to ensure that successful project activities will be continued after Federal funding ends.

Dissemination of Information

An applicant must provide an assurance that it will disseminate information about project activities, and may budget up to 1% of the funds received for this purpose.

State Educational Agency Approval

The Secretary does not approve an application if the State Educational Agency (SEA) for the State in which the applicant is located determines that the proposed project is inconsistent with State plans for elementary and secondary education.

During the application process, the Secretary will provide an opportunity for SEAs to determine whether or not applications from their States that address elementary or secondary education are consistent with State plans for elementary and secondary education.

This requirement is in addition to the requirements of Executive Order 12372 which is another opportunity for State level review. The requirements of the Executive Order are explained elsewhere in this notice.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria—(1) Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the Educational Partnerships Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Educational Partnerships Act of 1988.

Note: The purposes of the Educational Partnerships Act of 1988 are listed in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Educational Partnerships Act of 1988, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.228, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline, date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.228) Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center Attention: (CFDA #84.228) Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Lois N. Weinberg, U.S. Department of Education, 555 New Jersey Ave. NW., Washington, DC 20208–5644. Telephone: 202–219–2116. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 5031–5039.

Dated: March 5, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. DEPARTMENT OF EDUCATION

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 2 8

TITLE: EDUCATIONAL PARTNERSHIPS PROGRAM

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON.

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR PART III - APPLICATION NARRATIVE

Before preparing the application narrative, an applicant should read carefully the description of the program and the evaluation criteria the Secretary uses to evaluate applications. This information is included in this application notice. The narrative should describe each function or activity for which funds are being requested, and should:

1. Begin with an abstract, that is, a summary of the proposed project.

2. Describe the "eligible partnership" that is applying for this project. Identify each member of the partnership. State which member of the partnership would serve as the fiscal agent for this grant, if the project is approved for funding.

3. Include as attachments to the narrative a description of the partnership arrangement, and letters of commitment and partnership agreements.

4. Specify which one or more of the "Authorized Activities" described earlier in this notice will be addressed by the proposed project.

5. Describe the proposed project in light of each of the selection criteria, in the order in which these criteria are listed in this notice.

6. In the Budget section, show all project costs, including both personnel and other costs to be supported through the Federal grant and those to be supported through the matching funds or in-kind support.

7. Specify the financial support and describe any in-kind support that will be provided by the eligible partnership in the Budget section.

8. Provide estimates of the Federal funds that will be requested, and the matching funds that will be provided, for the second, third and fourth years of the project.

9. Describe what steps the partnership will take to ensure that project activities will be continued after Federal funding ends.

10. Describe plans to disseminate information about project activities, using not more than 1% of the grant funds for this purpose.

11. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

NOTE TO APPLICANTS

Included in this notice are various assurance forms, which must be submitted as part of the application. The member of the eligible partnership serving as applicant should submit a complete set of forms. If an application is selected for funding, each member of the eligible partnership will then be required to submit a complete set of assurance forms.

EDUCATIONAL PARTNERSHIPS

ASSURANCES

The eligible partnership hereby assures and certifies as follows:

(1) The eligible partnership will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources.

(2) The eligible partnership will take such steps as may be available to it to continue the activities for which the eligible partnership is making application after the period for which assistance is sought.

(3) The eligible partnership will disseminate information on the model program for which assistance is sought, using not more than one percent of the grant in any fiscal year.

_____

Signature of Authorized Representative

_____

Name of Authorized Representative

Title_____

Agency or Organization_____

Date_____

ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850 -0648, Washington, D.C. 20503.

(Information collection approved under OMB control number 1850-0648. Expiration date: March 31, 1992)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Offite and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

[FR Doc. 91-5608 Filed 3-8-91; 8:45 am]

federal register

Monday
March 11, 1991

Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 1235

Uniform System for Handicapped Parking; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1235

[FHWA Docket No. 89-18]

RIN 2125-AC39

Uniform System for Handicapped Parking

AGENCIES: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes a uniform system for parking for persons with disabilities. It is the result of Public Law 100-641 passed by Congress on November 9, 1988, and has been developed through the regulatory negotiation process. Its purpose is to provide guidelines to States for the establishment of a uniform system for handicapped parking to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

DATES: This regulation is effective on April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Harry B. Skinner, FHWA, Office of Traffic Operations (202) 366-2186, or Mr. E. William Fox, NHTSA, Office of Chief Counsel, (202) 366-1834, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 9, 1988, the Congress enacted Public Law 100-641 which authorizes DOT to issue regulations for a uniform system for handicapped parking and which is the subject of this final rule. This authority was delegated to the FHWA and the NHTSA which decided to conduct the rulemaking through regulatory negotiation. Regulatory Negotiation (RN) is a procedure recommended by the Administrative Conference of the United States (Recommendation 82-4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982) for handling certain regulatory actions. RN is carried out by an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The purpose of RN is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest.

Accordingly, a Notice of Intent to form an Advisory Committee for Regulatory Negotiation was published in the **Federal Register** on June 12, 1989 (54 FR 24908). Based on the response to this notice it was determined that an advisory committee on this subject was necessary and in the public interest. The charter for this committee, its membership, and first meeting date were published in the **Federal Register** on October 3, 1989 (54 FR 40770).

The advisory committee met for six sessions—October 18-19, 1989, October 30-November 1, 1989, November 29-December 1, 1989, January 10-12, 1990, May 9-11, 1990, and September 11, 1990. Minutes of these meetings are available in FHWA Docket No. 89-18 located at the Department of Transportation, room 4232, 400 Seventh Street SW., Washington, DC 20590. The FHWA and the NHTSA have participated fully in the deliberations of the Committee.

On March 23, 1990, the FHWA and the NHTSA published a Notice of Proposed Rulemaking (NPRM) which adopted the Committee's recommended rule and adopted the rationale for each of the provisions as contained in the Committee report.

Comments received on this NPRM were reviewed by the Committee. Changes were negotiated by the Committee in the same manner as the NPRM. The Committee submitted a recommended final rule to the FHWA and the NHTSA in a Final Report.

The FHWA and the NHTSA have adopted the Committee's recommended rule as this Final Rule and it is set forth below with the section numbers of the Code of Federal Regulations which are added. In addition, we have adopted the rationale for each of the provisions and the responses to comments on the NPRM as contained in the Committee report. Rather than repeat these explanations, we have attached the Committee report to the preamble as an appendix.

After reviewing the details of this final rule, it has been determined that this rule more appropriately fits the Code of Federal Regulations (CFR), Chapter II—National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation than Chapter I—Federal Highway Administration, Department of Transportation. This decision is based on the fact that this regulation was jointly developed by the NHTSA and the FHWA and will be jointly administered by these agencies. Therefore, the CFR numbering of the rule will be 23 CFR 1235.1 through 1235.8 rather than 23 CFR 655.801 through 655.808 as used in the Notice of Proposed Rulemaking published on March 23, 1990, in 55 FR 10988 and in the Committee's Final Report.

During the review of the report, two editorial changes were made to the language of the Committee's Final Rule Report. The only purpose of these changes was to clarify the intended language. Specifically, at several locations, reference to the purpose of the rule included the phrase, "* * * enhance the safety of persons with disabilities * * *". A review of the minutes of the meetings of the Committee clearly indicates that the Committee members were concerned with access as well as safety. When used at locations other than in the Final Rule Report, this phrase is replaced with, "* * * enhance access and the safety of persons with disabilities." Also, in referring to the design of a placard, the report used two terms, "hooked" and "hanger-style." When used in the final rule at locations other than in the Final Rule Report, the term, "hanger-style" has been used.

Discussion of Proposal

The purpose of this regulation is to set guidelines for States to use in establishing a uniform parking system to enhance access and the safety of persons with disabilities which limit or impair the ability to walk. States are not precluded from going beyond the threshold requirements specified in this regulation. Nevertheless, we note that the rationale we adopted, as explained in the appendix to the preamble, indicates those sections of the guidelines which are deemed to be minimum requirements, and those which are deemed to be the outside limits for the design and implementation of a safe and effective uniform parking system for persons with disabilities.

This regulation addresses six specific subjects. First, terms necessary to implement the regulation are defined for the purposes of this regulation. The section provides definitions for:

- The International Symbol of Access.
- Persons with disabilities which limit or impair the ability to walk.
- A special license plate.
- A removable windshield placard.
- A temporary removable windshield placard.

Second, the regulation sets out the conditions under which a State shall issue a special license plate and the fee which can be charged for that plate. Third, the regulation sets out conditions for the issuance and periodic renewal of a removable windshield placard and its

use. The regulation covers permanent and temporary placards.

Fourth, the regulation limits the means of identifying a vehicle being used by a person with a disability to the display of a special license plate or removable windshield placard. Fifth, the regulation sets out the limiting conditions for the design, construction, and designation of parking spaces reserved for persons with disabilities. Sixth, the regulation requires that States recognize special license plates and removable windshield placards issued by issuing authorities of other States and countries.

Discussion of Comments Received

The discussion of the comments received is contained in the Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee which is included as an appendix to the preamble.

Regulatory Impact

The FHWA and the NHTSA have determined that this document does not contain a major rule under Executive Order 12291; it does contain, however, a significant proposal under the Department's Regulatory Policies and Procedures because of the Federalism implications affecting the relationship between the States and the Federal Government. The expected impact of the changes requested is so minimal that a full regulatory evaluation is not warranted. Comments submitted by the States indicate that costs will be minimal if the system is phased in over time. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This final rule has Federalism implications affecting the relationship between the States and the Federal Government. It has been assessed in light of the principles, criteria, and requirements as outlined in E.O. 12612.

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and handicapped parking permits. These methods have contributed to the problems that persons with disabilities face whenever they use their cars for interstate travel. For this reason, Congress directed the agencies to determine methods most effective for combatting the problem, through implementation of section 3 of Public Law 100–641.

E.O. 12612 requires consultation with appropriate officials and organizations representing the States with respect to both the development of national standards and the preemption of State law. We have consulted with the States to implement Public Law 100–641. The American Association of Motor Vehicle Administrators, the National Association of Governor's Highway Safety Representatives, and the National Governors Association were members of the Committee. We have examined comments submitted by these organizations and by their members.

This rule is a guideline and is consistent with the statutory mandate. It allows the States the maximum administrative discretion possible in establishing a uniform system.

