

# federal register

Friday  
November 1, 1985

**Briefings on How To Use the Federal Register**

For information on briefings in Atlanta, GA, and Philadelphia, PA, see announcement on the inside cover of this issue.

## Selected Subjects

- Air Pollution Control**  
Environmental Protection Agency
- Air Traffic Control**  
Federal Aviation Administration
- Aviation Safety**  
Federal Aviation Administration
- Communications Common Carriers**  
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- Conflict of Interests**  
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- Crop Insurance**  
Federal Crop Insurance Corporation
- Education**  
Veterans Administration
- Endangered and Threatened Species**  
Fish and Wildlife Service
- Government Procurement**  
Defense Department  
General Services Administration  
National Aeronautics and Space Administration
- Hazardous Materials Transportation**  
Research and Special Programs Administration
- Loan Programs—Agriculture**  
Farmers Home Administration

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## Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 50 FR 12345.

### Marketing Agreements

Agricultural Marketing Service

### Milk Marketing Orders

Agricultural Marketing Service

### Organization and Functions (Government Agencies)

Transportation Department

### Voting Rights

Personnel Management Office

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**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 2 1/2 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.

### ATLANTA, GA

**WHEN:** Nov. 21; at 1 pm.  
Nov. 22; at 9 am. (identical session)

**WHERE:** Room LP-7,  
Richard B. Russell Federal Building,  
75 Spring Street, SW., Atlanta, GA.

**RESERVATIONS:** Deborah Hogan,  
Atlanta Federal Information Center.  
Before Nov. 12: 404-221-2170  
On or after Nov. 12: 404-331-2170

### PHILADELPHIA, PA

**WHEN:** Dec. 17; at 1 pm.  
Dec. 18; at 9 am. (identical session)

**WHERE:** Room 3306/10  
William J. Green, Jr., Federal Building,  
600 Arch Street, Philadelphia, PA.

**RESERVATIONS:** Laura Lewis,  
Philadelphia Federal Information Center,  
215-597-1709

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## Presidential Documents

Title 3—

Proclamation 5402 of October 30, 1985

The President

National Foster Grandparent Month, 1985

By the President of the United States of America

### A Proclamation

This year, we celebrate the 20th Anniversary of the Foster Grandparent Program. In its first year of operation, 782 foster grandparents carried out 33 projects in 27 States. Today, some 19,000 foster grandparents are serving some 65,000 children through 245 projects in all 50 States, Puerto Rico, the Virgin Islands, and the District of Columbia. The program, which has achieved both great success and great acceptance, is administered by ACTION, a Federal agency that promotes voluntarism.

Most of us have been fortunate enough to have enjoyed a very special relationship with our grandparents. They were the living bridge to the past. They handed down to us the hard-won lessons they had learned from life and the wisdom they had received from their own grandparents. They provided us with the patient, unquestioning love and understanding that gave us the strength to face the future with confidence and hope.

Today, the elderly and retired participants in the Foster Grandparent Program provide unique, personal guidance and care to tens of thousands of physically, emotionally, and mentally handicapped children as well as those who have been abused, neglected, or who are in the juvenile justice system, or in need of other special help.

Love is the only thing we have more of the more we give it away. And these volunteers who give of themselves, of their wisdom, and of their time, reap rich benefits. They rejoice in a newfound independence. Their loneliness and fear of isolation disappear. In many cases, their health improves. Their sense of self-worth is enhanced as they find themselves deeply involved with others who depend on them. They experience a new fulfillment in performing a much-needed community service which taps all their reserves of understanding, creativity, and warmth.

The children in the program blossom under the golden glow of counsel and caring that foster grandparents bring into their lives. This program has truly worked wonders for hearts young and old.

I urge all Americans to join me in applauding the activities of these foster grandparent volunteers. Their service encourages positive attitudes about the abilities of the elderly. It demonstrates how greatly society benefits when it calls on the experience and seasoned judgment of older persons.

The Congress, by Senate Joint Resolution 92, has designated the month of October 1985 as "National Foster Grandparent Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1985 as National Foster Grandparent Month. I invite all citizens and appropriate agencies and organizations to unite during October with appropriate observances and activities to honor these volunteers and the children they serve.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-26315  
Filed 10-31-85; 10:48 am]  
Billing code 3195-01-M

## Presidential Documents

Proclamation 5403 of October 30, 1985

### American Education Week, 1985

By the President of the United States of America

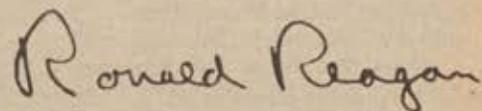
#### A Proclamation

From their very beginnings, the colonies that later were to form the United States of America set great store by the education of the young, and with the birth of the New Nation this commitment to education deepened. Our Founding Fathers shared the insight of an ancient sage that "only the educated are free," and they took to heart the inspired maxim that it is the truth which sets us free. To them it was clear that since here the people would rule, the people must have the means to understand the issues and to make wise decisions. As James Madison put it: "On the diffusion of education among the people rest the preservation and perpetuation of our free institutions."

American Education Week offers all Americans an invitation to reflect on the importance of education to our Nation, not only to its prosperity but to the proper functioning of our whole system of government. It invites each of us to play a part in the national commitment to sound education and to the constant striving to improve the institutions that provide education at every level, from pre-school through graduate school. American Education Week is a time for all Americans to seek to do something to further the cause of education—whether by involvement in parent-teacher groups, contributions to private educational institutions, serving on local school boards, participation in adult education programs, furthering the utilization of libraries and museums, or any similar activity. For educators it is a time to rededicate themselves to what is surely one of the noblest of callings; and to students it is a challenge to make the best use of the manifold educational opportunities this country offers.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 17, 1985, and the first full week preceding the fourth Thursday of November of each succeeding year, as American Education Week, and to observe this time with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.



PROCEEDINGS OF THE

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*George...*

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# Rules and Regulations

Federal Register

Vol. 50, No. 212

Friday, November 1, 1985

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1002 and 1004

[Docket No. A0-160-A62 and A0-71-A74]

#### Milk in the Middle Atlantic and New York-New Jersey Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This action amends the Middle Atlantic and New York-New Jersey milk marketing orders. As amended, 5 unregulated east central Pennsylvania counties are added to the Middle Atlantic marketing area and 15 unregulated northeastern Pennsylvania counties are added to the New York-New Jersey marketing area. Other amendments revise the location adjustment provisions of the two orders to more closely align fluid milk (Class I) prices at various plant locations in the expanded marketing areas. The action is based on industry proposals considered at a public hearing held in Allentown and Philadelphia, Pennsylvania on 24 separate days during the July-October 1983 period. These changes are necessary to reflect current marketing conditions and to insure orderly marketing in the two Federal order marketing areas.

**EFFECTIVE DATE:** December 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing: Issued June 17, 1983; published June 23, 1983 (48 FR 28655).

**Recommended Decision:** Issued March 5, 1985; published March 11, 1985 (50 FR 9637).

**Extension of Time for Filing Exceptions:** Issued April 5, 1985; published April 10, 1985 (50 FR 14110).

**Final Decision:** Issued August 9, 1985; published August 14, 1985 (50 FR 32716).

#### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic and New York-New Jersey orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and New York-New Jersey marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of this order amending each of the specified orders, including the provisions establishing an Advertising and Promotion Program under the Middle Atlantic order as amended, is approved or favored by at least two-thirds of the producers who participated in each referendum and who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

#### List of Subjects in 7 CFR Parts 1004 and 1002

Milk marketing order, Milk, Dairy products.

#### Order Relative to Handling

*It is therefore ordered,* That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby further amended, as set forth below.

The authority citation for Parts 1004 and 1002 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

#### PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. In § 1004.2, paragraphs (d)(2)(ii) and (e) are revised to read as follows:

§ 1004.2 Middle Atlantic marketing area.

(d) \* \* \*  
 (2) \* \* \*  
 (ii) The boroughs of:  
 Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton.

(e) In the State of Pennsylvania, the counties of:

Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, York.

2. In § 1004.52, paragraph (a) is revised to read as follows:

§ 1004.52 Location differentials to handlers.

(a) For that milk received from producers and from a handler described in § 1004.9(c) at a pool plant and which is assigned to Class I milk, subject to the limitations pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment is applicable, the Class I price shall be reduced by the amount stated in paragraph (a) (1) and (2) of this section for the location of such plant.

(1) For a plant located in any of the following Pennsylvania counties, the adjustment shall be minus 10 cents.

Berks  
 Dauphin  
 Lebanon

(2) For a plant located outside the area described in paragraph (a)(1) of this section, and which is 55 miles or more from the city hall in Philadelphia, Pennsylvania, and also 75 miles or more from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, Maryland (all such distances to be based on the shortest highway distance as determined by the market administrator), the adjustment shall be minus 2.2 cents per 10 miles distance or fraction thereof that such plant location is from the nearest of such basing points.

3. Section 1004.75 is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) In making the payments required pursuant to § 1004.73, the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced by the amounts set forth in § 1004.52 according to the location of the plant where the milk being priced was received.

(b) For purposes of computations

pursuant to §§ 1004.71 and 1004.72 the weighted average price shall be reduced by the amounts set forth in § 1004.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class II price.

**PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA**

1. Section 1002.3 is revised to read as follows:

§ 1002.3 New York-New Jersey marketing area.

"New York-New Jersey marketing area" (hereinafter called the "marketing area") means all of the territory within the boundaries of the city of New York, and the counties and parts of counties set forth below together with all piers, docks, and wharves connected therewith, and all craft moored thereat, and including territory within such boundaries which is occupied by Government (municipal, State, Federal, or international) reservations, installations, institutions, or other establishments.

**New York Counties**

Albany, Broome, Cayuga (except the townships of Sterling, Victory, Conquest, and Montezuma), Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Essex (Schroon, Ticonderoga, Crown Point, and Moriah townships only), Fulton (except the township of Stratford), Greene, Herkimer (except the townships of Webb, Ohio, and Salisbury), Madison, Montgomery, Nassau, Oneida (except the townships of Ava, Boonville, Forestport, and Florence), Onondaga, Orange, Oswego (except the townships of Redfield and Boylston), Otsego, Putnam, Rensselaer, Rockland, Saratoga (except the townships of Day, Edinburg, and Providence), Schenectady, Schoharie, Schuyler, Steuben (Addison, Corning, and Erwin townships only), Suffolk (except Fisher's Island), Sullivan, Tioga, Tompkins, Ulster, Warren (except the townships of Johnsburg, Thurman, and Stony Creek), Washington, Westchester, Yates (except the townships of Italy, Middlesex, and Potter).

**New Jersey Counties**

Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean (except the boroughs of Barnegat Light, Beach Haven, Harvey Cedars, Ship Bottom, Surf City, Tuckerton, and the townships of Barnegat, Eagleswood, Lacey, Little Egg Harbor, Long Beach, Ocean, and Stafford), Passaic, Somerset, Sussex, Union, Warren.

**Pennsylvania Counties**

Bradford, Columbia, Lackawanna, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming.

2. In § 1002.51, paragraph (c) is revised to read as follows:

§ 1002.51 Transportation differentials.

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

A-freight zone (miles)	B-classes 1-A and 1-B †	C-class II †
1 to 10	+59.0	+8
11 to 20	+58.8	+8
21 to 25	+54.6	+8
26 to 30	+54.6	+7
31 to 40	+52.4	+7
41 to 50	+50.2	+7
51 to 60	+48.0	+6
61 to 70	+45.8	+6
71 to 75	+43.6	+6
76 to 80	+43.6	+5
81 to 90	+20.4	+5
91 to 100	+24.2	+5
101 to 110	+22.0	+4
111 to 120	+19.8	+4
121 to 125	+17.6	+4
126 to 130	+17.6	+3
131 to 140	+15.4	+3
141 to 150	+13.2	+3
151 to 160	+11.0	+2
161 to 170	+8.8	+2

† Cents per Cwt.

**Middle Atlantic and New York-New Jersey—Final Order**

A-freight zone (miles)	B-classes 1-A and 1-B †	C-class II †
171 to 175	+5.6	+2
176 to 180	+5.6	+1
181 to 190	+4.4	+1
191 to 200	+2.2	+1
201 to 210	0.0	0
211 to 220	-1.5	0
221 to 225	-3.0	0
226 to 230	-3.0	-1
231 to 240	-4.5	-1
241 to 250	-6.0	-1
251 to 260	-7.5	-2
261 to 270	-9.0	-2
271 to 275	-10.5	-2
276 to 280	-10.5	-3
281 to 290	-12.0	-3
291 to 300	-13.5	-3
301 to 310	-15.0	-4
311 to 320	-16.5	-4
321 to 325	-18.0	-4
326 to 330	-18.0	-5
331 to 340	-19.5	-5
341 to 350	-21.0	-5
351 to 360	-22.5	-6
361 to 370	-24.0	-6
371 to 375	-25.5	-6
376 to 380	-25.5	-7
381 to 390	-27.0	-7
391 to 400	-28.5	-7
401 and over	-30.0	-8

† Cents per cwt.