Environmental Assessment

This rule has also been analyzed for the purposes of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 1235

Handicapped, Highway safety, Intergovernmental relations, Parking.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

In consideration of the foregoing, the FHWA and NHTSA hereby add part 1235 to chapter II of title 23, Code of Federal Regulations (CFR), as set forth below.

Issued on: March 1, 1991.

T.D. Larson,

Administrator, Federal Highway Administration.

Jerry R. Curry,

Administrator, National Highway Traffic Safety Administration.

The Federal Highway Administration and the National Highway Traffic Safety Administration are adding part 1235 to title 23, CFR, chapter II, subchapter B, to read as follows:

PART 1235—UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES

Sec.
1235.1 Purpose.
1235.2 Definitions.
1235.3 Special license plates.
1235.4 Removable windshield placards.
1235.5 Temporary removable windshield placards.
1235.6 Parking.
1235.7 Parking space design, construction and designation.
1235.8 Reciprocity.

Appendix A—Sample Removable Windshield Placard

Appendix B—Sample Temporary Removable Windshield Placard

Authority: Pub. L. 100–641, 102 Stat. 3335 (1988); 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

§ 1235.1 Purpose.

The purpose of this part is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

§ 1235.2 Definitions.

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest; or

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Use portable oxygen; or

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

§ 1235.3 Special license plates.

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§ 1235.4 Removable windshield placards.

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§ 1235.5 Temporary removable windshield placards.

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

§ 1235.6 Parking.

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

§ 1235.7 Parking space design, construction, and designation.

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk;

(2) Ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes; and

(3) Ensure uniform sign standards which comply with those prescribed by the "Manual on Uniform Traffic Control Devices for Streets and Highways" (23 CFR part 655, subpart F) to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

§ 1235.8 Reciprocity.

The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

BILLING CODE 4910-22-M

Appendix A to Part 1235—Sample Removable Windshield Placard

COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

Appendix B to Part 1235—Sample Temporary Removable Windshield Placard

COLORS
SYMBOL & LEGEND—WHITE
BACKGROUND—RED

BILLING CODE 4910-22-C

Note: This appendix to the preamble will not appear in the Code of Federal Regulations.

Appendix to the Preamble Committee Report

Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee "A Uniform Parking System for Persons with Disabilities"

September 1990

Dedication

R. Dennis Smurr
February 24, 1943–December 7, 1989.

To R. Dennis Smurr, Associate Advocacy Director, Paralyzed Veterans of America, who dreamed of a better parking system for persons with disabilities. Without his enthusiastic and tireless efforts over a period of six years, a section on parking would never have been added to a bill concerning the naming of a Federal building. Without his efforts, this Committee might not have been formed. We are happy to have worked and laughed with him.

Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee

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Foreword

Public Law 100–641 directs the Secretary of Transportation to issue regulations which establish a uniform system for handicapped parking and which encourage adoption of the system by the States. This authority has been delegated to the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). To identify the major issues, gauge the importance to parties, and develop workable regulations, the FHWA and the NHTSA chartered the Handicapped Parking Regulatory Negotiation Advisory Committee (the Committee) to write a report and a recommended Notice of Proposed Rulemaking (NPRM), to review comments submitted on the NPRM, and to write a report and a recommended final rule.

The following organizations were appointed as members of the Committee:

American Association of Motor Vehicle Administrators (AAMVA)
Mr. David H. Hugel
American Public Transit Association (APTA)
Mr. Ronald L. Habegger
Arthritis Foundation
Mr. Robert C. Hollenbach
Dignity for the Disabled, Inc.
Mr. Denny R. Wood
Disabled American Veterans (DAV)
Mr. Ronald W. Drach
Federal Highway Administration
Ms. Judith S. Kaleta
National Association of Governors' Highway Safety Representatives (NAGHSR)
Mr. Dennis R. Atkins
National Committee on Uniform Traffic Laws and Ordinances (NCUTLO)
Mr. Robert Reeder
National Governors' Association (NGA)
Mr. Glenn D. Turner
National Highway Traffic Safety Administration
Mr. Sam E. Luebbert
National Sheriffs' Association (NSA)
Mr. Charles B. Meeks
New York State Office of Advocate for the Disabled (NYSOAD)
Mr. Robert J. Boehlert
Paralyzed Veterans of America (PVA)
Ms. Alyse B. Steinborn
United States Architectural and Transportation Barriers and Compliance Board (ATBCB)
Ms. Marsha K. Mazz

AAMVA is an association of State and provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada.

APTA is an international organization representing the public transit industry. APTA members include almost 400 bus and rail transit systems which carry over ninety-five percent of those persons using public transit in the United States today. APTA members also include approximately 500 other members who serve the transit industry including government agencies, academic institutions, consulting firms, manufacturers, and other suppliers of services and products to the transit industry in domestic and international markets.

ATBCB was established by section 502 of the Rehabilitation Act of 1973 and has among its functions to promote the elimination of architectural, transportation, communication, and attitudinal barriers affecting persons with disabilities.

The Arthritis Foundation is committed to the issues that affect people with disabilities because arthritis is one of the leading causes of disability. Through its volunteers and staff, the Foundation addresses these concerns on local, state and national levels.

Dignity for the Disabled, Inc., is a Florida based, nonprofit organization composed of twenty-five members representing persons with disabilities.

DAV is a nonprofit organization chartered by Congress with more than 1.1 million members. DAV is the largest organization representing disabled veterans and probably the largest organization of disabled people in the country.

NAGHSR represents the highway safety offices of the States, territories and the District of Columbia. Its goal is to work on behalf of the States to reduce death and morbidity on our nation's highways.

NGA, founded in 1908, is the instrument through which the nation's governors collectively influence the development and implementation of national policy and apply creative leadership to State issues.

NSA represents 2,096 sheriffs in the United States and has 28,000 members.

NCUTLO is an independent, nonprofit association comprised of more than 140 representatives of Federal, State, and local governmental units.

NYSOAD is a cabinet-level agency of New York Government. The Office has not only served as a technical resource to the State legislature and the Department of Motor Vehicles on issues involving special parking privileges for people with disabilities, but has also successfully advocated for the liberalization of New York's statute on reciprocity for out-of-state vehicles accorded special parking privileges.

PVA is a veteran's service organization chartered by Congress and has more than 14,000 members in 33 chapters and 14 subchapters located throughout the United States. For more than 40 years, PVA has been a strong advocate for restoring the rights and opportunities of individuals with physical disabilities.

The Committee submitted a report and recommended NPRM to the FHWA and the NHTSA in February 1990. That report and the agencies' NPRM were published in the **Federal Register** on March 23, 1990. 55 FR 10988 (1990).

This final report is based on the initial report and comments to the rulemaking docket, Docket No. 89–18, and a series of meetings which the Committee held in Washington, D.C. The Committee operated by the general consensus of those persons and interests present at the meetings. With the exception of NCUTLO, which was unable to attend, each Committee member participated in the deliberations of the committee through appointed representatives and alternates, and drafted provisions for the review of other members. This report is an embodiment of those agreements reached by the Committee.

The purpose of this report is to provide a recommended final rule to the FHWA and the NHTSA that sets guidelines for the States in establishing a uniform parking system to enhance the safety of persons with disabilities which limit or impair the ability to walk. As such, while the States are not precluded from going beyond the threshold requirements specified in the guidelines, the Committee has indicated in this report those sections of the guidelines which are deemed to be minimum requirements and those which are deemed to be outside limits for the design and implementation of a safe and effective uniform parking system for persons with disabilities.

The recommended rule contained in this report is not a panacea. This rule is only a starting point. It allows the FHWA and the NHTSA to implement Public Law 100–641 without exceeding their statutory authority, and the Committee urges the agencies to issue a final rule which adopts the Committee's recommendations. Therefore, the purpose of this report is also to provide supplemental recommendations which would enhance a uniform parking system for persons with disabilities.

The Committee encourages all who read this report to do what they can to help eliminate the problems that persons with disabilities face when travelling, from home to the grocery store or across the country.

The Problem

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and "handicapped parking permits." These methods have contributed to the problems that persons with disabilities face whenever travelling by car. Persons with disabilities who can validly park in a parking space reserved for persons with disabilities in their home State are often ticketed by law enforcement personnel outside of their State who do not recognize the designation on the license plate or permit, in spite of reciprocity agreements.

When traveling by airplane, some persons with disabilities must decide whether to park their car in the spaces reserved for persons with disabilities at the airport of their departure, or to park in other spaces in order to take their permit with them to use in rental cars at their destinations. With only one permit, they cannot do both.

Persons, with license plates and permits which belong to someone else, park in spaces reserved for persons with disabilities resulting in a shortage of these spaces for those persons who truly need them.

Finally, persons who do not have disabilities which limit or impair the ability to walk have been issued license plates and permits which allow them to park in parking spaces reserved for persons with disabilities. This, too, results in a shortage of spaces for those persons who truly need them.

The Federal Statute

To help address the problems that persons with disabilities face when travelling, Congress enacted Public Law 100–641. This statute directs the Secretary of Transportation to establish a uniform system for handicapped parking which enhances the safety of persons with disabilities which limit or impair the ability to walk, and which encourages adoption by the States. The Secretary has delegated this authority to the FHWA and the NHTSA.

The law provides that the uniform system for handicapped parking:

(1) Adopts the International Symbol of Access (ISA) (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk;

(2) Provides for the issuance of license plates which display the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(3) Provides for the issuance of removable windshield placards, which display the ISA, to persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(4) Provides that the fees charged for the licensing or registration of a vehicle used to transport persons with disabilities do not exceed the fees charged for licensing or registration of other similar vehicles operated in the State; and

(5) For purposes of easy access parking, recognizes license plates and placards which display the ISA which have been issued by other States and countries.

Purpose

The Committee recommended, and the FHWA and the NHTSA proposed, a section in the NPRM that set forth the purpose of the regulation. This section stated that the purpose of the regulation is to provide minimum guidelines to the States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities that limit or impair the ability to walk.

A concerned citizen asked that the agencies reconsider the purpose section. He stated that the safety of persons with disabilities is not addressed in any significant way, because the purpose section did not discuss "permissible grade, protection from moving traffic, visibility, surface treatment, lighting, etc." He also stated that the intent of the rule seems to be the identification of persons or vehicles for special parking privileges.

The Committee has reviewed the purpose section in light of the comment, and has determined that the rule does promote safety. By imposing restrictions and limitations on to whom special license plates and removable windshield placards are issued, in a way that encourages enforcement, the rule ensures the safety of persons with disabilities by increasing the likelihood that parking spaces reserved for persons with disabilities are available. Furthermore, it ensures safety by not requiring the names or addresses of persons with disabilities to appear on the placard. Therefore, the Committee recommends that the agencies adopt § 655.801, as proposed.

Definitions

To clarify each of the terms used in the regulation, the Committee recommended, and the agencies proposed, a definitional section. The following terms were defined: "International Symbol of Access (ISA)", "persons with disabilities which limit or impair the ability to walk", "special license plate" and "removable windshield placard".

a. International Symbol of Access

In Public Law 100–641, the ISA was defined as the symbol adopted by Rehabilitation International in 1969. No comments were received on the definition of ISA. Therefore, the Committee recommends that the

definition be adopted as proposed. The Committee also recommends that the figure itself be included in the final rule.

b. Persons With Disabilities Which Limit or Impair the Ability to Walk

The Committee recommended, and the FHWA and the NHTSA proposed, a definition of "persons with disabilities which limit or impair the ability to walk." The Committee believes that a definition is essential to meet the Congressional intent to establish a uniform system and because of the widespread abuse of parking spaces reserved for persons with disabilities. A definition is necessary to give guidance to the States, and to ensure that special license plates, removable windshield placards, and temporary removable windshield placards are available at least to those individuals with the disabling conditions listed in the definition. Several organizations and individuals submitted comments on the definition of "persons with disabilities which limit or impair the ability to walk". The Oregon Department of Transportation, Motor Vehicles Division, (Oregon) mentioned that the proposed definition is narrower and more specific than Oregon's current definition, but stated that this difference should not pose major problems.

Other commenters questioned what disabilities should permit a person to meet the definition. One private citizen commented that it appears that some people without a "mobility handicap" can get a permit. He noted two examples: persons missing an arm and someone who has a hearing impairment. The Michigan Department of Labor, Commission on Handicapped Concerns, (Michigan) stated that State law allows for the issuance of special license plates and placards to persons who are blind. Michigan noted that "a range of mobility skills levels exist for people who are blind * * * But for those individuals without adequate mobility skill, the option of parking near a building or sidewalk rather than being forced to traverse a noisy and dangerous parking lot becomes a necessity." Since the purpose of the rule is to enhance the safety of persons with disabilities, Michigan asserted that it would be unjust to exclude persons who are blind from the definition. Furthermore, Michigan noted that the issuance of permits to persons who are blind comprises only a very small percentage of total permits issued in the State. Issuance of permits to persons with visual impairments is not perceived as contributing to the abuse problem. Similarly, the Idaho Transportation Department (Idaho) stated that the Idaho law "accepts blindness under its definition of handicapped for plates and placards." Idaho commented that maneuverability is an issue, and that being nearer to a building removes hazards from extended walking. Idaho summed up its concerns by asserting, "We consider this courtesy to the blind to also be a safety precaution."

The Committee discussed whether the definition should include blindness as a disability that limits or impairs a persons ability to walk. The Committee reviewed a resolution passed by the National Federation of the Blind (NFB). The resolution, Resolution 85–22, finds that blindness, in and of itself, is not a mobility impairment and that the problems blind persons face with respect to mobility cannot be remedied by making handicapped parking spaces available to them. Furthermore, the resolution states that the NFB opposes the use of a parking space designated for persons with disabilities by blind persons who do not truly need a space.

For these reasons, the Committee recommends that the definition contained in the final rule should not include blindness as a disability that limits or impairs the ability to walk. However, the Committee notes that this definition sets only a minimum requirement. The States are not precluded from going beyond this threshold, and adding visual impairments as a disability which limits or impairs the ability to walk.

c. Special License Plate

The Committee recommended, and the NPRM included, a definition of "special license plate"—a license plate that displays the ISA. Corning's Independent Living Center noted the general concern that vehicles with special license plates often become targets for vandals.

The definition of special license plate is consistent with Public Law 100–641 which states that the ISA shall be the only recognized symbol for the identification of vehicles used to transport persons with disabilities that limit or impair the ability to walk. In light of the statutory mandate, the Committee recommends that the definition be adopted as proposed.

d. Removable Windshield Placard

The Committee recommended, and the FHWA and the NHTSA proposed, a definition of "removable windshield placard". As required by Public Law 100–641, the definition proposed to require that the ISA be displayed on the placard. In addition, the definition proposed that the ISA should be three inches in height, centered on the placard, and blue or white on a contrasting blue or white background, and be on both sides of the placard. The proposed definition would require that the placard contain an identification number, an expiration date, and the seal or other identification of the issuing authority.

The Committee has reviewed the definition of removable windshield placard and the definition of ISA adopted by Rehabilitation International in 1969 at the Eleventh World Congress on Rehabilitation of the Disabled. As determined by that organization, the ISA shall be white on blue, unless there are compelling reasons to use other colors. Based on this information, the Committee urges the FHWA and the NHTSA to adopt a definition of removable windshield placard that requires the ISA to be white on a blue shield.

Several organizations submitted comments on the proposed definition of "removable windshield placards". The Idaho Department of Transportation (Idaho) explained that the 1990 Idaho Legislature removed the expiration date from the State placard program due to the concerns of persons with permanent disabilities. At the other extreme, the Michigan Paralyzed Veterans Association (MPVA) thought that the expiration date is an excellent idea, and suggested enlarging it to aid enforcement personnel.

The Committee urges the FHWA and the NHTSA to include an expiration date for removable windshield placards. An expiration date aids in purging the system of placards which are no longer needed, for example, when a person moves from one State to another. Furthermore, the Committee notes that the expiration date is a document expiration date; submission of another physician's certification is not required.

Other commenters suggested that additional information be included on the removal windshield placards. The Waterbury Parking Authority, Waterbury, Connecticut (Waterbury) stated that when the name of the person to whom the placard is issued is on the placard, enforcement personnel are better able to determine if the permit is being abused. The City of West Palm Beach, Florida, suggested that abuses could be minimized if the "transporting and permanent disability identifications be registered to the vehicle and that the vehicle type and tag number be prominently displayed on the identification." MPVA suggested that a bar code similar to the Universal Pricing Code be added to the placard to deter counterfeiting and aid enforcement, and

encouraged the lamination of placards. MossRehab Driving School for Disabled (MossRehab) and the Virginia Department for Rights of the Disabled (Virginia) agreed with the statement in the Committee Report that "an object hanging from the rearview mirror when the vehicle is in motion creates a safety hazard", 55 FR 10993 (1990). MossRehab suggested that the removable windshield placard include a statement that the placard should only be used when the vehicle is parked. Virginia suggested that the issuing authority provide the applicant with a written warning at the time of issuance that the placard should be removed by those persons physically able to do so while the vehicle is on the streets and highways.

The Committee notes that States are not precluded from including additional information on the placard. However, the Committee cautions against including names and addresses on the placards because this information could infringe on the safety and privacy of persons with disabilities. Identification related to the vehicle and license plate may also hinder mobility by limiting a person to a single vehicle. Furthermore, the enforcement argument in support of including names and addresses assumes that enforcement personnel would witness the violation. The Committee finds that such enforcement action is the exception rather than the rule, and that the major problem is the use of parking spaces designated for persons with disabilities by persons who do not have removable windshield placards or special license plates.

The use of a bar code, and the means to read the code, assumes a central issuing authority. These placards will be issued by the States, and in some instances, by several offices within the States. To impose this requirement would not aid enforcement or reciprocity and would impose additional costs on state and local jurisdictions. The Committee does not find that lamination alone would deter counterfeiting. Finally, the Committee believes that persons with disabilities should be informed of the safety hazard that is caused by driving with the removable windshield placard hanging on the rearview mirror. Whether the warning is on the placard itself or on other material distributed by the States does not contribute to the uniform system necessary to ensure access. Therefore, the Committee urges the agencies to reject these suggestions and to leave the decisions concerning additional information on the placard to the administrative discretion of the States. However, the Committee encourages the States to keep abreast of developing technology which could deter abuse, and enhance a uniform system of parking for persons with disabilities.

e. Temporary Removable Windshield Placard

To clarify the difference between a removable windshield placard and a temporary removable windshield placard, the Committee recommends that the FHWA and the NHTSA define "temporary removable windshield placard". While the term was not defined in the NPRM, temporary removable windshield placards were distinguished from removable windshield placards in § 655.805 by the word "temporary" overprinted on the placard.

The California State University—Long Beach Parking Administration (CSULB) noted that a color coding rather than overprinting would aid enforcement. In addition, the State of New Hampshire Department of Safety (NHDOS), and the Michigan Department of State, Bureau of Driver and Vehicle Records (MDOS), suggested that temporary removable windshield placards be distinguished by color. The State of New York, Department of Motor Vehicles, noted that it currently issues temporary permits that are red and white as opposed to its permanent permits which are blue and white. On the other hand, the Maryland Department of Transportation, Motor Vehicle Administration (MdDOT) suggested that a sticker be used to identify the temporary placard, so that only one type of placard would need to be ordered.

The Committee reviewed the proposed requirement, and determined that the overprinting could interfere with the information on the placard. Therefore, the Committee agrees with the CSULB, NHDOS, and MDOS, and recommends that "temporary removable windshield placard" be defined to include the same information as the removable windshield placard; however, the ISA would be white on a red shield, rather than white on a blue shield. The Committee believes that this color differential of the ISA is necessary to remind holders of these placards of their temporary nature and to alert law enforcement personnel to closely examine the expiration date. In light of cost data submitted by the State of New York, Department of Motor Vehicles, that 150,000 plastic hanger-style permits, cost less than 4½ cents each, the Committee does not find the requirement of two types of placards unduly burdensome.

To assist the States in designing removable windshield placards and temporary removable windshield placards that meet the requirement of the rule, the Committee recommends that the FHWA and the NHTSA include, as an appendix to the final rule, a sample of each placard.

Special License Plates

Public Law 100–641 states that a uniform system for handicapped parking is one which provides for the issuance of license plates displaying the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk. Consistent with the statute, the Committee recommended and 655.803 of the NPRM proposed to require the States to issue special license plates for the vehicle which is registered in the name of a person with a disability which limits or impairs the ability to walk, and that the initial application be accompanied by the certification of a licensed physician that the applicant meets the regulatory definition of persons with disabilities which limit or impair the ability to walk.