Effective date: December 1, 1985.  
 Signed at Washington, DC on: October 29, 1985.

Alan T. Tracy,  
 Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-26284 Filed 10-31-85; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 100

## Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records; Correction

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule; correction.

**SUMMARY:** The Immigration and Naturalization Service is correcting an error in the listing of district offices published October 3, 1985 at 50 FR 40327.

**FOR FURTHER INFORMATION CONTACT:** Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3291.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 85-23616 dated October 3, 1985 on page 40327, the following error was made and should be corrected in § 100.4(a) by removing "23" from the listing of districts under the jurisdiction of Burlington, Vermont in the first sentence.

Dated: October 29, 1985.

Richard E. Norton,  
*Acting Associate Commissioner,  
Examinations, Immigration and  
Naturalization Service.*

[FR Doc. 85-26132 Filed 10-31-85; 8:45 am]

BILLING CODE 4410-10-M

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Ch. I

## Revocation of Policy Statements

**AGENCY:** The Nuclear Regulatory Commission.

**ACTION:** Policy statements: Revocation.

**SUMMARY:** The Nuclear Regulatory Commission is revoking those policy statements issued by the Commission which have been superseded by subsequent agency action or which have become obsolete in some other way. This action is the result of a comprehensive review of Commission policy statements.

**EFFECTIVE DATE:** November 1, 1985.

**ADDRESS:** Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear

Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:** The Nuclear Regulatory Commission (NRC) is conducting a comprehensive review of the policy statements which it has issued and under which it operates. As a result of this review, the NRC has identified a number of policy statements which have been incorporated in or superseded by NRC rulemaking actions, subsequent policy statements, or other agency action. Other policy statements have become obsolete.

## I. Policy Statements Being Revoked

The NRC is revoking the policy statements that have been superseded by subsequent agency action or are otherwise obsolete. The following list identifies the policy statements which are being revoked, the citation to their original publication in the *Federal Register*, and the reasons for their revocation.

1. Criteria for determining enforcement action and categories of noncompliance (40 FR 820; January 3, 1975)—Superseded by 10 CFR Part 2, Appendix C.
2. Licenses to export nuclear material and petitions for leave to intervene; notice and disclosure (41 FR 28044; July 8, 1976)—Superseded by 10 CFR Part 110.
3. Environmental effects of the uranium fuel cycle (41 FR 34707; August 16, 1976)—Superseded by the final rule published August 2, 1979 (44 FR 45362) (10 CFR Part 51) and the policy statement published November 8, 1982 (47 FR 50591).
4. Environmental effects of the uranium fuel cycle (41 FR 49898; November 11, 1976)—Superseded by the final rule published August 2, 1979 (44 FR 45362) (10 CFR Part 51) and the policy statement published November 8, 1982 (47 FR 50591).
5. Uranium milling; proposed scope and outline for generic environmental impact statement (42 FR 13874; March 17, 1977)—Superseded by 10 CFR Part 40, Appendix A.
6. Standardization of nuclear power plants (42 FR 34395; August 4, 1977)—Replaced by policy statement published August 31, 1978 (43 FR 38954).
7. Licensing procedures for geologic repositories for high-level radioactive waste; proposed (43 FR 53869;

November 17, 1978)—Superseded by 10 CFR Part 60.

8. Programmatic environmental impact statement; statement of policy and intent to prepare (44 FR 67738; November 27, 1979)—Final policy statement published May 1, 1981 (46 FR 24764).

9. Further Commission guidance for power reactor operating licenses (45 FR 41738; June 20, 1980)—Replaced by policy statement published December 24, 1980 (45 FR 85236).

10. NRC Action Plan; request for comments (45 FR 50613; July 30, 1980)—See item 13.

11. General statement of policy and procedure for enforcement actions; proposed (45 FR 66754; October 7, 1980)—Incorporated in and superseded by 10 CFR Part 2, Appendix C.

12. Action plan developed as a result of the Three Mile Island accident; proposed, extension of comment period (45 FR 79819; December 2, 1980)—Comment period for this action expired December 24, 1980.

13. Evaluation of agreement state radiation control programs; proposed, extension of comment period (45 FR 80937; December 8, 1980)—Final policy statement published December 4, 1981 (46 FR 59341).

14. Safety goals for nuclear power plants; proposed (47 FR 7023; February 17, 1982)—Final policy statement published March 14, 1983 (48 FR 10772).

15. Further Commission guidance on emergency response capability (48 FR 360; January 4, 1983)—Superseded by Federal Radiological Emergency Response Plan and NUREG 0728, Rev. 1.

16. Regionalization (48 FR 12619; March 25, 1983)—Superseded by policy statement published March 1, 1984 (49 FR 7676).

17. Severe accidents and related views on nuclear reactor regulation; proposed (48 FR 16013; April 13, 1983)—Final policy statement published August 8, 1985 (50 FR 32138).

18. Engineering expertise on shift; draft policy statement (48 FR 33781; July 25, 1983)—Superseded by NUMARC/NRC negotiated statement, January 1985.

19. Investigations and adjudicatory proceedings (48 FR 36358; August 10, 1983)—Superseded by policy statement published September 13, 1984 (49 FR 36032).

20. Revision of backfitting process for power reactors (48 FR 44173; September 28, 1983)—Superseded by final rule published September 20, 1985 (50 FR 38097).

21. Financial qualifications for electric utilities (49 FR 7981; March 5, 1984)—

Superseded by policy statement published June 12, 1984 (49 FR 24111).

22. Financial qualifications statement of policy (49 FR 24111; June 12, 1984)—Superseded by final rule published September 12, 1984 (49 FR 35747).

## II. Current Policy Statements

The following list identifies the policy statements issued by the NRC that remain in effect and that the NRC relies on in the conduct of agency affairs. This listing includes all current policy statements issued by the NRC, or its predecessor the Atomic Energy Commission, and published in the Federal Register through October 23, 1985. These policy statements are compiled in Volume III of the NRC Rules and Regulations. Single copies of the policy statement compilation may be obtained by writing John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

1. Products intended for use by general public (Consumer products) (30 FR 3462; March 16, 1965).
2. Abnormal occurrence reports (42 FR 10950; February 24, 1977).
3. Mixed oxide fuel (42 FR 65334; December 30, 1977).
4. Program for resolution of generic issues related to nuclear power plants (43 FR 1565; January 10, 1978).
5. Camera coverage of hearings before Atomic Safety and Licensing Boards and Licensing Appeal Boards (43 FR 4294; February 1, 1978).
6. Domestic license applications; open meetings (43 FR 28058; June 28, 1978).
7. Standardization of nuclear power plants (43 FR 38954; August 31, 1978).
8. Recommendations for improved nuclear power plant licensing (43 FR 49802; October 20, 1978).
9. Generic rulemaking to improve nuclear power plant licensing; interim (43 FR 58377; December 14, 1978).
10. Regulation of the medical use of radioisotopes (44 FR 8242; February 9, 1979).
11. Generic rulemaking to improve nuclear power plant licensing; interim, extension of comment period (44 FR 8276; February 9, 1979).
12. Agency policy and procedures for differing professional opinions; proposed (44 FR 59886; October 16, 1979).
13. Planning basis for emergency responses to nuclear power reactor accidents (44 FR 61123; October 23, 1979).
14. Planning basis for emergency responses to nuclear power reactor accidents; EPA policy statement (45 FR 2893; January 15, 1980).

15. Nuclear power plant accident considerations under the National Environmental Policy Act of 1969 (45 FR 40101; June 13, 1980).

16. Further Commission guidance for power reactor operating licenses (45 FR 85236; December 24, 1980).

17. Criteria for guidance of States and NRC in discontinuance of NRC regulatory authority and assumption thereof by States through agreement (46 FR 7540; January 23, 1981 as amended by policy statements published at 46 FR 36969; July 16, 1981 and 48 FR 33376; July 21, 1983).

18. Programmatic environmental impact statement of the cleanup of Three Mile Island Unit 2 (46 FR 24764; May 1, 1981).

19. Conduct of licensing proceedings (46 FR 28533; May 27, 1981).

20. Issuance of uncontested fuel loading and low power testing operating licenses (46 FR 47906; September 30, 1981).

21. Low-level waste volume reduction (46 FR 51100; October 16, 1981).

22. Evaluation of Agreement State radiation control programs (46 FR 59341; December 4, 1981).

23. Nuclear power plant staff working hours (47 FR 7352; February 18, 1982).

24. Information flow (47 FR 31482; July 20, 1982).

25. Use of high-enriched uranium (HEU) in research reactors (47 FR 37007; August 24, 1982).

26. Licensing and regulatory policy and procedures for environmental protection; uranium fuel cycle impacts (47 FR 50591; November 8, 1982).

27. Safety goal development program (48 FR 10771; March 14, 1983).

28. Regionalization (49 FR 7676; March 1, 1984).

29. Environmental qualification of electric equipment (49 FR 8422; March 7, 1984).

30. NRC response to accidents occurring during the transportation of radioactive material (49 FR 12335; March 29, 1984).

31. Financial qualifications statement of policy (49 FR 24111; June 12, 1984).

32. Investigations, inspections, and adjudicatory proceedings (49 FR 36032; September 13, 1984).

33. Systematic safety evaluation of operating nuclear power reactors (49 FR 45112; November 15, 1984).

34. Environmental qualification of electrical equipment: Status of June 30, 1982 deadline (49 FR 45114; November 15, 1984).

35. Handling of late allegations (50 FR 11030; March 19, 1985).

36. Training and qualification of nuclear power plant personnel (50 FR 11147; March 20, 1985).

37. Regulation of advance nuclear power plants; proposed policy (50 FR 11882; March 26, 1985).

38. Regulation of advance nuclear power plants; proposed policy, correction (50 FR 13810; April 8, 1985).

39. Emergency planning (50 FR 20892; May 21, 1985).

40. Severe reactor accidents regarding future designs and existing plants (50 FR 32138; August 8, 1985).

41. Coordination and information exchange meetings between NRC staff and organizations involved in the study of the nuclear power industry (50 FR 41480; October 11, 1985).

Dated at Washington, DC this 29th day of October, 1985.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,  
Secretary of the Commission.

[FR Doc. 85-28154 Filed 10-31-85; 8:45 am]  
BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 85-NM-111-AD; Amdt. 39-5167]

#### Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) which requires inspection of the aft pressure bulkhead on all Boeing Model 747 series airplanes through Line Number 622 for evidence of repairs or damage. This AD also requires reports on the results of these inspections, and the repair of any discrepancies, if necessary. This action is prompted by a recent report of extensive cracking of a repaired aft pressure bulkhead; it is also prompted by findings of other damage and improper repairs to aft pressure bulkheads that were not recorded in the airplane records. This action is necessary since improper repairs, if not corrected, could result in depressurization of the affected airplanes.

**DATE:** Effective November 19, 1985.

**ADDRESSES:** Information on the inspection procedure may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA.

Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** There has been a recent report of cracking of a repaired aft pressure bulkhead on a Boeing Model 747 airplane. This cracking was found to have been the result of the repair not being performed in accordance with the repair drawing.

On August 29, 1985, Boeing Commercial Airplane Company issued a notice to all operators of Model 747 airplanes to report details of any repairs of the aft pressure bulkhead to Boeing for engineering review. On August 30, 1985, the FAA issued General Notice (GENOT) 8320-322, which requested operators to perform a records search to determine if any repairs had been accomplished on aft pressure bulkheads, and to submit this information to Boeing.

A preliminary review of some records and repairs has indicated that not all the repairs to aft pressure bulkheads have been fully documented, not all repairs are airworthy, and previously unknown damage has been found. Improper repair or undetected damage to the aft pressure bulkhead could lead to failure of the bulkhead and depressurization of the airplane.

Since this condition is likely to exist on other airplanes of this model, the FAA has determined that an AD is necessary which requires inspection of the aft pressure bulkhead to ensure that any repair or discrepancies are evaluated, reported, and corrected, if necessary, in accordance with FAA-approved procedures.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0056.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is

impracticable for the agency to follow the procedure of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

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

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

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

2. By adding the following new airworthiness directive:

**Boeing:** Applies to all Model 747 series airplanes, through Line Number 622, certificated in any category. To prevent a condition that would lead to depressurization of the airplane, accomplish the following, unless already accomplished after August 29, 1985:

A. Within 30 days after the effective date of this AD, perform a one-time visual inspection of the aft side of the aft pressure bulkhead for evidence of repairs or damage. Damage is defined in the Structural Repair Manual.