A private citizen correctly noted that although the proposed regulation would require a physician's certification with the initial application, it was silent with regard to recertification, and that the proposed rule did not contain a "grandfather" clause that would permit people who currently have special license plates or removable windshield placards to continue to be issued replacements even though they do not meet the definition of persons with disabilities which limit or impair the ability to walk.

The Committee intended that the renewal of special license plates need not be accompanied by a recertification. Furthermore, eligibility should be determined in light of the guidelines. In implementing these minimum guidelines, States are encouraged to establish state systems that develop mechanisms to review and, where appropriate, recall removable windshield placards and other permits which were issued without an expiration date and which do not comply with these guidelines.

The Committee recommended and § 655.803(a) proposed that the issuance of special license plates shall not preclude the issuance of one removable windshield placard.

The Oregon Department of Transportation, Motor Vehicle Division (Oregon), argued that the States should not be required to issue more than one placard to a person. Oregon asserted that the "extra placard substantially increases the risk of abuse." Oregon

questioned the significance and extent of the problem, and noted that the need for an extra placard was not mentioned during extensive legislative hearings on Oregon's new law.

The Committee believes that one placard is sufficient to provide easy access. A person who has chosen to obtain special license plates for his or her own car would still be able to travel in another car using the one placard. The Committee deems this requirement to be an outside limit. Issuing more than one placard when a person already has special license plates could result in abuse.

In addition to the issuance of special license plates to persons with disabilities, the Committee recommended, and the agencies proposed in § 655.803(b), that States be required to issue special license plates for a vehicle which is registered in the name of a person when a household member has a disability which limits or impairs the ability to walk. The number or sets of special license plates issued to an applicant would not exceed the number of household members who meet the regulatory definition of persons with disabilities which limit or impair the ability to walk. In addition, this section would require the States to issue special license plates for a vehicle which is registered in the name of an organization.

Several commenters disagreed with the proposal to issue special license plates to persons other than those with disabilities which limit or impair the ability to walk. MossRehab argues that allowing family members who transport a disabled member of their family to have such a license plate leads to abuses, since in most instances, they will not be transporting a family member with a disability. The Washington Governor's Committee on Disability Issues and Employment (Washington) also stated that issuing a special license plate to a family member will increase the potential for abuses of parking spaces designated for persons with disabilities, and asserted that the potential for abuse outweighs the inconvenience family members might suffer. Idaho noted that the program of issuing special license plates to organizations "would open up one more avenue for potential abuse".

The New York State Office of Advocate for the Disabled (NYSOAD) urged the Committee to permit the issuance of special license plates to only those vehicles which are registered in the name of persons with disabilities, and not when a household member has a disability which limits or impairs the ability to walk. NYSOAD noted that this was a reasonable interpretation of Public Law 100–641 and that the objective of the law, to ensure mobility of persons with disabilities, would be achieved by the use of removable windshield placards. Furthermore, NYSOAD raised the concerns of abuse of special license plates and removable windshield placards. "The primary responsibility to guard against misuse rests with the individual to whom a removable windshield placard has been issued or with the individual having ownership or control over a vehicle to which a special license plate has been issued. To require issuance of a special license plate to a vehicle upon the basis of an individual's disability when that individual may neither own nor control the vehicle, and still expect that the individual with the disability will be responsible for the appropriate use of the vehicle, is problematic."

The Committee's initial recommendation was based on the premise of fundamental fairness, to provide a range of options to persons with disabilities and to ensure mobility. However, based on these comments and the overall concern about abuse raised by the commenters, the Committee recommends that § 655.803(b) be deleted. The Committee notes that if individuals use a vehicle primarily to transport a family member with a disability which limits or impair the ability to walk, they may wish to consider registering the vehicle in the name of the person with a disability.

The Committee recommended, and the agencies proposed in § 655.803(d), a requirement that the fees charged for the issuance of a special license plate shall not exceed the fees charged for a license plate for the same class vehicle. If a State issues a vanity license plate that also displays the ISA, this requirement would allow the State to charge the applicant at the rate set for other vanity plates.

This position is consistent with Public Law 100–641, which states that a uniform system for handicapped parking is one that provides that the fees charged for the licensing or registering of the vehicle used to transport persons with disabilities do not exceed fees charged for licensing or registration of other similar vehicles operated in the State. "Licensing" and "registration", for purposes of this rulemaking, mean the issuance of license plates. No comments were submitted. Therefore, the Committee recommends that the agencies adopt § 655.803(d) as proposed.

Removable Windshield Placards

As noted above, Public Law 100–641 states that a uniform system for handicapped parking provides for the issuance of removable windshield placards. Therefore, the Committee recommended, and the agencies proposed, a section on this subject. The NPRM adopted the Committee's recommendations.

In § 655.804(a), the NPRM proposed to require that each State system provide for the issuance and periodic renewal of removable windshield placards upon application of a person with a disability which limits or impairs the ability to walk. In addition, the NPRM proposed to require that each State mandate the issuing authorities to issue one additional placard to applicants who do not have special license plates, upon the request of the applicant for an additional placard.

Several commenters were opposed to issuing one additional placard. A Council Member, City Council of Laurel, Maryland strongly opposed the issuance of additional and temporary placards. Michigan stated that rather than issuing an additional placard to persons with disabilities, in Michigan, travelers only have a license plate and one permit. Michigan has "never heard complaints of the nature described in the NPRM." Oregon asserted that States should not be required to issue more than one placard to a person. The State of Illinois, Office of the Secretary of State, (Illinois) noted that windshield placards are especially subject to abuse because they can be moved from one vehicle to another. To deter abuse, Illinois suggested that additional placards be issued upon request "and approval".

While the Committee recognizes that the issuance of a placard could increase the potential for abuse, the Committee believes that the benefit to persons with disabilities outweighs this concern. The issuance of a removable windshield placard in addition to special license plates addresses the problem persons with disabilities face when travelling by airplane or rail and parking in a parking space reserved for persons with disabilities at the airport or train station. They would have an additional placard to use at their destination. The Committee believes that one additional placard is sufficient to provide easy access to persons with disabilities which limit or impair the ability to walk, and deems this requirement to be an outside limit. Issuing more than one additional placard could result in abuse.

The Committee did not intend that an additional removable windshield placard be routinely issued. The states may develop procedures to provide the additional placards. The Committee believes that periodic renewal will

eliminate potential abuse by family members and others who continue to utilize the placard after the death of the person with a disability to whom the placard was issued, or when a person with a disability moves to another jurisdiction. The Committee cautions the States against a renewal system that places a burden on applicants for placards that is substantially greater than that placed upon persons with disabilities which limit or impair the ability to walk who opt for special license plates. Therefore, the Committee recommends that § 655.804(a) be adopted as proposed.

The Committee also recommended, and the agencies proposed, that each State system require that the removable windshield placard be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities. (The Committee notes that placards are to be displayed only when the vehicle is parked, and recognizes that an object hanging from the rearview mirror when the vehicle is in motion creates a safety hazard.) When a vehicle does not have a rearview mirror, the Committee recommends that the placard be displayed on the dashboard.

Several commenters urged the FHWA and the NHTSA to permit removable windshield placards to be displayed either by hanging it from the front windshield rearview mirror or by placing it on the dashboard. The Westside Center for Independent Living, Inc. (WCIL) noted that hanging a placard from a rearview mirror is not always an option for someone who has limited use of arms, hands, and/or fingers. Failing "to see the need to propose rules which promote easy law enforcement by law enforcement personnel", the United Cerebral Palsy Associations (UCPA) believes that the regulation should promote the ease of compliance by persons with severe disabilities and suggested that the agencies allow flexibility in displaying the placard. The Michigan Department of State, Bureau of Driver and Vehicle Records, (MDOS) also questioned the benefit of a placard that hangs from the front windshield rearview mirror. MDOS argued that a placard that requires law enforcement personnel to leave their vehicle to verify validity will help stem abuse of expired or fraudulent permits.

Based on discussions with representatives of the law enforcement community, the Committee believes that the requirement that placards be hung from the rearview mirror would help enforcement personnel to easily recognize whether a vehicle is legally parked, and would result in better enforcement. The Committee also believes that the burdens placed upon persons with limited hand movement and reach could be minimized if the issuing authorities carefully consider the design and manufacture of the placards. For example, a placard made of cardboard (approximately 15 point) or a plastic could be manipulated more easily than a placard made of typing paper (20 pound bond). Therefore, the Committee recommends that the FHWA and the NHTSA adopt § 655.804(c).

The Committee considered whether the State system should require the installation of a device from which to hang the placard. However, the Committee believes that this would be burdensome to persons utilizing placards, especially if traveling in a vehicle which they do not own. Furthermore, the Committee believes that since the number of vehicles which lack rearview mirrors is minimal, enforcement would not be impeded.

Temporary Removable Windshield Placards

The Committee recommended, and the agencies proposed to require, that the State system provide for the issuance of temporary placards, for a period not to exceed six months. By limiting eligibility, this provision would ensure that parking spaces reserved for persons with disabilities are available only to those persons who truly need them.

The Committee also recommended, and the NPRM proposed to require, that the applicant submit a certification by a licensed physician that he or she is a person with a disability which limits or impairs the ability to walk as defined in the regulation. The certification shall also include the period of time that the physician determines the person will have the disability, not to exceed six months.

In recommending the establishment of a maximum validation period of six months, the Committee did not intend to preclude a person whose disability extends beyond that period, but is nevertheless temporary, from subsequently applying for another temporary placard. These persons are required to submit a new application and certification for the placard in accordance with § 655.805.

In order to distinguish between temporary and other placards, for enforcement purposes, the Committee recommended, and the agencies proposed, that the word "TEMPORARY" be overprinted on these placards. As cited above, in light of the comments submitted, the Committee now recommends that the ISA or the temporary removable windshield placard be white on a red shield.

Although it may be helpful to require that persons who have been issued temporary placards return them to the issuing authority upon expiration, the Committee believes that this may be unduly burdensome to issuing authorities who would then need to monitor the return of the placards and take action if the placards were not returned. In addition, a provision that required the return of the placards could also be burdensome on the persons to whom they were issued. Therefore, the Committee does not recommend a provision that would address the return of expired placards. Nevertheless, the Committee encourages issuing authorities to determine whether the use of expired placards is a problem within their jurisdiction and take appropriate action to control the unauthorized use of expired placards.

Parking

Public Law 100–641 states that a uniform system for handicapped parking adopts the ISA as the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk. Consistent with this provision, the Committee recommended and the agencies proposed, that the special license plates and removable windshield placards be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities. This does not prohibit the States from using the designations "HP" (Handicapped Person), "DP" (Disabled Person), or "DV" (Disabled Veteran), in addition to the ISA.

Parking Space Design, Construction, and Designation

Consistent with the Congressional mandate that a uniform system for handicapped parking should enhance the safety of persons with disabilities, the Committee recommended and the FHWA and the NHTSA proposed a section concerning parking space design and construction. This section proposed to require that the States establish design and construction standards that ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. In addition, it proposed to require that these standards also ensure the safety of persons with disabilities who use these spaces and

their accompanying accessible routes. To allow the States maximum administrative discretion, the section proposed that these standards be set under criteria to be determined by the States.

Several commenters discussed the need to include specification for identifying a parking space reserved for persons with disabilities through the use of uniform signs and/or permanent markings. The Committee considered a number of alternative methods and concluded that since there was a provision in The Manual on Uniform Traffic Control Devices for identifying parking spaces reserved for persons with disabilities and since there was a need to include such a specification in the rule, reference should be made to the method of identification included in the Manual on Uniform Traffic Control Devices.

Other commenters suggested the need for specific dimensions which would be required for the development or maintenance of a parking space reserved for use by persons with disabilities. After extensive deliberation of the details of such a provision the committee reached the consensus that the needs of those with disabilities would be best served if each state were required to set its own standard dimensions. It was agreed to retain the provisions of NPRM § 655.807 with the addition of the designation provision discussed in the previous paragraph.

In recommending this addition, it is not the Committee's intention to invalidate enforcement of parking provisions currently in effect pursuant to State or local law where signs do not comply with this requirement, particularly with regard to enforcement on private property.

Reciprocity

Public Law 100–641 states that a uniform system for handicapped parking recognizes licenses and placards displaying the ISA which have been issued by other States and countries. Consistent with this provision, the Committee recommended and the agencies proposed, a section on reciprocity, to ensure that States, cities, counties, municipalities, and independent parking authorities recognize all special license plates and removable windshield placards that are issued. Several commenters declared their support of the provision. No comments were adverse. Therefore, the Committee recommends that § 655.808 be adopted as proposed.

Recommended Final Rule

For the foregoing reasons, the Committee recommends that the FHWA and the NHTSA issue a final rule which reads as follows:

Uniform System for Parking for Persons with Disabilities

Section 655.801—Purpose

The purpose of this regulation is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance the safety of persons with disabilities which limit or impair the ability to walk.

Section 655.802 Definitions

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest;

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(4) Use portable oxygen;

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hooked placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hooked placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

Section 655.803 Special License Plates

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

Section 655.804 Removable Windshield Placards

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may

be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

Section 655.805 Temporary Removable Windshield Placards

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

Section 655.806 Parking

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Section 655.807 Parking Space Design, Construction, and Designation

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk; and

(2) ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes.

(3) ensure uniform sign standards which comply with those prescribed by the Manual on Uniform Traffic Control Devices to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

Section 655.808—Reciprocity

The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Appendix A

The following is a sample removable windshield placard:

BILLING CODE 4910-22-M

COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

Appendix B

The following is a sample temporary removable windshield placard:

COLORS
SYMBOL & LEGEND—WHITE
BACKGROUND—RED

Appendix C

The Report of the Handicapped Parking Regulatory Negotiation Advisory Committee reads as follows. (The full text of the report is available from the Federal Highway Administration, Mr. Harry B. Skinner, Chief, Traffic Control Systems Division, Washington, DC 20590, telephone: (202) 366-2185.)

Implementation

The Committee strongly urges the States to begin implementation of a uniform system for handicapped parking upon the issuance of a final rule by the FHWA and the NHTSA. The Committee recognizes that legislative sessions and budgetary constraints may prohibit some States from immediately implementing all the provisions of the final rule. While the Committee does not expect all States to issue conforming license plates and placards immediately, the Committee asks the States to move in that direction. The Committee recommends that the States review State statutes and/or regulations to determine if legislative or regulatory action is required, and take action to ensure the adoption of new laws and regulations. In implementing these minimum guidelines, States are encouraged to develop mechanisms to review and, where appropriate, recall, removable windshield placards issued without an expiration date which do not comply with these guidelines.

Education and Outreach Program

The Committee believes that the FHWA and the NHTSA, the States, enforcement organizations and persons with disabilities, need to conduct an aggressive education and outreach effort to alert the public of the need for the availability of parking spaces reserved for persons with disabilities. The following groups should be targeted as part of this program: (1) The general public; (2) persons with disabilities and advocates; (3) municipal officials; (4) civic and business organizations; (5) legislators; (6) law enforcement; (7) parking providers; and (8) physicians.

The general public needs to be made aware of the reasons for parking spaces reserved for persons with disabilities. They need to realize the safety risks and burdens they place on persons with disabilities when they merely "use the space to run into the store." To deter abuse of parking spaces reserved for persons with disabilities, the general public must believe that they will be ticketed and penalized for their actions.

Persons with disabilities and advocates need to be made aware of Public Law 100-641 and the regulation promulgated by the FHWA and the NHTSA. Because of the safety hazard that could result if they drive with the placard hanging from the rearview mirror, persons with disabilities must be informed that the removable windshield placard is only required to be displayed when the vehicle is parked. In addition, they need to be made aware that the parking spaces reserved for persons with disabilities are designed for their use, to allow easy access when driving their own vehicle or when they are transported by someone else. Parking spaces reserved for persons with disabilities should not be used by family members or others when they are not accompanied by the person with a disability. The Committee firmly believes that the disability community must police itself to prevent abuse to the maximum extent possible.

Municipal officials responsible for the designation of on-street parking places must be made aware of the need for the establishment of adequate spaces to allow persons with disabilities which limit or impair the ability to walk to participate in activities in the community.

Business and civic organizations, whose members are responsible for the designation of off-street parking places in shopping centers, parking garages and lots, business establishments, places of employment, and other private properties should be made aware of the economic and tax benefits and other incentives which can result when their establishments are made more accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. Furthermore, business and civic organizations must be made aware that accessibility is not limited to the provision of spaces, but includes the removal of impediments to accessible routes, such as garbage canisters and snow piles at curb cuts.

State and local legislators should be made aware of the need to review State and local legislation to address Public Law 100-641, the regulation promulgated by the FHWA and the NHTSA, and other issues raised in this report.

Law enforcement needs to be made aware of the extent of its obligation to enforce parking violations. Law enforcement must adopt policies to encourage personnel to ticket violators of parking spaces reserved for persons with disabilities. Judges and others responsible for the adjudication of parking violations should be made aware of the need for stringent application of appropriate penalties. In addition, law enforcement and adjudicatory personnel should be trained in the State system and reciprocity agreements.

Parking providers, including hospitals, universities and other operators of public or private parking facilities, should be made aware that once access is permitted to their facilities, they must recognize special license plates, removable windshield placards, and temporary removable windshield placards.

Finally, it is essential that physicians asked to certify eligibility for special license plates, removable windshield placards, and temporary removable windshield placards be made aware of State eligibility requirements and encouraged to stringently adhere to these requirements in certifying eligibility. The American Medical Association, State and local medical organizations, and entities responsible for licensing physicians should assist in promoting physician education in, and compliance with, State eligibility requirements.

Supplemental Recommendations

During the discussions of the Committee, many issues were raised that are important to a better parking system for persons with disabilities, but that do not specifically fall within the scope of Public Law 100-641 or the authority of the FHWA and the NHTSA. Nevertheless, in good conscience, the Committee could not ignore these issues. Therefore, the Committee encourages States to adopt legislation or regulations or otherwise change their procedures to ensure the integrity of a uniform parking system for persons with disabilities.

The Committee believes that a uniform parking system for persons with disabilities can be enhanced by State systems that utilize a central authority as the only issuing authority for both special license plates and removable windshield placards. This could assist law enforcement in combatting abuse by providing a system to allow them to quickly determine to whom the placard or plate is issued if the central authority also establishes a computerized data base. A data base will also assist inventory control.

The Committee believes that a uniform system for parking for persons with disabilities would also be enhanced by allowing persons with disabilities equal access to parking. Disabilities which limit or impair the ability to walk prevent persons from safely getting from one point to another as quickly and as efficiently as persons without such disabilities, and actually may prevent a person from conducting a transaction in the time allotted on a parking meter. Furthermore, some persons with disabilities are unable to

reach the parking meters. Others have limited hand movement and cannot insert the coins and/or otherwise operate the meter.

The Committee strongly urges the States to ensure equal access to parking. States should undertake an evaluation of the feasibility of adopting a system of parking for persons with disabilities which would permit them to park in metered spaces, which have not been designated as parking spaces reserved for persons with disabilities, without cost and without time limits. The Committee notes that some jurisdictions currently have this type of system. States should also consider technological advancements in metered parking that would ensure equal access. In addition, the Committee urges the States to permit the designation of reserved parking spaces for persons with disabilities on the roadway in front of their homes.

A uniform parking system for persons with disabilities could also be enhanced by stronger enforcement. The Committee encourages the States to adopt fines or penalties which are not less than the fines or penalties for other serious parking violations. Fines or penalties established for violations of parking spaces reserved for persons with disabilities should consider that these fines and penalties are part of an overall system of enforcement of all parking violations. The Committee also encourages the States to adopt Section 11–1003(a)(k) of the *Uniform Vehicle Code* which makes handicapped parking violations enforceable on private property used by the public. The Committee also encourages the allocation of additional resources for enforcement and/or the exploration of alternatives to traditional law enforcement, such as the citizen enforcement programs established in a number of States and localities. The Committee believes that such action would discourage persons from illegally parking in parking spaces reserved for persons with disabilities.

Finally, the Committee believes that a uniform parking system for persons with disabilities can be enhanced by penalties for false or fraudulent statements on applications and renewals. The Committee is concerned that physicians might sometimes certify a person's eligibility for special license plates, removable windshield placards, and temporary removable windshield placards, without the opportunity to review the criteria adopted by the issuing authority. In addition, the Committee is concerned that some individuals falsify their own applications.