B. Report a complete description of the findings (sketches, photos, or drawings, as necessary) of the inspections required by paragraph A., above, within 30 days after the effective date of this AD to either:

1. The Boeing Commercial Airplane Company, ATTN: Director, 747 Customer Support Engineering, P.O. Box 3707, Seattle, Washington 98124-2207; or

2. Boeing Support Engineering through the Boeing Field Service Representative.

C. If any cracking or punctures are found in the aft pressure bulkhead, repair prior to further flight in accordance with the Structural Repair Manual; Boeing Designated Engineering Representative (DER)-approved data; or data approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Repair all other discrepancies or improper repairs in accordance with the Structural Repair Manual; Boeing DER-approved data; or data approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Repairs must be performed in accordance with a

schedule approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

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

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received information on inspection procedures from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 19, 1985.

Issued in Seattle, Washington, on October 25, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-26062 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 91

[Docket No. 24636; Amdt. 91-190]

#### Transponder-On Operation

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

**ACTION:** Final rule.

**SUMMARY:** This amendment requires all aircraft equipped with an operable radar beacon transponder to have the transponder turned on while airborne in the National Airspace System. This action is intended to enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in air traffic control (ATC) facilities. A transponder-on environment is expected to help increase controller awareness and facilitate recognition and resolution of potential traffic conflict

situations. This action does not require installation of transponders.

**EFFECTIVE DATE:** December 2, 1985.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On May 8, 1985, the FAA proposed to amend § 91.24 of Part 91 of the Federal Aviation Regulations (FAR) (14 CFR Part 91) to require that while in controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.172 of the FAR operate the transponder, including Mode C, if installed, and reply on the appropriate code or as assigned by ATC (50 FR 19381).

The preamble to the rule stated that aircraft positional information which is not readily available should be made available by requiring that transponders be turned on while aircraft are airborne within all controlled airspace. A transponder-on environment would enhance aviation safety by providing an increased degree of aircraft target visibility to radar controllers in ATC facilities and would help increase controller awareness and facilitate recognition and resolution of potential traffic conflict situations.

A transponder-on requirement was considered in the National Airspace Review (NAR). The NAR program is a comprehensive review of airspace use and procedural aspects of the ATC system. The NAR effort is a joint effort of the FAA, the Department of Defense, aviation industry and other government aviation agencies. NAR Task Group 2-3 convened in September 1984, and with the exception of a dissenting view by the Aircraft Owners and Pilots Association (AOPA), recommended adoption of a transponder-on requirement in the National Airspace System. Members of the task group making this recommendation represented the Air Transport Association (ATA), the Regional Airline Association (RAA), the National Air Transportation Association (NATA), the Department of Defense (DOD), the Air Line Pilots Association (ALPA), the Experimental Aircraft Association (EAA), the National Business Aircraft Association (NBAA), the Allied Pilots Association (APA), Transport Canada, AOPA, and the FAA. The NAR Task

Group recommendation was formally approved by the NAR Executive Steering Committee and forwarded to the FAA on December 4, 1984. In addition to the NAR recommendation, the Air Line Pilots Association (ALPA) included a transponder-on requirement in its list of proposed safety recommendations submitted to the FAA in late 1984.

In discussion of the proposal, the preamble noted that the FAA is aware that at certain times and in certain places a concentration of beacon targets could possibly confuse and interfere with the efficiency of ATC rather than assist it. Examples given were such occasions as high density fly-ins, space launches, or such operations as touch-and-go landings. The concentration of targets issue was similarly recognized by the NAR Task Group during its consideration of the proposal. However, the NAR Task Group determined that even if the situation did occur, controllers would prefer to have the aircraft's transponder on, and if situations would exist where the transponder should be off, § 91.24 of the FAR provides ample authority for controllers to so instruct pilots. Aware of a potential problem, the FAA noted in the preamble to the proposal that it was not the intent to create an inflexible requirement that could interfere with the efficiency of the National Airspace System or derogate ATC separation and advisory services. Accordingly, the proposal was designed so that it would not change the current operational environment. Under the proposal, controllers would continue to be able to ask pilots who were in communication with ATC to turn transponder off, or change transponder to "standby" or "low sensitivity." Consistent with the ATC procedures in effect, these actions could be taken to reduce clutter in a multi-target area or "ring around" or other phenomena.

It was also stated that it is not the intent of the proposal to change the application of § 91.172 "ATC Transponder Tests and Inspections." This section states that no person may use an ATC transponder that is specified in Part 125, § 91.24(a), § 121.345(c), § 127.123(b), or § 135.143(c) of this chapter unless within the preceding 24 calendar months, that ATC transponder has been tested and inspected and found to comply with Appendix F of Part 43 and certain other test and inspection requirements.

Comments were invited relative to situations when continued operations of the transponder could result in possible unsafe or inefficient operation of the National Airspace System.

**Comments**

The FAA received 18 comments in response to the NPRM. Twelve commenters supported the proposal, including the National Transportation Safety Board (NTSB), NBAA, EAA, ATA, RAA, GAMA, ALPA, several airlines including Continental, Piedmont, US Air and CP Air, and an aviation consultant. Six commenters, including four private citizens, the Soaring Society of America, and AOPA opposed the proposed rule.

Two of the individual commenters contended the proposal would benefit only ATC and not the pilot. One commenter stated it would not help to have a transponder turned on and cited the Brownsville, Texas, area as an example because there the radar coverage only goes down to 5,000 feet. Another stated there is no guarantee that operating with the transponder on would enhance safety. The writer noted that ATC frequently calls out traffic that he never finds, and that ATC does not call out traffic that he sees. The same commenter likened the proposed rule to a speed trap which would make the pilot subject to civil penalties and suspension or revocation solely for not turning on a transponder. The same commenter went on to mention that he flew out of Gaithersburg, Maryland, which has a high volume of student training. Often there are five to eight aircraft in the pattern and since the traffic pattern has been raised into controlled airspace, the proposed rule would require all of the aircraft to have their transponders on while shooting takeoffs and landings. Further, only an exemption issued by FAA headquarters could relieve the flight schools from this requirement because their aircraft are not in contact with ATC. The commenter also said that the proposal would exacerbate radar problems of saturation, clutter, and ring around which would be caused primarily by pilots who would not be in radio contact with ATC. It was suggested that if FAA is nonetheless going to adopt the rule, it would need to be amended because it does not explicitly authorize a pilot to turn off a transponder when instructed to do so by ATC. The commenter maintained that the authority of ATC to assign a code does not include "stand-by" or "low" because neither of those is a code.

The Soaring Society of America, Inc. (SSA) stated that it concurs with FAA's intent but does not support the proposal. SSA reasoned that a transponder-on rule would cause pilots to be more careless by inducing them to neglect their primary responsibility of

maintaining a visual watch in favor of relying on the use of transponders as a means of separating visual flight rules (VFR) traffic. SSA said that in its experience, it simply doesn't work.

AOPA did not support the proposal on the following grounds.

1. There is no persuasive evidence that large numbers of operators of aircraft equipped with transponders are not turning them on. It defies logic to assume that an aircraft owner would purchase expensive avionics and then intentionally not use them.

2. There is no assurance that operating with transponder on will enhance safety. Today, controllers who reach a level of traffic saturation selectively suppress the transponder emissions of VFR aircraft to reduce workloads. The proposed rule would encourage that practice.

3. Supplemental information in the proposal admits that concentrations of targets could confuse and interfere with the efficiency of ATC. There is no requirement that aircraft establish or maintain communications with ATC. Mandated operation of transponders increases the opportunity for a number of transponder problems to occur while reducing or eliminating ATC's control or resolution of such problems. In conjunction with this point, AOPA noted two possibilities:

(a) Saturation, clutter, and ring around may be exacerbated with no way for the controller to advise aircraft to stop squawk, squawk stand-by, or change codes.

(b) Erroneous, conflicting, or malfunctioning codes emitted by transponders could not be corrected by the controller and not perceived by the operator.

4. The proposal is unenforceable and contradicts Administration efforts to reduce unnecessary regulation.

#### Discussion of Comments

In summary, the nonconcurring commenters expressed the following concerns:

1. There is no assurance the rule would enhance aviation safety.

2. The benefits would accrue to ATC, not pilots. The pilot would not see an improvement in traffic advisory service. Further, the pilot would be subject to enforcement penalties for not turning the transponder on.

3. The radar operational environment would be adversely affected as follows:

(a) The rule would not be needed where radar coverage did not exist.

(b) Situations of radar clutter, ring-around, and other undesirable phenomena would increase.

(c) The controller would not be able to control or correct beacon malfunction and saturation problems because radio communications would not exist with many aircraft.

4. As written, the rule provides ATC authority to assign codes only.

5. The rule is unenforceable.

#### Safety/Benefits

The greater share of safety benefits from a transponder-on rule accrue to pilots and other users of the National Airspace System (NAS). Both visual and instrument flight rules (VFR/IFR) aircraft can be provided a higher degree of safety in the NAS through proper use of a transponder. Transponders substantially increase the capability of radar to "see" an aircraft. Improved visual acquisition enables the controller to quickly determine where potential traffic conflicts may exist. The intent behind the transponder-on rule is to increase controller awareness to facilitate recognition and resolution of potential traffic conflict situations. The acquisition of radar target information is basic to the provision of safety advisories which are a first priority duty of controllers. Therefore the FAA submits that while transponders help to improve the efficiency of ATC safety advisory service, the ultimate beneficiary of improved aviation safety is the airspace user.

#### The Radar Environment

The arguments raised over the perceived problems that would be encountered by ATC if mandatory use of transponders is initiated are suppositional and without supportive data. In one case, they appear to be contradictory. It was seen as inconceivable that aircraft operators would purchase expensive avionic equipment and not operate it, indicating that transponders were already on. However, the commenter went on to say that if a transponder rule were effected, radar saturation problems would occur, presumably as a result of the operation of transponders which are now left off.

With respect to the alleged radar saturation problem, the FAA noted in Notice No. 85-12 that it was not the intent of the proposal to create an inflexible requirement that could interfere with the efficiency of the National Airspace System or derogate ATC separation and advisory services. Accordingly, the proposal was specifically structured so that the current operational environment would be left intact, including continuation of the ATC deviation authority. The FAA does not expect that the rule would encourage the suppression of select

transponder codes. In those instances when controllers have to selectively suppress certain codes, it is to reduce clutter over a particular area, but only temporarily. Code monitoring procedures will not be changed by this rule. During periods when ring around or excessive VFR target presentations derogate the separation of IFR traffic, the monitoring of the VFR code may be temporarily discontinued.

Code monitoring procedures are implemented independent of radio communications with aircraft. With respect to the issue of radio communications and transponders, controllers have the means to inhibit certain transponder codes, or all if necessary, but to date have no way to "turn on" a transponder in an aircraft with the transponder turned off. An aircraft with a transponder turned on, even when no communications have been established, is receiving a form of service from ATC in that the target is observed, and if necessary the traffic may be provided other aircraft that are in contact with ATC.

#### Rule Provisions/Effects

Contrary to the concerns of one commenter, the language of the amended rule does provide ATC authority to "stop squawk," "squawk low," or turn transponder off. New subparagraph (c) of § 91.24 provides such broad authority by specifying that each person shall reply on the appropriate code or "as assigned by ATC." Again, the amended rule generates no change in the current practice or procedure.

There were a few comments that the rule would be unenforceable or, conversely, that it would trap pilots into enforcement actions. The purpose of this rule is the enhancement of aviation safety through the provision of an increased degree of aircraft target visibility to ATC radar controllers. The relative ease or difficulty of enforcing the rule was not a significant factor in adopting the rule, although the FAA does not agree that the rule could not be enforced. It is also the FAA's belief that pilots would have no valid reason to object to operating the transponder if such operation would assist ATC in providing improved detection and advisory service and that the effectiveness of the rule will result from voluntary compliance rather than enforcement.

With respect to the rule's effects, another concern was that it would induce pilots to relax their vigilance for other traffic. The FAA appreciates the psychology of this concern. However,

the more obvious capability of the rule to enhance aviation safety outweighs the negative supposition which at best would be difficult to measure. Also, the transponder-on requirement has no effect on the requirement that places ultimate responsibility on the pilot for operation of the aircraft, and thereby, the safety of that flight.