Conclusion

The Handicapped Parking Regulatory Negotiation Advisory Committee has taken its charge seriously. Members of the Committee did not always agree, but always attempted to understand each other's interests and concerns. The Committee worked diligently to present the FHWA and the NHTSA with a recommended NPRM and final rule that implement Public Law 100–641 in a manner that helps to alleviate the problems that persons with disabilities face in travelling, without imposing unnecessary burdens. When appropriate, the Committee has given the States wide latitude in establishing a system that meets the guidelines. For example, the Committee believes that the States should be permitted to exercise administrative discretion in determining the size, renewal period, and fees for removable windshield placards. Therefore, the Committee urges the FHWA and the NHTSA to issue a final rule that adopts the recommended final rule contained in this report and to publish this report in the **Federal Register** as an appendix to that final rule so that persons will fully understand the problems that persons with disabilities face and the rationale for the final rule.

Finally, the Committee urges the States, the enforcement community, and all who read this report to implement the recommendations to alleviate the problems that persons with disabilities face when travelling by car.

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federal register

Monday
March 11, 1991

Part IV

Department of Education

The Educational Research and Development Centers Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1991

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117G]

The Educational Research and Development Centers Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1991

PURPOSE OF PROGRAM: To support research and development centers to conduct research and related activities.

ELIGIBLE APPLICANTS: The following are eligible for a new award under this program: Institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: June 14, 1991.

APPLICATIONS AVAILABLE: March 18, 1991.

AVAILABLE FUNDS: This Center will be awarded as a cooperative agreement. In fiscal year 1991, $900,000 is available for the Center on Dissemination and Knowledge Utilization for the first year of funding. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 2 through 5 are estimates depending upon the availability of funds and needs as reflected in the approved application.

First Year Funding—$.9 Million
Second Year Funding—$1.0 Million
Third Year Funding—$1.5 Million
Fourth Year Funding—$1.5 Million
Fifth Year Funding—$1.6 Million
Five Year Total—$6.3 Million

ESTIMATED NUMBER OF AWARDS: 1.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 706 and 708.

SUPPLEMENTARY INFORMATION: The Secretary published a notice in the **Federal Register** on March 8, 1990 (55 FR 8876) inviting applications for new awards for the Educational Research and Development Centers Program. One of the centers to be funded under that competition was the Center on Dissemination and Knowledge Utilization. The quality of applications received for that Center was not sufficient to warrant funding and no award was made.

The individual mission statement describing the activities the Secretary is particularly interested in supporting under the Center on Dissemination and Knowledge Utilization will be found in the application package. However, the mission statement does not contain binding rules for the center competition. This mission statement is not identical to the one contained in the application package for CFDA Number: 84.117G and 84.117Q issued March 9, 1990.

PRIORITY: Under 34 CFR 75.105(c)(3) and 34 CFR 706.3(b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority.

Research on Dissemination and Knowledge Utilization

(Dissemination and knowledge utilization in education (34 CFR 706.3(b)(11))

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 708.11.

The program regulations in 34 CFR 706.20 (b) and (d) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition the 10 points are added to plan of operation (34 CFR 708.11(c)), for a possible total of 25 points.

FOR APPLICATIONS OR ADDITIONAL INFORMATION CONTACT: Mr. Ned Chalker, U.S. Department of Education, OERI, Office of Research, room 610, 555 New Jersey Avenue, NW., Washington, DC 20208–5573. Telephone: (202) 219–2079. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: March 4, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–5622 Filed 3–8–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
March 11, 1991

Part V

Department of Justice

Office of the Attorney General

28 CFR Part 51

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Provision of Data by Magnetic Media; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1480-91]

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Provision of Data by Magnetic Media

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Attorney General finds it necessary to revise the Procedures for the Administration of section 5 of the Voting Rights Act, 28 CFR part 51. The revisions will allow submitting authorities to provide certain data on magnetic media in support of their preclearance request. These revisions are prompted by the need for governmental units to prepare and adopt redistricting plans on the basis of the 1990 census and by the computerization of the redistricting process. By enabling submitting authorities to provide data on magnetic media and by providing uniform procedures for such provision, the revisions will facilitate improved efficiency both for submitting authorities and for the Department of Justice.

DATES: Comments must be received by April 10, 1991.

ADDRESSES: Comments may be mailed to Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128; delivered or sent by a carrier other than the U.S. Postal Service to Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street NW., room 716, Washington, DC 20001; or telefaxed to 202-307-3961.

FOR FURTHER INFORMATION CONTACT: Robert S. Berman, 202-307-3100, or David H. Hunter, 202-307-2898, Attorneys, Voting Section, Civil Rights Division, Department of Justice.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions to obtain "preclearance" from either the United States District Court for the District of Columbia or from the Attorney General of the United States before implementing any new standard, practice, or procedure that affects voting. The purpose of this preclearance is to prevent the implementation of discriminatory voting changes.

The release of the 1990 Census data in the Topically Integrated Geographic Encoding and Reference (TIGER) format combined with the increased accessibility of computer-assisted redistricting systems indicates that many submitting authorities either possess, or in the near future will possess, the capability of providing on magnetic media significant amounts of the data used by the Attorney General in reaching a determination on whether the submitted change has the proscribed discriminatory purpose or effect. The Department of Justice intends to analyze demographic data provided in a table of equivalencies indicating the census geography to district assignment and election-related data such as precinct election returns and voter registration information when such data are provided on magnetic media. These amendments to the Procedures focus solely on the technical aspects of the transmittal of these supporting data and make no substantive revisions.

The overriding principle of these revisions is to establish a generic format for those data that can be produced by virtually any automated data processing equipment. Section 51.20 has been revised to define the various forms of magnetic media and the descriptive material (record layout, file description, etc.) that may be provided to the Attorney General. It should be noted that new § 51.20(b) provides that data provided on magnetic media need not be duplicated on hard copy unless requested by the Attorney General.

All the demographic data provided on magnetic media are based on the unique census block identifier established by the Bureau of the Census's PL94-171 file. Data provided in conjunction with a redistricting will be contained in a table of equivalencies that indicates the assignment of each census block to a particular district. Section 51.28(a)(5) sets forth the format for the table of equivalencies. The revisions propose that any number of plans may be submitted in a single table of equivalencies, thereby alleviating the necessity of repeating the list of census blocks within a jurisdiction. The proposed modifications do not alter the requirement that paper maps of the redistricting plan(s) be provided.

Section 51.28(d)(7) allows election-related data to be provided on magnetic media. Since it is likely that such data will not be related easily to census geographic units it may be identified by county, if necessary, and by precinct. In view of the varying formats in which jurisdictions maintain election data, a detailed record layout will be necessary.

Submitting authorities providing data on magnetic media will be expected, under § 51.28(h), to provide the general public with meaningful access to such data. Meaningful access would include not only providing an opportunity to view the data but also providing appropriate assistance so that interested persons and groups may make meaningful use of the data.

Finally, §§ 51.50(a) and 51.50(d), which set forth the manner in which the Attorney General maintains records concerning submissions, are revised to provide for the retention of computer readable data.

Under the definition of section 1(b) of E.O. 12291, 3 CFR 127 (1981 Compilation), this amendment does not constitute a major rule. Accordingly, a regulatory impact analysis, pursuant to section 3 of E.O. 12291, has not been prepared. Pursuant to section 3(c)(3) of E.O. 12291, this amendment was submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. Issuance of this amendment does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR part 61. Because this amendment is excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The collection of information requirements contained in the section 5 Procedures have been submitted to and approved by the Director of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h) (1) and 5 CFR 1320.13. See § 51.26(g).

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Reporting and recordkeeping requirements, Voting rights.

Accordingly, 28 CFR part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

2. Section 51.20 is amended by designating the existing text as paragraph (a) and by adding new paragraphs (b) through (e) to read as follows:

§ 51.20 Form of submissions.

* * * * *

(b) The Attorney General will accept certain machine readable data in the following forms of magnetic media: 3½" MS–DOS formatted diskettes; 5¼" MS–DOS formatted floppy disks; ¼" cartridge tape; 8mm cartridge tape; nine-track tape (1600/6250 BPI). Unless requested by the Attorney General, data provided on magnetic media need not be provided in hard copy.

(c) All magnetic media shall be clearly labelled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

The label shall be affixed to each magnetic medium and the information included on the label shall also be contained in a documentation file on the magnetic medium. The information identified above shall be formatted in a standard American Standard Code for Information Interchange (ASCII), 80 byte text file with carriage return and line feed separating each record; the carriage return and line feed shall be counted in the 80 byte count.

(d) Each magnetic medium (floppy disk, tape, or cartridge) provided must be accompanied by a printed description of its contents, including an identification by name and/or location of each data file that is contained on the medium, a detailed record layout for each such file, a record count for each such file and a full description of the magnetic medium format.

(e) All data files shall be provided in a fixed record-length format using alphanumeric ASCII values. The first 50 records of each such file shall be printed on hard copy and shall be attached to the printed description of the file. Proprietary and/or commercial software system data files (e.g., SAS, SPSS, dBase, Lotus 1–2–3) and data files containing compressed data or binary data fields will not be accepted. Nine-track tapes shall be clearly marked with printed labels to indicate the tape density, the record count, the record length and block size of each file on the tape, the operating system command that created the tape, and whether the tape is IBM standard-labelled.

3. Section 51.28 is amended by adding new paragraphs (a)(4), (a)(5), and (d)(7), by redesignating paragraph (h) as paragraph (i), and by adding a new paragraph (h) to read as follows:

§ 51.28 Supplemental contents.

* * * * *

(a) * * *

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94–171 file unique block identity code of state, county, tract and block.

(5) Demographic data on magnetic media which are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

(i) Each census block record will be followed by one or more additional fields which shall indicate the district assignment for the census block in one or more plans.

(ii) All district assignments shall be four digits, alphanumeric and right justified.

(iii) The file structure shall be as follows:

Field	PL 94–171 Reference Name	Length	Data Type
State	STATEFP	2	Num.
County	CNTY	3	Num.
Tract	TRACT/BNA	6	Num.
Block	BLCK	4	Alpha/Num.
Plan 1 District	User supplied	4	Alpha/Num.
Plan 2 District	User supplied	4	Alpha/Num.
Plan 3 District, etc.			
Plan n District	User supplied	4	Alpha/Num.

(iv) In addition to the information identified in § 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

(A) The total number of fields.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (*e.g.*, state senate, congressional, county board, city council, school board) and its status or nature (*e.g.*, plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc.