Because this amendment generates no significant energy, cost, or other impacts on aircraft operators, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### Regulatory Evaluation

The requirement that transponders already installed in aircraft be turned on while such aircraft are airborne in the National Airspace System will not have a significant economic impact on airspace users. The rule will not require the purchase, installation, or maintenance of any additional equipment nor will it require any additional recordkeeping. Only an imperceptible amount of additional electricity at negligible cost will be required to keep transponders in operation while the aircraft equipped with them are airborne. Because the impact of this rule is minimal, a full regulatory evaluation has not been prepared. For the same reasons, a transponder-on rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. While FAA has no estimate of the number, if any, of small entities which will be affected by the rule, the impact on individual operators is so minimal as not to meet the threshold of "significant impact" within the meaning of the Regulatory Flexibility Act. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 14 CFR Part 91

Aviation safety, Air traffic control, Airspace, Safety.

#### The Amendment

Accordingly, Part 91, Subpart A of the Federal Aviation Regulations (14 CFR Part 91), is amended as follows:

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil

Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

2. Section 91.24 is revised by redesignating paragraph (c) as paragraph (d), and by adding new paragraph (c) to read as follows:

#### § 91.24 ATC Transponder and altitude reporting equipment and use.

(c) *Controlled Airspace, all aircraft, transponder-on operation.* While in controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.172 of this Part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

Issued in Washington, DC, on October 29, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-26150 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Rel. Nos. 33-6608; 34-22576; 35-23881; 39-1042; IA-992; IC-14771]

#### Revision of Rule Concerning Acceptance of Travel Reimbursement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

**SUMMARY:** The Commission has determined that its rule relating to the acceptance of reimbursement for travel expenses from entities tax exempt pursuant to 26 U.S.C. 501(c)(3) is unduly restrictive. It is therefore amending its rules to permit Commission members and employees who participate in conferences and meetings sponsored by entities which are tax exempt pursuant to 26 U.S.C. 501(c)(3) to accept from such entities, under limited circumstances, reimbursement for the actual travel expenses of a spouse, provided the prior approval of the General Counsel is obtained.

**EFFECTIVE DATE:** November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Myrna Siegel, Ethics Counsel, Office of the General Counsel, Securities and Exchange Commission, Washington, DC 20549, (202) 272-2430.

**SUPPLEMENTARY INFORMATION:** Prior to 1983, the Commission's regulations

permitted Commission members and employees who participate in programs sponsored by entities designated tax exempt pursuant to 26 U.S.C. 501(c)(3) to accept from such entities reimbursement for travel and subsistence expenses for an accompanying spouse, if the prior approval of the General Counsel was obtained. The amendment announced in this release reinstates that rule.

#### Discussion

In June 1983, Congress authorized the Commission to accept from non-federal entities payment or reimbursement for expenses incurred by Commission members and staff in connection with participation at educational conferences and meetings sponsored by such entities.<sup>1</sup> On August 23, 1983, the Commission adopted regulations to implement this new statutory authority.<sup>2</sup>

In order to eliminate real or apparent conflicts of interest, those regulations require all private reimbursement for the expenses of Commission members and staff on official duty time to be accepted by the Commission, not by the individual. Because Congress authorized the Commission to accept reimbursement only for the travel and subsistence expenses of its members and employees, the reimbursement rules generally have the effect of prohibiting a member or employee who is traveling while on official duty from accepting any payment or reimbursement offered by the sponsoring organization for the travel expenses of a spouse. Staff members can, under certain circumstances,<sup>3</sup> avoid the effects of this prohibition by taking annual leave to attend the educational program or conference in question. Since Commission members are not subject to any leave system, they are effectively prohibited from accepting reimbursement for a spouse when participating in educational conferences or meetings relating to the functions or responsibilities of the Commission, even when the sponsor is a tax-exempt institution.

Entities, tax exempt pursuant to Section 501(c)(3), that sponsor

<sup>1</sup> Pub. L. No. 98-38, 97 Stat. 205 (1983).

<sup>2</sup> 48 FR 39215 (August 30, 1983).

<sup>3</sup> Employees may accept reimbursement for a spouse or traveling companion only with the prior written approval of the General Counsel. That approval may be given when program participants are expected to engage in social activities. However, reimbursement may not be accepted from entities which do business with the Commission, are regulated by the Commission, are registered with the Commission or have interests which may be substantially affected by the official duties of the employee. Moreover, public disclosure of the amount accepted is required.

conferences in which Commission members and employees participate are primarily educational organizations, such as universities. \* Therefore, the acceptance of reimbursement for the traveling expenses of a spouse (or traveling companion) from such an entity does not generally raise questions of conflict of interest.

Accordingly, the Commission has determined to amend its current rule to permit Commission members and staff to accept spousal reimbursement from an entity which is tax exempt pursuant to 26 U.S.C 501(c)(3), provided (as in the case of staff members currently) the prior approval of the General Counsel is obtained. Such approval will be granted routinely where the circumstances do not raise an appearance of impropriety or conflict of interest and where participants are expected to engage in social activities, such that the attendance of a spouse facilitates the business of the program. Although the situation is unlikely to arise with Section 501(c)(3) organizations, no reimbursement will be accepted from a tax-exempt organization which does business with the Commission, is regulated directly or indirectly by the Commission, is registered with the Commission, or has interests which may be substantially affected by the participating individual's performance or non-performance of his or her official duties.

A copy of the General Counsel's approval, and a notice of the amount of payment or reimbursement accepted, will be placed in the public file. The Office of Government Ethics has approved this rule amendment, and a copy of that determination will also be placed in the public file.

**Regulatory Flexibility Act**

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rules are procedural, and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

The Commission finds that the foregoing action relates solely to rules of

\*Entities qualifying for tax exempt status pursuant to 26 U.S.C. 501(c)(3) are limited to:  
Corporations and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific testing purposes, or to foster natural or international amateur sports competition \* \* \* or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation \* \* \* and which does not participate in, or intervene in \* \* \* any political campaign on behalf of any candidate for public office.

agency procedures or practice and, accordingly, that notice and prior publication for comments under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. See 5—U.S.C. 553(b).

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Conflicts of interest, Freedom of Information, Privacy, Securities.

**Text of Amendment**

In consideration of the foregoing, the Commission hereby amends Part 200 of Chapter II, Title 17, Code of Federal Regulations as follows:

**PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS**

1. The authority citation for Subpart M of Part 200 continues to read as follows:

Authority: Sections 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 791, 77sss, 80a-37, 80b-11; E.O. 11222; 3 CFR, 1964-1965 Comp. 5 CFR 735.104.

2. Section 200.735-4 is amended by adding paragraph (b)(6)(vii) as follows:

**§ 200.735-4 Outside employment and activities.**

- \* \* \* \* \*
- (b) \* \* \*
- (6) \* \* \*
- (vii) Members or employees who are participating in a program meeting the criteria of paragraph (b)(6)(i) of this section, which is sponsored by a person determined by the Secretary of the Treasury to be a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3), and for which reimbursement for the member's or employee's participation will be accepted by the Commission, may, while on official duty, accept from the sponsoring entity *bona fide* reimbursement for actual expenses for travel and necessary subsistence for a spouse or traveling companion provided that the procedures detailed in paragraphs (d)(6) (vi)(A)-(C) of this section are followed.
- \* \* \* \* \*

By the Commission.  
Dated: October 28, 1985.  
**John Wheeler,**  
Secretary.  
[FR Doc. 85-26171 Filed 10-31-85; 8:45 am]  
BILLING CODE 8010-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 436**

[Docket No. 85N-0392]

**Antibiotic Drugs; Hyclate Doxycycline Pellet-Filled Capsules**

*Correction*

In FR Doc. 85-24471 beginning on page 41678 in the issue of Tuesday, October 15, 1985, make the following corrections:

On page 41679, first column, in § 436.543(c), thirteenth line, "time" should read "timed". In the second column, in § 436.543(e), fourth line, "on" should read "one".

BILLING CODE 1505-01-M

**21 CFR Part 522**

**Animal Drugs, Feeds, and Related Products; Change of Sponsor**

*Correction*

In FR Doc. 85-24362 beginning on page 41488 in the issue of Friday, October 11, 1985, make the following correction:

On page 41489, third column, in amendatory instruction 18 for § 522.1081, third line, "genadotropin" should read "gonadotropin".

BILLING CODE 1505-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[A-4-FRL-2917-9; FL-012]

**Approval and Promulgation of Implementation Plans, Florida; Lead Implementation Plan**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is today disapproving the regulatory portion of the Florida State Implementation Plan (SIP) for lead, approving all other portions of the plan, and promulgating Federal source-specific emission limitations for the lead stationary sources in Florida identified as having a potential to violate the lead National Ambient Air Quality Standard (NAAQS). This action was proposed on February 21, 1985, in the Federal Register (50 FR 7187) and a public hearing and comment period provided. The comments which were received are discussed below.

**EFFECTIVE DATE:** December 2, 1985.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency,  
Region IV, Office of Regional Counsel,  
345 Courtland Street NW., Atlanta,  
Georgia 30365

Library, Office of the Federal Register,  
1100 L Street NW., Room 8401,  
Washington, D.C. 20005

EPA Central Docket Section West  
Tower Lobby, Gallery I, A-130, 401 M  
Street SW., Washington, D.C. 20460

Florida Department of Environmental  
Regulation, Bureau of Air Quality  
Management, Twin Towers Office  
Building, 2600 Blairstone Road,  
Tallahassee, Florida 32301

**FOR FURTHER INFORMATION CONTACT:**

Ms. Kelly McCarty, EPA Region IV, Air  
Management Branch, at the above listed  
address and phone 404/881-3286, or FTS  
257-3286.

**SUPPLEMENTARY INFORMATION:** On

September 17, 1984, the Florida  
Department of Environmental  
Regulation submitted a lead SIP to EPA  
to satisfy the requirements of section  
110 of the Clean Air Act and the  
National Ambient Air Quality Standard  
(NAAQS) for lead. EPA reviewed the  
submittal and proposed action on  
February 21, 1985 (50 FR 7187), in the  
Federal Register. This action proposed  
to: disapprove the source-specific  
regulatory portion of the SIP, approve of  
all other portions of the SIP, and  
promulgate the source-specific  
regulations necessary to complete the  
SIP. All other background information  
relating to the actions being taken may  
be found in that notice.

Since EPA was proposing to  
promulgate source-specific emission  
limits to substitute for the regulatory  
portion of the lead SIP, a public hearing  
on the SIP was required to be held under  
Section 110(c)(1) of the Clean Air Act.  
This hearing was held in Tampa, Florida  
on March 23, 1985, and the comments  
which were received at the hearing, as  
well as those comments received during  
the comment period of the February 21,  
1985, Notice of Proposed Rulemaking,  
are discussed below.

In the February 21, 1985, proposal  
notice, each individual source-specific  
emission limitation located in § 52.535(c)  
contained its own sections for test  
procedures and production restraints to  
be employed during compliance testing.  
In today's final rulemaking, these two  
sections have been deleted from the  
individual source-specific emission  
limits in § 52.535(c), and have been  
made part of § 52.535 (b) of the

regulations which contain the general  
provisions which apply to all the  
sources. Specifically, § 52.535(b)(5) and  
§ 52.535(b)(6) now contain the specific  
compliance testing requirements.  
Sections 52.535 (b) and (c) are hereby  
amended to reflect these changes.

The attainment date for the State of  
Florida for the lead NAAQS shall be  
thirty days from the date of this notice.  
The State is considered to be attainment  
because none of the monitors in the  
State are recording exceedances of the  
ambient concentration for lead (1.5 ug/  
m<sup>3</sup> averaged quarterly), and because the  
significant point sources of lead do not  
need additional time to meet the  
emission limits promulgated herein.

**Comments Received**

*Miscellaneous.* In the final,  
§ 52.535(b)(4) was slightly changed. The  
proposal stated that source tests should  
be performed in accordance with EPA  
Reference Methods 1 through 5. This  
should have read Methods 1 through 4.  
Section 52.535(b)(4) is hereby amended  
to reflect this change.

*Compliance Test.* Several commenters  
objected to the requirement that  
compliance stack testing must be  
performed within 120 days of  
promulgation. They felt that this  
requirement was unreasonable, since  
some sources have recently been tested.

EPA feels the 120 days to perform a  
compliance test is reasonable, but is  
willing to accept a recent stack test  
compliance verification on a case by  
case basis, provided the test meets EPA  
testing requirements. Therefore EPA has  
amended § 52.535(b)(1) to allow testing  
performed within 120 days after  
promulgation, or testing performed  
within the previous 12 months prior to  
promulgation, provided the test reports  
are submitted to EPA prior to, or within  
30 days after, promulgation, and the  
tests meet EPA standard reference  
testing requirements.

Although EPA agrees that an annual  
Method 12 stack test could be  
burdensome for some of these sources,  
the Agency also believes that adoption  
of a specific alternate testing schedule is  
not appropriate. The language in  
§ 52.535(b)(3) as proposed and retained  
in the final rule gives EPA the discretion  
to approve alternate compliance  
methods, including waiver of the annual  
Method 12 requirement, if adequate  
justification is provided. EPA will accept  
requests for alternative testing  
schedules and approve or disapprove  
them on a case by case basis. Therefore,  
no changes were made to this section.

*Fugitive Emissions.* During the public  
hearing, one of the commenters stated  
that § 52.535(b)(2) of the proposal was

unnecessary since there are no non-  
process fugitive emission limits. The  
commenter suggested that the section be  
deleted.

EPA agrees with the comment, but not  
the suggestion. The intent of the section  
was to enable a source inspector who  
documents an extraordinary amount of  
fugitive emissions to impose some sort  
of control requirement to reduce the  
emissions. In light of the  
misunderstanding, the section has been  
reworded to reflect the intended  
meaning.

*Action.* Based on the foregoing, EPA  
hereby disapproves the regulatory  
portion of Florida's SIP for lead,  
approves the rest of the SIP, and  
promulgates source-specific emission  
limits for the sources identified in the  
lead SIP. This action is effective  
December 2, 1985.

Under Executive Order 12291, today's  
action is not "Major". It has been  
submitted to the Office of Management  
and Budget for review.

Pursuant to section 307(d)(1)(B) of the  
Clean Air Act, EPA has established a  
docket (No. IV-A-85-01) which is  
available for public inspection and  
copying at EPA's Docket Office listed  
above, between 8:00 A.M. and 4:00 P.M.,  
Monday through Friday. A reasonable  
fee may be charged for copying. An  
identical docket has also been  
established at EPA's Region IV Office,  
listed above.

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 publication  
date). This action may not be challenged  
later in proceedings to enforce its  
requirements. (See § 307(b)(2) of the  
Clean Air Act.)

EPA reserves the right to include such  
other sources of lead in this Federal  
Implementation Plan if it finds the  
source to meet the criterion set forth in  
Chapter 17-2.100(99) of the Florida Air  
Regulations. This section states that a  
major source of lead is one "which emits  
or has the potential to emit 5 tons per  
year or more of lead or lead compounds,  
measured as elemental lead".

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

**List of Subjects in 40 CFR Part 52**

Air pollution control,  
Intergovernmental relations, Lead,  
Particulate matter, Incorporation by  
reference.

Dated: October 25, 1985.

Lee M. Thomas,  
Administrator.

## PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is hereby amended as follows:

### Subpart K—Florida

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.520 is amended by adding paragraph (c)(55) as follows:

#### § 52.520 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(55) State implementation plan for lead, submitted by the Department of Environmental Regulation on September 17, 1984.

(i) Incorporation by reference—

(A) Amendments to Florida Administrative Code, Chapter 17.2-100, Definitions, and 17.2-500 and 510, Applicability (for New Source Review), adopted by the State on January 25, 1984, and September 17, 1984 letter from the Florida Department of Environmental Regulation to EPA.

(ii) Additional material—

(A) Narrative submittal, including an attainment demonstration.  
(B) Emissions inventories for lead sources.

3. Section 52.535 is added as follows:

#### § 52.535 Rules and regulations.

(a) The regulatory portion of the lead implementation plan submitted on September 17, 1984, is disapproved because the laws or regulations needed to implement specific measures necessary to assure attainment and maintenance of the NAAQS for lead were not included.

(b) The following requirements shall apply to all the facilities listed in paragraph (c) of this section:

(1) The facilities listed in paragraph (c) of this section shall conduct an initial test on all sources of lead emissions specified for each facility within 120 days of promulgation of this regulation, unless such sources have been tested within the previous 12 months, and the results submitted to EPA, Region IV, within 30 days after promulgation, and approved. Such test shall demonstrate compliance with the specified emission limit for each source. Source test methods and analytical procedures used shall be in accordance with provisions

of Part 60, Appendix A, Method 9 and 12. For source testing, a plan of testing including the date(s) the tests will be performed, a description of the test equipment and procedures to be used and the sampling locations with appropriate dimensions, showing upstream and downstream gas flow disturbances, shall be submitted to the EPA Region IV Administrator thirty (30) days prior to the initial test. Results of all source testing and compliance determinations shall be submitted to the Region IV Administrator within thirty (30) days after completion of the test. After completion of the initial performance test required above, the facilities shall conduct annual stack tests for all sources with a specified emission limit.

(2) Non-process fugitive emissions, (i.e., road dust, stock piles, plant grounds, etc.) shall be minimized. Minimization efforts shall include such fugitive dust suppression activities as: chemical stabilization, water spraying with appropriate runoff collection, resurfacing, sweeping, revegetation, and other EPA approved methods. Minimization efforts shall be monitored by EPA via site inspections and review of records and logs of fugitive dust suppression efforts.

(3) Upon submittal and approval by EPA, the Agency will accept an alternative method to demonstrate compliance with the specified emission limit. A submittal for an alternative compliance method must provide an exclusive means (i.e., mathematical relationship with established parameter(s)) to determine compliance with the applicable emission limit. Until an alternative compliance method request is approved by EPA, the initial and annual test requirements will remain in effect.

(4) The owner(s) or operator(s) shall maintain continuous records of plant process and emission control operations as necessary to determine continuous compliance. Such records shall include reports of all process operations and control equipment operating parameters. Such records shall also include reports of all types of process upsets and emission control equipment malfunction, detailing the nature and duration of the upset or malfunction, the expected effects on emissions, and the corrective actions taken or planned to avoid recurrences. Such records shall be available at the plant site for inspections by the Region IV Administrator of EPA for a period of at least two (2) years.

(5) Source tests shall be performed in accordance with EPA Reference Methods 1 through 4, 9, and 12 (40 CFR

60, Appendix A). In the case of Method 9, Section 2.5 shall be excluded.

(6) All emissions testing shall be performed at the maximum production rate, or other production rate or operating conditions, which would result in the highest lead emissions.

(c) The following requirements are promulgated as applicable to the indicated stationary sources of lead:

(1) Gulf Coast Lead, 1901 North 66th Street, Tampa, FL. Secondary Lead Smelter Operation.

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rate lb/hr
Blast & Slag Furnaces	1.810
Blast & Slag Furnaces Slag & Product Tapping	0.060
Blast Furnace Charging	0.220
50-ton Melt Kettles (3 total)	0.400
20-ton Keel Cast Kettle	0.080
Total	2.570

(ii) Visible emissions from the closed charge doors on the blast furnace and the refining kettle shall not exceed 5 percent opacity during furnace operation.

(iii) Visible emissions from the charge doors on the blast furnace shall not exceed 10 percent opacity during charging operations.

(iv) Visible emissions from all other sources shall not exceed 5 percent opacity.

(v) No more than one blast furnace shall operate at a time.

(vi) No more than two 50-ton melt kettles shall be operated at a time.

(2) Johnson Controls, Globe Battery Division, 10215 North 30th Street, Tampa, FL.

Lead—Acid Battery Manufacturing Plant

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rate—lb/hr
OSI Drying Oven—A	0.008
OSI Drying Oven—B	0.008
Hofman VAC System	0.030
Remelt Rotocline	0.020
Paste Mixing Rotocline	0.008
Wirtz Caster #1	0.015
Wirtz Caster #2	0.015
Wirtz Caster #3	0.015
Wirtz Caster #4	0.015
Wirtz Caster #5	0.006
Mark V Cast on Strapline	0.118
Cast on Strapline 1 & 2	0.100
Cast on Strapline #3	0.050
Paste Mixing—dry	0.040
Mill Bearing	0.006
PbO Storage	0.010
Total	0.464

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(3) Chloride Battery, US. 41/Raleigh Street, Tampa, FL.

**Lead—Acid Battery Manufacturing Plant**

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rates—lb/hr
Ventilation System	0.300
PbO Silo	0.070
Pb Casting & Pasting	0.350
<b>Total</b>	<b>0.720</b>

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(iii) The PbO silo shall be limited to operating 16 hours per week.

(4) Chloride Metals, US. 41/Raleigh Street, Tampa, FL.

**Secondary Lead Smelter Operation**

(i) All emission points shall be limited to the following levels:

Source name	Lead emission rates—lb/hr
Blast Furnace #1	0.600
Slag & Product Tapping—Furnace #1	0.100
Blast Furnace #2	0.080
Slag & Product Tapping—Furnace #2	0.050
Remelt Kettles (4 total)	0.200
PbO Plant	0.220
PbO Transfer	0.220
<b>Total</b>	<b>1.470</b>

(ii) Visible emissions from the closed charge doors on Furnaces No. 1 and 2 shall not exceed 5 percent opacity during furnace operation.

(iii) Visible emissions from the charge doors on Furnaces No. 1 and 2 shall not exceed 10 percent opacity during charging operations.

(iv) Visible emissions from the lead oxide plant shall not exceed 5 percent opacity.

(v) Visible emissions from all other sources shall not exceed 5 percent opacity.

(5) Gould Battery (GNB), 11331 Satellite Boulevard, Orlando, FL. Lead—Acid Battery Manufacturing Plant.

(i) All emission points shall be limited to the following levels:

Source name	GNB ID #	Lead emission rates—lb/hr
Pasting/Parting	B1	0.1950
Assembly	B2	0.2188
Casting, QC Mixing	B3	0.1508
Assembly	B4	0.2998
Assembly	B5	0.4902
Bulk Oxide	B6	0.0142
Central Vacuum	B7	0.0096
Pot Hood	E1	0.1190
Pot Hood	E2	0.0096
Pot Hood	E3	0.0096
Tray Exhaust	E4	0.1238
Paste Oven POS	E5	0.0048
Paste Oven NEG	E6	0.0048
<b>Total</b>		<b>1.8800</b>

(ii) Visible emissions from all emission points shall not exceed 5 percent opacity during operation.

(iii) The following sources shall be limited to operating 4000 hours per year: Pasting/Parting, GNB ID #B1;

Assembly, GNB ID #B2; Assembly, GNB ID #B4; Assembly, GNB ID #B5; Central Vacuum, GNB ID #B7; Tray Exhaust, GNB ID #E4; Paste Oven POS, GNB ID #E5; Paste Oven NEG, GNB ID #E6.

(iv) The Bulk Oxide point source, GNB ID #B6, shall be limited to operating 1000 hours per year.

(v) The following sources shall be limited to operating 5000 hours per year: Casting, QC Mixing, GNB ID #B3; Pot Hood, GNB ID #E1; Pot Hood, GNB ID #E2; Pot Hood, GNB ID #E3.

(6) Refined Metals, 2640 Capitola Street, Jacksonville, FL. Secondary Lead Smelter Operation.

(i) This source is currently shut down, with no plans to reopen. However, should the owners decide to reopen the plant, they must reapply for a permit as if they were a new source, and they will be subject to new source review, as if they had not operated previously. This is to be effective immediately, since their current permit expired December 31, 1984. This is pursuant to Florida Administration Code 172.530, Source Reclassifications, and 17-4.09, Renewals.

[FR Doc. 85-26117 Filed 10-31-85; 8:45 am]  
BILLING CODE 6560-50-M

**40 CFR Part 52**

[A-5-FRL-2914-8]

**Approval and Promulgation of Implementation Plans; Ohio**

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

**ACTION:** Final rulemaking.

**SUMMARY:** In a September 25, 1984 (49 FR 37642), Federal Register notice, USEPA proposed to approve a revised emission limitation for the PPG

Barberton plant in Summit County, Ohio, as a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO<sub>2</sub>). Since that time, USEPA has been informed that PPG has permanently terminated the operations of the plant. Consequently, the State of Ohio withdrew its request for a revised emission limit for PPG.

USEPA is revising the SO<sub>2</sub> emission limitation in the Ohio federally promulgated SIP to adequately reflect the shutdown of the plant. The federal SIP for PPG will now consist of a 0.0 lbs/MMBTU for the Barberton plant's coal-fired steam generating units.

**DATE:** This action will be effective December 31, 1985, unless notice is received within 30 days that someone wishes to submit adverse or critical written comments, or requests an opportunity for oral presentation of data, views or arguments.

**ADDRESSES:** The docket for this revision (#5A-85-2) is on file at the following locations, and may be inspected and copied during normal business hours. (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460.