* * * * *

(d) * * *

(7) Election related data containing any of the information described above which are provided on magnetic media shall conform to the requirements of § 51.20 (b) through (e). Election related data that cannot accurately be presented in terms of census blocks may be identified by county and by precinct.

* * * * *

(h) *Availability of computerized submissions.* With respect to submissions in which data on magnetic media are provided, copies of public notices that announce that the submitting authority will provide the general public with meaningful access to such data, including not only the provision of an opportunity to view the data but also the provision of appropriate assistance to enable interested persons and groups to make meaningful use of the data.

* * * * *

6. Section 51.50 is amended by revising paragraph (a) and the first sentence of paragraph (d) to read as follows:

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on magnetic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

* * * * *

(d) The contents of the files in paper, computer readable, or microfiche form described in paragraphs (a) through (c) of this section shall be available for

inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, DC. * * *

Dated: March 4, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91 -5513 Filed 3-8-91; 8:45 am]

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federal register

Monday
March 11, 1991

Part VI

The President

Proclamation 6257—For National Days of Thanksgiving, April 5-7, 1991

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

Presidential Documents

Title 3—

The President

Proclamation 6257 of March 7, 1991

For National Days of Thanksgiving, April 5–7, 1991

By the President of the United States of America

A Proclamation

As the Psalmist wrote, "O give thanks to the Lord for He is gracious, for His mercy endures for ever." Almighty God has answered the prayers of millions of people with the liberation of Kuwait and the end of offensive operations in the Persian Gulf region. As we prepare to welcome home our courageous service men and women and join in the joyful celebrations of the Kuwaiti people, it is fitting that we give thanks to our Heavenly Father, our help and shield, for His mercy and protection.

Asking Him to judge not our worthiness but our need and protection, and knowing that the Lord gives victory "not by might, nor by power," we prayed for a swift and decisive victory and for the safety of our troops. Clearly, the United States and our coalition partners have been blessed with both. We thank the Lord for His favor, and we are profoundly grateful for the relatively low number of allied casualties, a fact described by the commanding general as "miraculous." Nevertheless, because each and every human life is precious, because the massive scale of Operation Desert Storm must never diminish the loss of even one service member, we also remember and pray for all those who made the ultimate sacrifice in this conflict. May the Lord welcome all who have fallen into the glory of Heaven, and may He strengthen and console their families in their hour of need. May it also please our Heavenly Father to grant a full recovery to those military personnel wounded in action.

We also give thanks for the remarkable unity of our people throughout this conflict—a unity marked by heartfelt and generous support for our troops in the field and, in the American tradition, respect for the rights of those who dissent. May our Nation emerge from this conflict stronger and more united, to face as one united people the challenges and opportunities before us.

As we unite in thanksgiving to Almighty God, let us pray in a special way for the innocent men, women, and children—wherever they may be—who have suffered as a result of the conflict in the Gulf. Recalling the words of President Wilson shortly after World War I, let us seek forgiveness for any "errors of act or purpose" and pray for God's help and guidance on the way that lies ahead. May the resolution of remaining questions and concerns, especially the return of all prisoners of war and the freeing of those who are detained, be as timely and as certain as this victory in battle.

Finally, seeing before us the promise of a safer, more peaceful world—one marked by respect for the rule of law—let us offer all these entreaties in a spirit of faith, humility, and gratitude, seeking reconciliation with all peoples. In so doing, we recall the timeless prayer found in Scripture:

> Thine, O Lord, is the greatness, and the power, and the glory . . . for all that is in the heaven and in the earth is Thine . . . and Thou reignest over all . . . in Thine hand is power and might; and in Thine hand it is to make great, and to give strength unto all. Now therefore, our God, we thank Thee and praise Thy glorious Name.

As the Psalmist wrote, "Come behold the works of the Lord . . . He makes wars to cease to the end of the earth."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 5–7, 1991, as National Days of Thanksgiving. I ask that Americans gather in homes and places of worship to give thanks to Almighty God for the liberation of Kuwait, for the blessings of peace and liberty, for our troops, our families, and our Nation. In addition, I direct that the flag of the United States be flown on all government buildings, I urge all Americans to display the flag, and I ask that bells across the country be set ringing at 3:00 p.m. (eastern daylight savings time) on April 7, 1991, in celebration of the liberation of Kuwait and the end of hostilities in the Persian Gulf.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91–5895
Filed 3–8–91; 11:05 am]
Billing code 3195–01–M

federal register

Monday
March 11. 1991

Part VII

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of The Treasury.

ACTION: Final Rule, amendments.

SUMMARY: This rule amends the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49856 (November 30, 1990), as amended at 56 FR 5351 (February 11, 1991) (the "KACR"), to authorize certain trade, transportation, travel, and transfer transactions with respect to Kuwait, in light of the liberation of Kuwait from Iraqi occupation.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Tel.: (202) 535-6020, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 535-9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: The KACR were originally published on November 30, 1990, to implement the sanctions imposed by the President in Executive Orders 12723 and 12725. With the suspension of hostilities and the withdrawal of Iraqi forces from Kuwait, the United Nations Security Council ("UNSC") on March 2, 1991, adopted Resolution 686, in part requesting UN member states to "take all appropriate action to cooperate with the government and people of Kuwait in the reconstruction of their country," and recalling paragraph 9 of UNSC Resolution 661, which authorized assistance to the legitimate Government of Kuwait. The President of the Security Council has recognized "the importance of taking all actions possible to facilitate Kuwait's reconstruction and reintegration into the international economic system." In light of this UN action, and at the request of the Government of Kuwait, the Office of Foreign Assets Control of the Treasury Department ("FAC") is amending the KACR to permit trade and commerce with, and travel to Kuwait.

The transactions authorized by this amendment are those prohibited pursuant to section 2 of Executive Order 12725, corresponding to UN sanctions adopted with respect to Iraq and occupied Kuwait in UNSC Resolution 661 of August 6, 1990. At this time, the assets of the Government of Kuwait, its agencies, instrumentalities, and controlled entities, including the Central Bank of Kuwait, blocked since August 2, 1990, pursuant to section 1 of Executive Orders 12723 and 12725 and section 570.201 of the KACR, are not being unblocked except as already authorized by existing FAC licenses. Further unblocking will be undertaken in cooperation with the Government of Kuwait.

Because the KACR involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed ruelmaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 570

Exports, Imports, Kuwait.

For the reasons set forth in the preamble, 31 CFR part 570 is amended as follows:

PART 570—KUWAITI ASSETS CONTROL REGULATIONS

1. The authority citation for part 570 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101-513, 104 Stat. 2047-55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12723, 55 FR 31805 (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 570.522 is added to Subpart E to read as follows:

§ 570.522 Authorization of certain new transactions with respect to Kuwait.

(a) Notwithstanding the provisions of subpart B of this part, transactions otherwise prohibited by §§ 570.204, 570.205, 570.206, 570.207, 570.208, and 570.209 are hereby authorized on or after March 8, 1991, provided that no such transaction results in a debit to a blocked account unless such debit is independently authorized by or pursuant to this part.

(b) Notwithstanding the provisions of §§ 570.201 and 570.210, commitments and transfers to the Government of Kuwait or a person in Kuwait otherwise prohibited by § 570.210 are hereby authorized to be made on or after March 8, 1991, provided that no such commitment or transfer results in a debit to a blocked account unless such debit is independently authorized by or pursuant to this part.

(c) The authorizations contained in this section do not eliminate the need to comply with regulatory requirements not administered by the Office of Foreign Assets Control, including export and reexport controls administered by other federal agencies.

Dated: March 7, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 7, 1991.

John. P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-5918 Filed 3-8-91; 12:06 pm]

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Proposed Rules:
20 ... 9462
285 ... 10227
641 ... 9930
658 ... 8736
672 ... 9251
675 ... 9251

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 8, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
4	15.00	Jan. 1, 1991
5 Parts:		
*1-699	17.00	Jan. 1, 1991
700-1199	13.00	Jan. 1, 1990
1200-End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0-26	15.00	Jan. 1, 1991
27-45	12.00	Jan. 1, 1990
46-51	17.00	Jan. 1, 1990
*52	24.00	Jan. 1, 1991
53-209	19.00	Jan. 1, 1990
210-299	25.00	Jan. 1, 1990
300-399	12.00	Jan. 1, 1990
400-699	20.00	Jan. 1, 1990
700-899	22.00	Jan. 1, 1990
900-999	29.00	Jan. 1, 1990
1000-1059	16.00	Jan. 1, 1990
*1060-1119	12.00	Jan. 1, 1991
1120-1199	10.00	Jan. 1, 1990
1200-1499	18.00	Jan. 1, 1990
1500-1899	11.00	Jan. 1, 1990
1900-1939	11.00	Jan. 1, 1990
*1940-1949	22.00	Jan. 1, 1991
1950-1999	24.00	Jan. 1, 1990
2000-End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1-199	20.00	Jan. 1, 1990
200-End	18.00	Jan. 1, 1990
10 Parts:		
0-50	21.00	Jan. 1, 1990
51-199	17.00	Jan. 1, 1990
200-399	13.00	[2] Jan. 1, 1987
400-499	21.00	Jan. 1, 1990
500-End	26.00	Jan. 1, 1990
11	11.00	Jan. 1, 1990
12 Parts:		
1-199	12.00	Jan. 1, 1990
200-219	12.00	Jan. 1, 1990
220-299	21.00	Jan. 1, 1990
300-499	19.00	Jan. 1, 1990
500-599	17.00	Jan. 1, 1990
600-End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1-59	25.00	Jan. 1, 1990
60-139	24.00	Jan. 1, 1990
140-199	10.00	Jan. 1, 1990
200-1199	21.00	Jan. 1, 1990
*1200-End	13.00	Jan. 1, 1991
15 Parts:		
0-299	11.00	Jan. 1, 1990
300-799	22.00	Jan. 1, 1990
800-End	15.00	Jan. 1, 1990
16 Parts:		
0-149	5.50	Jan. 1, 1991
150-999	14.00	Jan. 1, 1990
1000-End	20.00	Jan. 1, 1990
17 Parts:		
1-199	15.00	Apr. 1, 1990
200-239	16.00	Apr. 1, 1990
240-End	23.00	Apr. 1, 1990
18 Parts:		
1-149	16.00	Apr. 1, 1990
150-279	16.00	Apr. 1, 1990
280-399	14.00	Apr. 1, 1990
400-End	9.50	Apr. 1, 1990
19 Parts:		
1-199	28.00	Apr. 1, 1990
200-End	9.50	Apr. 1, 1990
20 Parts:		
1-399	14.00	Apr. 1, 1990
400-499	25.00	Apr. 1, 1990
500-End	28.00	Apr. 1, 1990
21 Parts:		
1-99	13.00	Apr. 1, 1990
100-169	15.00	Apr. 1, 1990
170-199	17.00	Apr. 1, 1990
200-299	5.50	Apr. 1, 1990
300-499	29.00	Apr. 1, 1990
500-599	21.00	Apr. 1, 1990
600-799	8.00	Apr. 1, 1990
800-1299	18.00	Apr. 1, 1990
1300-End	9.00	Apr. 1, 1990
22 Parts:		
1-299	24.00	Apr. 1, 1990
300-End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0-199	20.00	Apr. 1, 1990
200-499	30.00	Apr. 1, 1990
500-699	13.00	Apr. 1, 1990
700-1699	24.00	Apr. 1, 1990
1700-End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0-1-1.60	15.00	Apr. 1, 1990
§§ 1.61-1.169	28.00	Apr. 1, 1990
§§ 1.170-1.300	18.00	Apr. 1, 1990
§§ 1.301-1.400	17.00	Apr. 1, 1990
§§ 1.401-1.500	29.00	Apr. 1, 1990
§§ 1.501-1.640	16.00	[3] Apr. 1, 1989
§§ 1.641-1.850	19.00	Apr. 1, 1990
§§ 1.851-1.907	20.00	Apr. 1, 1990
§§ 1.908-1.1000	22.00	Apr. 1, 1990
§§ 1.1001-1.1400	18.00	Apr. 1,1990
§§ 1.1401-End	24.00	Apr. 1, 1990
2-29	21.00	Apr. 1, 1990
30-39	15.00	Apr. 1, 1990
40-49	13.00	[3] Apr. 1, 1989
50-299	16.00	[3] Apr. 1, 1989
300-499	17.00	Apr. 1, 1990
500-599	6.00	Apr. 1, 1990
600-End	6.50	Apr. 1, 1990
27 Parts:		
1-199	24.00	Apr. 1, 1990
200-End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
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1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
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1–39, Vol. I	15.00	[5] July 1, 1984
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34 Parts:		
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38 Parts:		
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425–699	23.00	[4] July 1, 1989
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790–End	21.00	July 1, 1990
41 Chapters:		
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1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
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7	6.00	[6] July 1, 1984
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500–1199	26.00	Oct. 1, 1990
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46 Parts:		
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41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
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140–155	13.00	Oct. 1, 1990
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166–199	14.00	Oct. 1, 1990
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500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