Written comments and request for a public hearing should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

**SUPPLEMENTARY INFORMATION:** On August 27, 1976, USEPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of SO<sub>2</sub> in the State of Ohio (42 FR 36342). Revisions to the Summit County regulations for most sources were published December 5, 1979 (44 FR 69928), but did not include PPG's Barberton, Ohio, plant. USEPA promulgated new regulations for the PPG facility on July 25, 1980 (45 FR 49550). On January 27, 1981, USEPA disapproved the proposed SIP limitations that Ohio had submitted for Summit County, including the PPG facility (46 FR 8481).

The State of Ohio submitted a petition for reconsideration of USEPA's disapproval as it applied to, among other sources, the PPG plant. Additionally, PPG had submitted a petition for reconsideration of the federally promulgated Ohio SIP limit for its Barberton plant.

On April 13, 1982, USEPA announced that it was granting Ohio's petition for reconsideration (47 FR 15814). The Agency stated that it would respond to the State's petition by taking action on the revised Summit County SIP that Ohio intended to submit for USEPA review. Also, on July 7, 1982, USEPA announced that it was granting PPG's petition for reconsideration of the federally promulgated emission limitation for the Barberton plant (47 FR 29573). The Agency stated in that notice that it would respond to PPG's petition in the same way—by taking action on the State's revised Summit County submittal.

On August 27, 1982, and November 17, 1982, Ohio submitted a request to revise the SO<sub>2</sub> SIP for the PPG Barberton Plant in Summit County. The State requested USEPA to revise the federally promulgated emission limit of 3.8 lbs/MMBTU SO<sub>2</sub> by approving a limit of 7.8 lbs/MMBTU for Boilers 3, 6 through 10 (the stokers), 11, and 12 at the PPG Plant, with operation of the boilers permitted in only one of four specific configurations.

On February 18, 1985, PPG notified USEPA that it had permanently terminated operation of Boilers Nos. 11 and 12, the larger coal-fired boilers, in September 1983. Additionally, the last of the six small coal-fired boilers was permanently shutdown on October 1, 1984. Furthermore, PPG stated it had no intention of resuming use of these coal-fired boilers at Barberton. On April 4, 1985, Ohio EPA withdrew its request for the revised SO<sub>2</sub> emission limit for these boilers at PPG as a result of the shutdown.

USEPA is now revising the SO<sub>2</sub> emission limitation in the Ohio federally promulgated SIP to reflect the shutdown of the plant. Thus, the Federal SIP for PPG will consist of 0.0 lbs/MMBTU emission limit for all coal-fired boilers at the Barberton plant. (This reflects the fact that the PPG Barberton plant is permanently shutdown and would have to satisfy the appropriate new source review requirements if the plant were reopened.)

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on December 31, 1985.

However, if we receive notice by December 2, 1985 that someone wishes to submit critical written comments, or requests opportunity for oral presentation of data, views, or arguments, then USEPA will publish: (1) A notice that withdraws the action; and (2) a notice that begins a new rulemaking by proposing an action and establishing a comment period.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

The Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq. requires the Agency to prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities. Because this revision affects only one source which is no longer in operation, this action will not have a significant economic impact on a substantial number of small entities.

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 December 31, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Intergovernmental relations, Air pollution control, Sulfur oxides.

Dated: October 11, 1985.

Lee M. Thomas,  
Administrator.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

**Subpart KK—Ohio**

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1881 is amended by revising paragraph (b)(59)(xiv).

**§ 52.1881 Control Strategy: Sulfur oxides (sulfur dioxide).**

(b) \* \* \*

(xiv) PPG Industries or any subsequent owner or operator of the PPG Industries facilities in Summit

County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at this facility in excess of 0.00 pounds of sulfur dioxide per million BTU actual heat input for each coal-fired unit.

(xv) \* \* \*

[FR Doc. 85-28166 Filed 10-31-85; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 180**

[OPP-300089A; FRL 2650-71]

**Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Dibutyltin Dilaurate, Ethyl Vinyl Acetate, Nitrile Rubber Modified Acrylonitrile-Methylacrylate Copolymers, Polyethylene, Polypropylene, Tetrafluoropolyethylene**

*Correction*

In FR Doc. 84-20984, beginning on page 31694 in the issue of Wednesday, August 8, 1984, on page 31695, second column, in § 180.1001(e) table under the third column headed "Uses" the first entry reading "Component of plastic slow release tag" should have appeared in each entry where "Do" appears. As corrected the entire table is reprinted below.

**§ 180.1001 Exemptions from the requirement of a tolerance.**

(e) \* \* \*

Inert Ingredients	Limits	Uses
Dibutyltin dilaurate (CAS Registry No. 77-58-7).	.	Component of plastic slow release tag.
Ethyl vinyl acetate (CAS Registry No. 24937-78-8).	.	Component of plastic slow release tag.
Nitrile rubber modified acrylonitrile-methylacrylate (CAS Registry No. 27012-62-0) conforming to 21 CFR 177.1480.	.	Component of plastic slow release tag.
Polyethylene (CAS Registry No. 9002-88-4) conforming to 21 CFR 172.615.	.	Component of plastic slow release tag.
Polypropylene (CAS Registry No. 9003-07-0).	.	Component of plastic slow release tag.
Polytetrafluoroethylene (CAS Registry No. 9002-84-0).	.	Component of plastic slow release tag.

BILLING CODE 1505-01-M

**OFFICE OF PERSONNEL  
MANAGEMENT**
**45 CFR Part 801**
**Voting Rights Program; New Mexico**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is establishing eight new offices for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective November 1, 1985. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before December 2, 1985.

**ADDRESS:** Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532, 1900 E Street NW., Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brooks, (202) 632-5544.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Chavez, Cibola, Curry, McKinley, Otero, and Sandoval Counties, New Mexico, as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on December 17, 1984, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and

where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

**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 significant economic impact on a substantial number of small entities because it adds eight new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedures, Voting rights.

U.S. Office of Personnel Management.  
Constance Horner,  
Director.

Accordingly, OPM is amending 45 CFR Part 801 as follows:

**PART 801—VOTING RIGHTS  
PROGRAM**

1. The authority citation for Part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; secs 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g).

2. Section 801.202 is amended by adding alphabetically Appendix A, New Mexico consisting of the following counties; Chavez, Cibola, Curry, McKinley, Otero, and Sandoval to read as follows:

**§ 801.202 Times and places for filing and forms of applications.**

\* \* \* \* \*

**Appendix A**

\* \* \* \* \*

New Mexico

County; Place for filing; Beginning date.

\* \* \* \* \*

Chavez—Federal Building, 5th and Richardson Street, Roswell, New Mexico; Cibola—U.S. Forset Service, Mt. Taylor Ranger District, Cibola National Forest, 201 Roosevelt, Grants, New Mexico; Curry—Main Post Office, 417 Gidding, Room 203, Clovis, New Mexico; McKinley—Bureau of Indian

Affairs, Eastern Navajo Agency, P.O. Box 328, Crowpoint, New Mexico (25 miles north of Thoreau, 1 mile west of State Road 57); Bureau of Indian Affairs, Navajo Area Office, Federal Building, 3rd and Hill Streets, Gallup, New Mexico; Otero—U.S. Forest Service, Lincoln National Forest, Federal Building, 11th and New York Streets, Alamogordo, New Mexico; Sandoval—Mobile unit on parking lot behind U.S. Post Office, Camino del Pueblo Road, Bernalillo, New Mexico; U.S. Forest Service, Cuba Ranger District, San Fe National Forest, State Highway 126 and South Main, Cuba, New Mexico. December 17, 1984.

[FR Doc. 85-25987 Filed 10-31-85; 8:45 am]

BILLING CODE 6325-01-M

**FEDERAL COMMUNICATIONS  
COMMISSION**
**47 CFR Parts 1 and 21**

[CC Docket No. 85-40; FCC 85-562]

**Establish Procedures for Processing  
Mutually Exclusive Applications for  
Digital Termination Systems**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission adopts rules to use random selection procedures, pursuant to its authority under Section 309(i) of the Communications Act, 47 U.S.C. 309(i), to select from among mutually exclusive digital termination system applications in the Digital Electronic Message Service.

**EFFECTIVE DATE:** December 2, 1985.

**FOR FURTHER INFORMATION CONTACT:** Geraldine A. Matise, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1841.

**SUPPLEMENTARY INFORMATION:**
**List of Subjects**
**47 CFR Part 1**

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications.

**47 CFR Part 21**

Communications common carriers, Point-to-multipoint microwave.

**Report and Order**

[CC Docket No. 85-40]

In the matter of amendment of Parts 1 and 21 of the Commission's Rules to Establish Procedures for Processing Mutually Exclusive Applications for Digital Termination Systems in the Digital Electronic Message Service.

Adopted October 15, 1985.

Released October 24, 1985.

By the Commission:

1. In this proceeding the Commission is amending its rules to implement a system of random selection (lotteries) to select permittees from among mutually exclusive applications for common carrier digital termination systems (DTS) in the Digital Electronic Message Service (DEMS).<sup>1</sup> These amendments are made pursuant to Section 309(i) of the Communications Act, as amended, 47 U.S.C. 309(i) (Supp. 1982).

### I. Background

2. DEMS is a common carrier radio service providing end-to-end transmission of digitally encoded information. A DEMS network consists of one or more DTS for local distribution, interconnected by some form of inter-city digital transmission such as terrestrial microwave or satellite links.<sup>2</sup> Each DTS consists of a nodal station which transmits information in an omnidirectional manner to user stations, which in turn communicate back to the nodal station in a point-to-point manner.<sup>3</sup>

3. There are two types of DEMS networks. An extended DEMS network consists of commonly owned, managed, and interconnected DTS facilities in at least 30 SMSAs.<sup>4</sup> A limited DEMS network can consist of DTS facilities in as few as one SMSA.<sup>5</sup> Different frequencies are available for DTS for extended as opposed to limited networks. Each DEMS application consists of a lead application, which describes the network, and individual radio station applications for each DTS nodal station in the network.<sup>6</sup> When an applicant applies for authorization for a DTS in a given SMSA, that applicant is, in essence, applying for an administrative franchise for exclusive use of a pair of channels (one for the

nodal and one for the user stations) throughout the SMSA.<sup>7</sup>

4. Applications for DTS may be mutually exclusive in one of two ways. If there is a prior application or authorization for a station within 50 miles, a timely-filed applicant may be mutually exclusive if it cannot satisfactorily show that no harmful interference will result to the prior station.<sup>8</sup> Mutual exclusivity may also occur when more than one applicant has applied for the same channel pair in a given SMSA.<sup>9</sup> In either case the applications are mutually exclusive on a DTS-by-DTS basis.

5. On March 15, 1985 the Commission released a Notice of Proposed Rulemaking (hereinafter *Notice*)<sup>10</sup> in this proceeding in which we proposed to use a lottery to resolve mutually exclusive situations where all common carrier DTS applications were otherwise grantable. In the *Notice* tentatively concluded that a lottery would be in the public interest because not only did DEMS meet the relevant Congressional criteria as an appropriate service for using a lottery, but also there were no significant material differences which could be used as bases for designating applications for comparative consideration in hearings. We invited commenters opposed to the lottery proposal to suggest comparative issues upon which applications could be designated for hearing.

6. The lottery procedures proposed in the *Notice* included pre-lottery processing of applications to grantable status.<sup>11</sup> This level of processing would require resolution of petitions to deny that have been filed under Part 21 rules; no additional pleading cycle was contemplated. We indicated that applicants' compliance with the requirements of previously granted network authorizations and construction permits would be evaluated in determining whether an applicant is legally qualified and thus eligible to

participate in a lottery.<sup>12</sup> We proposed that streamlined "paper hearings" be used to resolve material issues of fact concerning competing applications. In the *Notice* we also indicated our intention to exercise discretion to consolidate applications for hearing or lottery, and we proposed to give applicants who entered into settlement agreements the cumulative number of changes in a lottery that they would have if no settlement agreement had been filed. By using the proposed procedures, we anticipated that most tentative selectees produced by a lottery could be granted a permit without further proceedings.

7. Comments were received from six parties, four of whom also filed reply comments. The commenters were evenly split on the issue of whether a lottery should be used to select DTS permittees. Those opposed to a lottery—Dama Telecommunications Corp. (Dama), Contemporary Digital Services, Inc. (Contemporary), and Local Area Telecommunications, Inc. (Locate)—did suggest comparative issues upon which applications could be designated for comparative considerations. Although Associated MDS Corp. (Associated), Bypass Telecommunications, Inc. (Bypass) and GTE Sprint Communications Corp. (GTE Sprint) supported the use of a lottery in DEMS, they objected to specific procedural proposals. All commenters voiced some dissatisfaction with various proposed lottery procedures.

8. After carefully reviewing the comments, the lottery statute, and the Congressional Conference Report accompanying that legislation, we conclude that the use of a lottery to select DTS permittees is in the public interest.<sup>13</sup> We also conclude, however, that certain changes should be made to the procedures proposed in the *Notice*. Most significantly, although we will require petitions to deny to be filed before a lottery for new applications, we

<sup>1</sup> DEMS is a common carrier radio service regulated under Part 21 of the Commission's Rules. See Amendment of Parts 2, 21, 87 and 90 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Sys. for the Provision of Digital Communication Servs. (Hereinafter DEMS Order), 86 F.C.C.2d 360 (1981), modified, 90 F.C.C.2d 319 (1982), further modified, 54 Rad. Reg. 2d (P&F) 1091 (1983), petition for review dismissed sub nom. Alascom, Inc. v. FCC, 727 F.2d 1212 (D.C. Cir. 1984), further modified, 49 FR 37,760 (September 26, 1984).

<sup>2</sup> 47 CFR 21.2 (definition of Digital Electronic Message Service).

<sup>3</sup> *Id.* (definition of Digital Termination System).

<sup>4</sup> 47 CFR 21.2 (definition of Extended Network); *cf.* *id.* § 21.500.

<sup>5</sup> 47 CFR 21.2 (definition of Limited Network); *cf.* *id.* § 21.500.

<sup>6</sup> See 47 CFR 21.15(i); *id.* § 21.7(e) (each nodal station requires a separate radio authorization).

<sup>7</sup> This exclusive franchise is subject to the requirement that the license not interfere with adjacent channel use or with co-channel use in an adjacent SMSA. See 47 CFR 21.504.

<sup>8</sup> 47 CFR 21.504(c). This may be referred to as electrical mutual exclusivity. If the application is not timely filed, then the failure to make the non-interference showing will result in the application being returned as unacceptable for filing.

<sup>9</sup> This may be referred to as administrative mutual exclusivity.

<sup>10</sup> Notice of Proposed Rulemaking, Common Carrier Docket No. 85-40, 50 FR 11402 (March 21, 1985) (hereinafter *Notice*).

<sup>11</sup> This requires that to be considered in a lottery all applications must be acceptable for filing, that no substantial and material questions of fact be presented, and that each applicant is legally, technically, financially and otherwise qualified. See 47 CFR 21.32(b).

<sup>12</sup> Applicants are required to seek and receive a network authorization under Title III of the Communications Act before any construction may begin. 47 CFR 21.15(i); see Policy and Rules for Competitive Common Carrier Services and Facilities Authorizations Thereof, 49 FR 34,824 34,830 (September 4, 1984). Individual DTS construction permits are granted pursuant to the network authorization.

<sup>13</sup> As we stated in the *Notice*, we do not intend to employ statutory lottery authority to resolve mutually exclusive applications filed prior to August 14, 1981, the effective date of the Commission's lottery authority under Section 309(i). See *Notice*, 50 FR at 11,404, n.31. An examination of the Commission's files reveals only two pending applications, 9440 and 9444 CDM-P-81, which fall into this category. These will be resolved by other methods.

will reopen the petition period after the lottery for applications currently on file, and all petitions will be resolved after each lottery, as necessary. Streamlined paper hearings will be used to resolve material issues of fact. To be included in a lottery, an application need only be found acceptable for filing. Furthermore, we have decided to consolidate for hearing or lottery only applications of extended network applicants, and the cumulation of chances for settlements among applicants will be employed in a lottery.

## II. Lottery Authority

9. Dama, Locate and Contemporary oppose the use of a lottery for selecting DTS permittees. They argue that a system of random selection will not significantly speed up the process of getting DEMS to the public, a finding which must be made as part of the requisite public interest finding under the lottery statute. They also argue that there are substantial and material differences between applicants, and they suggest comparative issues upon which competing applications could be designated for hearing.

10. Dama suggests the problem is not the delay in granting permits which has hindered the provision DEMS to the public, but rather the lack of fully qualified applicants. It notes that although several hundred permits have been granted, only a small percentage of the proposed stations have been constructed and licensed. Dama does not believe that a service-wide lottery will provide adequate safeguards to prevent grants to permittees who will merely warehouse spectrum, and suggests instead that the Commission use tie-breaker lotteries on a case-by-case basis when there are no substantial differences between competing applicants. When there are significant differences, Dama suggests that paper hearings be conducted to expedite the comparative process. Comparative issues proposed by Dama include efficiency of frequency use, flexibility of system design, cost, DTS construction history, and quality and reliability of service.<sup>14</sup>

11. Locate also argues that the major impediment to the rapid implementation of DEMS is the presence of unqualified applicants and permittees who warehouse spectrum, and that a lottery does not adequately address these

problems. Locate suggests that these problems could be resolved and the backlog of mutually exclusive DTS applications substantially reduced by implementing the processing standards and procedures proposed in the *Notice*. These measures, Locate argues, would reduce to a manageable number the applications which would then have to be designated for comparative evaluation. Locate would classify permittees' progress on DEMS network development as an issue for comparative evaluation, rather than as an element of an applicant's legal qualifications as proposed in the *Notice*.

12. Contemporary believes that the Commission has not justified use of a lottery because the procedures outlined in the Commission's proposal, although they would significantly reduce the number of mutually exclusive applications to be included in a lottery, would result in a time-consuming and burdensome process. As a consequence, Contemporary argues, the Commission's proposal offers no advantage in terms of speed, cost or efficiency over the traditional comparative hearing process. Contemporary suggests that comparative issues for evaluating applications include the proposed use of DTS facilities, the nature of the proposed DEMS network, technical experience, and financial qualifications. It also argues that a permittee's progress on DEMS network development is an issue for comparative evaluation and not an element of an applicant's legal qualifications.

13. We have carefully reviewed the lottery statute,<sup>15</sup> the Conference Report accompanying that legislation,<sup>16</sup> and the comments. We conclude that using lotteries to select DTS permittees will significantly benefit the public interest. A lottery will enable us to speed up the process of getting DEMS to the public in an efficient manner, with the least cost to the public and to the applicants.

14. We note initially that the lottery statute authorizes the Commission to adopt rules implementing lottery procedures, following a rulemaking proceeding, for granting any initial license or construction permit when there are mutually exclusive applications. 47 U.S.C. 309(i)(1), (i)(4)(B). In the initial order implementing the lottery statute and in subsequent orders, the Commission has authorized the use of lotteries in new services, such as low

power television,<sup>17</sup> cellular services,<sup>18</sup> and multichannel multipoint distribution services,<sup>19</sup> and in traditional or established services such as the public land mobile<sup>20</sup> and private radio services.<sup>21</sup> Before using a lottery in any service, however, we must determine whether the use of a lottery more effectively furthers the public interest than the traditional comparative hearing process. The Conference Report lists certain relevant factors which should be considered in making this determination. The factors are: (a) whether there is a large number of licenses available; (b) whether there is a large number of mutually exclusive applications for each license; (c) whether there is a significant backlog of applications; (d) whether employing a lottery would significantly speed up the process of getting service to the public; and (e) whether the diversity of information available in the community would be significantly improved.<sup>22</sup>

15. A consideration for these criteria supports our decision to use lotteries for DTS applications. First, in the major service areas, common carrier applications are on file for seven limited and six extended network channels at 10 GHz, and for five channels at 18 GHz. Second, most mutually exclusive situations involve from two to five applicants. Some situations involve "gridlocks" with as many as 11 applicants in 12 service areas.<sup>23</sup> Third, for those applications that are administratively mutually exclusive, there are approximately 77 service areas in which there are some 301 situations involving approximately 645 applications. The number of situations will undoubtedly be higher when all instances of electrical mutual exclusivity are identified. Fourth,

<sup>17</sup> Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applicants Using Random Selection or Lotteries Instead of Comparative Hearings (hereinafter Lottery Order), 93 F.C.C.2d 952, 959-72 (1983), modified, 49 FR 40,486 (December 20, 1984).

<sup>18</sup> Amendment of the Commission's Rules to Allow the Selection from among Mutually Exclusive Competing Cellular Applicants Using Random Selection or Lotteries Instead of Comparative Hearings (hereinafter Cellular Lottery Order), 49 FR 23,928 (June 7, 1984), modified, 50 FR 20,790 (May 28, 1985).

<sup>19</sup> Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Service (hereinafter MMDS Lottery Order), 50 FR 5983 (February 13, 1985).

<sup>20</sup> Lottery Order, 63 F.C.C.2d at 952.

<sup>21</sup> *Id.* at 983-91.

<sup>22</sup> See Conference Report, *supra* n.10, at 37.

<sup>23</sup> See Pub. Notice No. 5631, Mutually Exclusive DTS Applications (July 10, 1985).

<sup>14</sup> These suggested comparative issues are described in Dama's Motion to Designate Applications for Hearing in File Nos. 10295 and 10301 CDM-P-82 (December 3, 1983), and are incorporated by reference in Dama's Comments to this rulemaking proceeding. Dama's Motion will be resolved by a separate action.

<sup>15</sup> Communications Amendments Act of 1982, Pub. L. No. 259, 97th Cong., 2d Sess., 96 Stat. 1087 (1982), codified in part at 47 U.S.C. 309(i).

<sup>16</sup> H.R. Rep. No. 765, 97th Cong., 2d Sess. (1982).

lotteries generally permit services to be made available to the public more rapidly;<sup>24</sup> with DEMS specifically, the network structure of the service would increase the complexity of a comparative hearing. Resolution of situations of electrical mutual exclusivity involving numerous applicants and service areas would be especially time-consuming. The final criteria, diversity of information sources, is inapplicable to common carrier services where carriers do not control the content of the transmitted information.<sup>25</sup>

16. We believe there are additional factors which mitigate any possible benefits gained from using the traditional comparative hearing process. First, by using our revised lottery procedures described below, tentative selectees will be carefully scrutinized to avoid grants to unqualified applicants. The level of scrutiny will be the same as that which we proposed in the *Notice* for all applications.<sup>26</sup> Second, DEMS service patterns and system designs can vary significantly within the parameters set by the Part 21 rules. Comparative evaluation of legally-allowable system designs would be difficult and essentially counterproductive to our goal of encouraging a diverse and competitive DEMS marketplace.<sup>27</sup> Third, the lack of significant material differences as a basis for designating applications for comparative consideration severely undermines the potential benefits to be gained by using such proceedings.<sup>28</sup> Finally, we have

considered the comments of Dama and Locate that a lottery will not speed up provision of DEMS to the public primarily because the problem is not granting DTS permits but weeding out speculators. To the extent that the development of DEMS has been hampered by the presence of insincere applicants, careful scrutiny of tentative selectees after lotteries and monitoring of permittees' network progress will help to alleviate the problem. DEMS development, however, has also been impeded by the gridlock of numerous mutually exclusive applications. DEMS was initially conceived as a network service. Because they are involved in numerous mutually exclusive situations, some extended network applicants have not been eligible for grant of any DTS permits.<sup>29</sup> Other applicants may find that the development of a DEMS network is hampered by their inability to construct DTS facilities in critical service areas where their applications for certain channels are not grantable because of mutual exclusivity. In summary, we conclude that the use of a lottery will significantly benefit the public interest by expediting the provision of service efficiently and with the least cost to the public and to the applicants.

### III. Lottery Procedure

#### A. General Procedure

17. In our *Notice* we originally proposed to process all applications to grantable status prior to inclusion in the lottery. In doing so we would consider all petitions currently on file against the applications, and would resolve any material issues of fact through the use of streamlined paper hearing procedures. By employing this approach in most cases we would be able to grant a permit to the tentative selectee without further action on the application.<sup>30</sup> In addition, we felt this approach would enhance our ability to ensure that only fully qualified applicants were in the lottery.

18. Most of those who commented were in favor of in-depth scrutiny of the applications. Bypass and Associated supported the procedure as proposed.

and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore, 49 FR 34,824, 34,829-30 (September 4, 1984).

<sup>29</sup> An extended network licensee must commit to a network containing at least 30 service areas. 47 CFR 21.02 (definition of "extended network"). Extended network applicants that do not have at least thirty uncontested applications have not been granted any authorizations, pending resolution of the contested cases. See National Microwave Interconnect Co., 88 F.C.C. 2d 1716, 1729 (1982).

<sup>30</sup> See *Notice*, 50 FR at 11,404-05, ¶¶ 15-20.