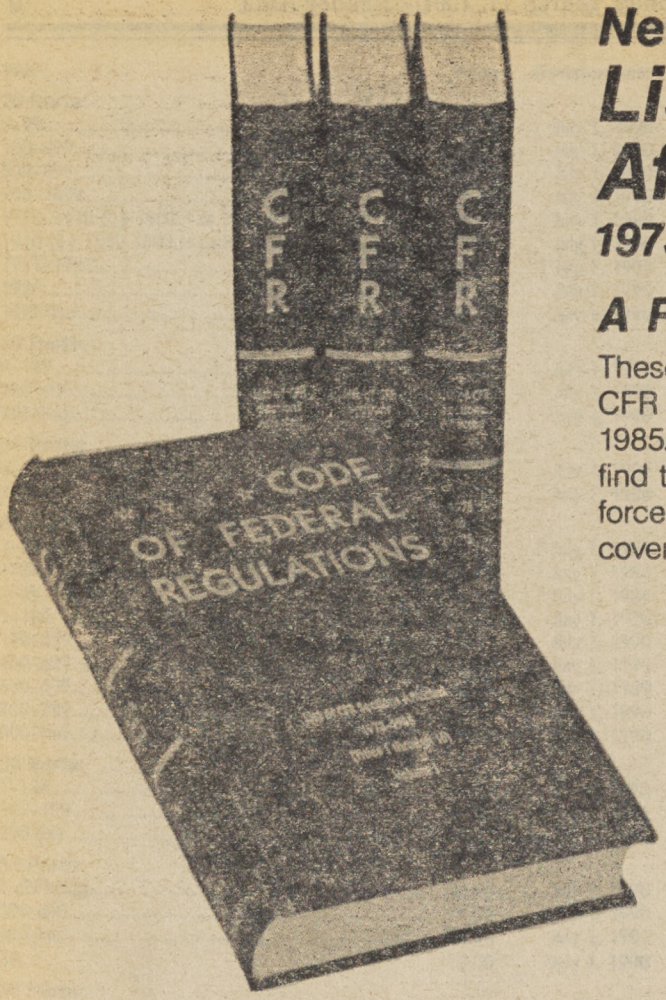
[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] 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.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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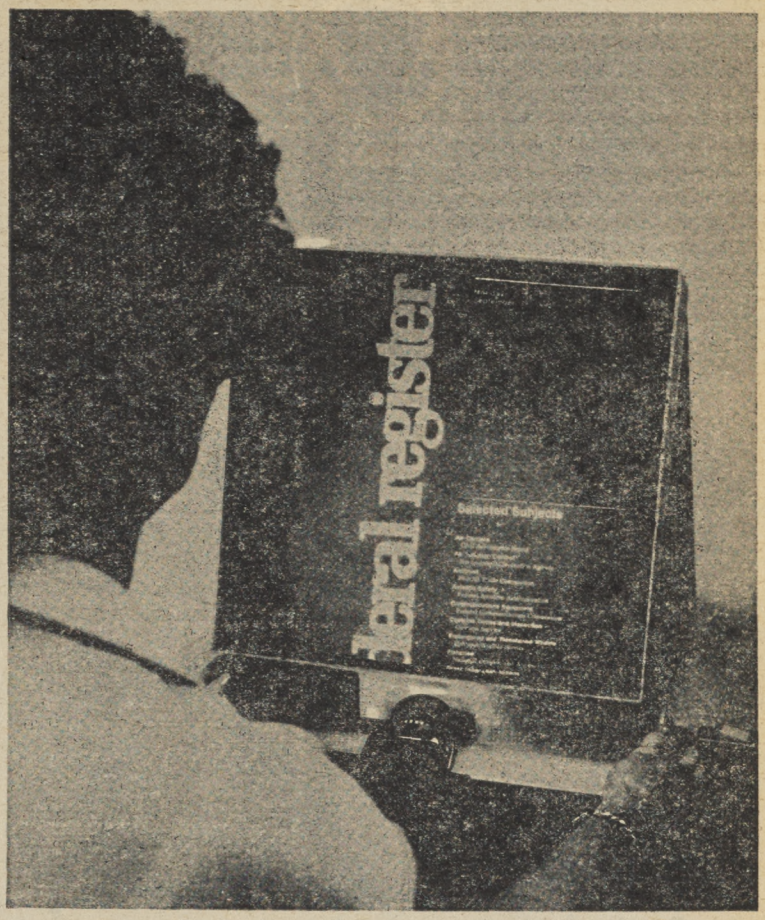

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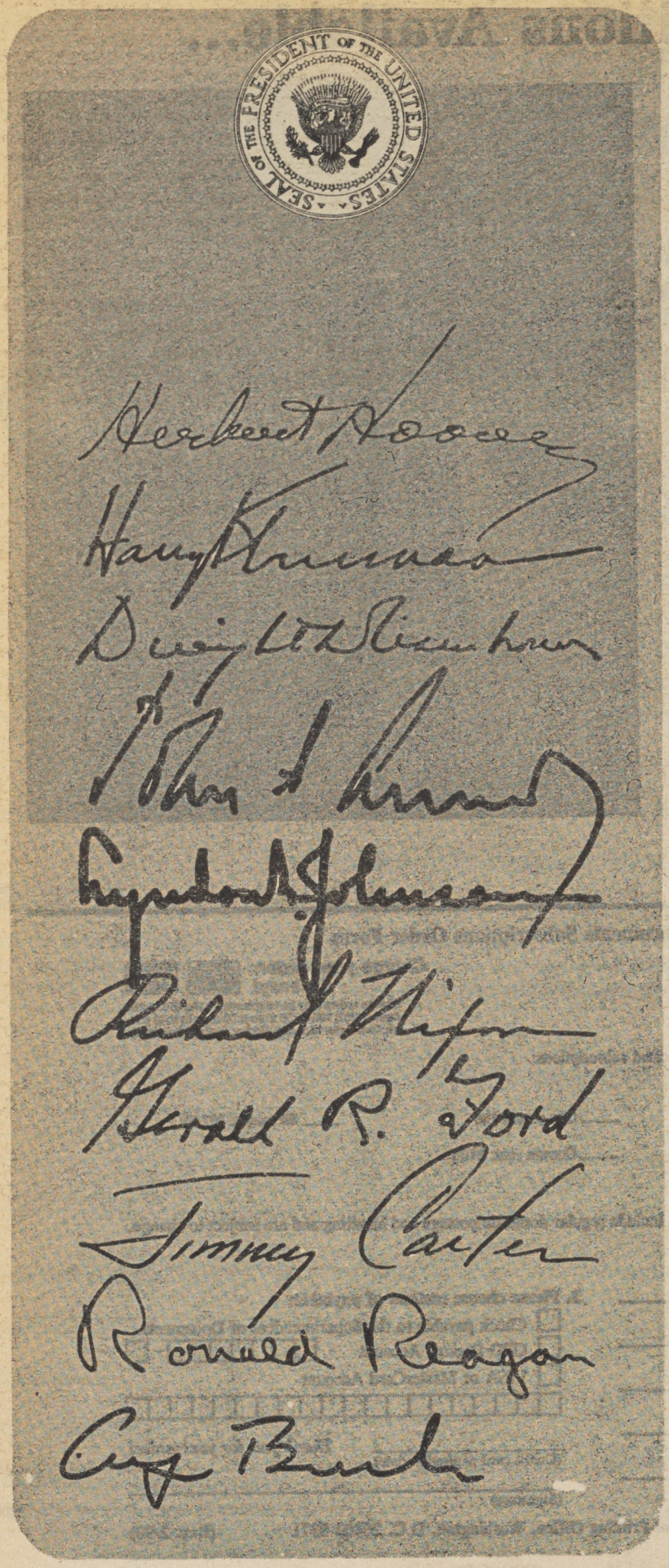

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