Dama and Locate, while opposing the lottery itself, advocated to warehouse spectrum.<sup>31</sup> While Contemporary advocated the expeditious processing of the applications, it opposed the consideration of network progress for those applicants who are also DEMS permittees in determining whether an application was grantable. According to Contemporary, such a consideration would be essentially unworkable and would rely on determinations of whether applicants had made "substantial progress" on their networks pursuant to Section 21.43 of the rules,<sup>32</sup> a term which Contemporary contended is vague and undefined.<sup>33</sup> GTE Sprint contended that parties should be given an additional opportunity to file petitions against those applications on file.<sup>34</sup>

19. While we do not intend to relax the scrutiny we bring to bear on any application prior to its approval, we do agree with the comments of GTE Sprint. The majority of the 10 GHz applications were filed in 1981 and 1982. Since that time, events may have occurred affecting the basic qualifications or the business plans of certain applicants. For example, a petition currently on file may not address the network progress issue (*see discussion, infra*) because at the time the protested application was filed the applicant, who is now a DEMS permittee, did not hold any DTS authorizations. We also note that currently-filed petitions were prepared in contemplation of comparative hearings and that a change to a random selection procedure warrants an additional opportunity to be heard. For these reasons, we conclude that we should provide an additional opportunity for the filing of petitions to deny. As GTE Sprint has noted, additional petitions filed and resolved prior to the lottery would slow down the procedure. If an additional petition period were to be allowed, it would be most logical to make the determination of grantability after the lottery, as is currently done in other services.<sup>35</sup>

20. We therefore adopt a procedure which will permit a post-lottery petition period for all applications on file as of the date of this order. All mutually exclusive applications that are

<sup>31</sup> Comments of Dama, at 7-11; Comments of Locate, at 7-8.

<sup>32</sup> Section 21.43 provides that a network construction schedule must provide for "substantial progress" in the early years of the construction of the network. 47 CFR 21.43(c)(1) (extended networks); *id.* § 21.43(c)(2) (limited networks).

<sup>33</sup> Comments of Contemporary, at 7-12.

<sup>34</sup> Comments of GTE Sprint, at 2-4.

<sup>35</sup> See, e.g., MMD S Lottery Order, 50 Fed. Reg. at 5987-88; cf. Cellular Lottery Order, 49 FR at 23,643.

<sup>24</sup> E.g., Cellular Lottery Order, 49 Fed. Reg. at 23,630; MMD S Lottery Order, 50 FR at 5984.

<sup>25</sup> See Cellular Lottery Order, 49 FR 23,637-38; Conference Report, *supra* n.16, at 41. In the *Notice*, we proposed that no preferences be granted in DEMS lotteries; no commenters disagreed. As with nearly all other common carrier radio services in which we employ lotteries, we will not use preferences.

<sup>26</sup> 50 FR at 11,404, ¶¶ 16-18. In fact, because the Common Carrier Bureau will not be scrutinizing those applications dismissed as a result of the lottery, it will be able to focus more resources on those applications selected by lottery.

<sup>27</sup> In this regard, DEMS is similar to cellular mobile services. See Cellular Lottery Order, 49 FR at 23,632.

<sup>28</sup> Some of the comparative issues proposed by the commenters, such as technical and financial qualifications, are basic qualifying criteria for applicants, and cannot be evaluated comparatively. See 47 CFR 21.13, 21.15, 21.17; see also Samuel N. Kirkland, 19 F.C.C. 566, 587 (1954). Other suggested issues, such as proposed service patterns and the nature of the network, are factors best determined by carrier responsiveness to market demands. See Frank K. Spain, 77 F.C.C.2d 20, 25 (1980). Other suggested issues, such as system cost, are inappropriate for comparative evaluation in what is a substantially deregulated common carrier service where market forces and the complaint process are deemed sufficient to ensure that carriers charge just, reasonable and non-discriminatory rates. See Policy

acceptable for filing will be included in the lottery, and selected in a rank order process. Interested parties will then have 30 days from the date of the public notice announcing the lottery results to file any petitions to deny;<sup>36</sup> 15 days will be provided for oppositions. The Bureau will then examine the first ranked tentative selectee, including newly-filed as well as any previously-filed petitions, to determine whether its application is grantable. If it is, then a construction permit will be granted. If a substantial and material question of fact exists regarding the application or if there is reason to question whether the public interest would be served by a grant, we will designate the application for an expedited hearing, under 47 CFR 1.822. For future applications, all petitions to deny should be filed within 30 days of the date of the public notice of the filing of the application, as currently provided in § 21.30 of the rules.<sup>37</sup>

21. As we pointed out in the *Notice*, applications may be mutually exclusive either administratively or by virtue of the unresolved potential for electrical interference. The applications for a given lottery situation may contain a combination of these. When the applications are rank ordered and the first ranked tentative selectee is approved, the Bureau will then examine the alternate applications in rank order to determine which ones must be dismissed and which ones, if any, can also be granted. An example will illustrate this analysis. A mutually exclusive configuration could conceivably include a number of applications in New York City, Newark, Trenton, Philadelphia, York, Baltimore, and Washington, D.C., among others.<sup>38</sup> If

none of these applications contained non-interference showings, they would all be considered in the same lottery process, and rank ordered. If, for example, the first ranked application were in New York City and were ultimately granted, the Commission would then look to see whether the next ranked application could also be granted. If the second ranked application were another New York City application, it could not be granted because the first ranked selectee would have the administrative franchise for the entire New York City SMSA; the second ranked application would then be dismissed. If the second ranked application were for Newark, which is within 50 miles of New York City, and no interference analysis had been made against the first ranked application, then the application would be considered electrically mutually exclusive and dismissed; if an appropriate non-interference showing had been made, then the application would be granted. If the second ranked application were for Washington, D.C., not within 50 miles of New York City, then the application would be granted. This example illustrates the analysis which would be performed upon the second ranked application if the first ranked application were granted. The procedure would be repeated sequentially with each of the subsequently ranked applications, dismissing those mutually exclusive with any previously selected and granted. In this way, each lottery would resolve the maximum number of both administrative and electrical conflicts.

22. When examining the application of the first ranked tentative selectee, or any subsequently ranked tentative selectee, the Commission will scrutinize the applications to make certain that they are grantable. This scrutiny will include an evaluation of network progress for those applicants who are also DEMS permittees. While the commenters disagree as to whether network progress is a comparative<sup>39</sup> or a qualifying issue,<sup>40</sup> there is general agreement that the Commission can properly consider the issue at the time it considers an application for grant, pursuant to 47 CFR 21.32(a). Because we do not intend to continue granting permits unconditionally to applicants who have not made substantial progress in the construction of that portion of the network previously granted, we believe that consideration of network progress

is essential when evaluating an application for grant and, thus, we invite parties to address this issue in petitions to deny applications of tentative selectees.<sup>41</sup>

23. In order to demonstrate that it is proceeding diligently with its network, an applicant must show that it is making "substantial progress" in the construction of its network, in accordance with its construction schedule.<sup>42</sup> Contemporary claims that the term "substantial progress" has never been defined.<sup>43</sup> We do not intend to adopt a rigid formula, since each network must be measured on its own terms. Each applicant and permittee, of course, has the obligation to devise and maintain a construction schedule which conveys that entity's projections for developing its network. By "substantial progress", we mean progress measured by tangible accomplishments which could lead one reasonably to conclude that the continuation of the actual rate of progress could result in the completion of the network within the authorized time. While progress is most readily reflected by constructing and licensing nodal stations, we recognize that unique aspects of each applicant's network may justify consideration of other activities as tangible accomplishments.

#### B. Consolidation

24. The Commission received comments on its proposal to consolidate for lottery those SMSAs containing an identity of applicants.<sup>44</sup> Our concern, in addition to processing efficiency, was the fact that extended networks require a minimum of thirty service areas. Bypass contends that consolidation of any applications could be counterproductive, encouraging settlements to accommodate regulatory concerns rather than for sound business reasons; Bypass also contends that consolidation, with its "winner-take-all"

<sup>36</sup> Because each lottery may result in more than one applicant being granted (see discussion, § 21), we will accept petitions to deny against the first ranked tentative selectee and any of the ranked alternate applicants. This will avoid unnecessary delay in granting applications.

<sup>37</sup> In the Lottery Order the Commission stated that petitions to deny would be filed before a lottery in common carrier services. 93 F.C.C. 2d at 965, 996.

Unlike MMDS where the large number of applications would have made a pre-lottery petitioning process time-consuming and burdensome, see MMDS Lottery Order, 50 FR at 5987-88, there is no compelling reason for DEMS to deviate from the traditional pre-lottery petitioning procedure. Because DEMS will be using a different petitioning procedure than MMDS, we are amending Sections 21.23 and 21.30 of the rules to reflect this difference. This will ensure that all issues and facts regarding the applications will be before the Commission prior to conducting each lottery, as discussed in the *Notice*. 50 FR at 11,404.

<sup>38</sup> This was in fact the situation on DTS Channel 5. See Pub. Notice 5831, at 2 (July 10, 1985).

<sup>39</sup> E.g., Comments of Contemporary, at 8-9; Reply Comments of Locate, at 3.

<sup>40</sup> E.g., Reply Comments of Dama, at 3-7.

<sup>41</sup> The Bureau will continue to monitor the network progress of all permittees under this standard, and to seek the return of permits from applicants in violation.

<sup>42</sup> 47 CFR 21.32; DEMS Order, 86 F.C.C.2d at 385-86.

<sup>43</sup> Comments of Contemporary, at 9-10.

Contemporary also argues that monitoring network progress would require the release of proprietary information by the applicant, and would be inaccurate because the schedules are too old. With regard to the latter, an applicant has an obligation to update its construction schedule, and can do so by amendment. With regard to the confidentiality, it is not clear at all that proprietary information would need to be disclosed. See Reply Comments of Dama, at 6 (sworn statements may suffice). Instances where such disclosure might be warranted will be dealt with on a case-by-case basis.

<sup>44</sup> 50 FR 11,404-05, § 19.

effect, would impede competition thus denying the loser the opportunity to participate in DEMS.<sup>45</sup> Bypass suggest that the 30-city minimum for extended networks be reduced to 15 cities for those applicants awarded permits by discrete city-by-city lotteries.

25. Associated objects to the consolidation of 18 GHz applications, on the basis that there is no meaningful distinction between extended and limited networks at 18 GHz; Associated contends that some extended network applicants at 18 GHz may wish to be considered limited applicants rather than risk an all-or-nothing lottery.<sup>46</sup> In response, Locate submits that the Bureau should consolidate applications where appropriate for whatever process is used to resolve mutual exclusivity.<sup>47</sup>

26. After considering the comments of Bypass and Associated, we nevertheless conclude that consolidation for resolving the mutually exclusive applications of extended network applicants is warranted. Initially we note that the incidence of consolidation will be limited because it will require a precise identity of applicants in each service area. Without consolidation, there is no guarantee that any of the applicants will have the minimum 30 cities, thus potentially rendering city-by-city lotteries a meaningless exercise.<sup>48</sup> Nor do we feel convinced at this time that the minimum number of service areas for extended networks should be reduced to 15 on the basis of this record. The service was designed with differences between extended and limited networks, including differences in bandwidth for the 10 GHz channels as well as in maximum construction time.<sup>49</sup>

<sup>45</sup> Comments of Bypass, at 4-17. Bypass claims that this would have a disproportionate effect on smaller companies, because larger companies presumably have enough applications that they could lose the consolidated lottery and still have at least thirty "other" applications. *Id.* at 6. In addition to being unsubstantiated, this assertion does not follow logically. It is not obvious that a larger company would want to create an extended network consisting only of leftover applications; cities are not necessarily interchangeable for the purpose of network planning. *Cf.* Reply Comments of Locate, at 5 (key to a network is planning, and not simply the accumulation of a minimum number of random cities).

<sup>46</sup> Comments of Associated, at 2-7.

<sup>47</sup> Reply Comments of Locate, at 3-5.

<sup>48</sup> We have previously rejected this approach. In *Nat'l Microwave Interconnect Co.*, 88 F.C.C.2d 1716, 1729 (1982), we stated: "[A]n applicant for an Extended system that does not have at least 30 uncontested applications may not proceed since we have no assurance it will meet the 30 SMSA minimum."

<sup>49</sup> See, e.g., DEMS Order, 49 FR 37,760, 37,771-72 (September 26, 1984); *reconsideration denied*, FCC 85-271, at ¶¶ 5-8 (Released May 24, 1985).

As Associated has noted, an applicant in the 18 GHz band may choose to reconfigure its extended network as a limited network or network rather than risk everything in a consolidated lottery. It is of course free to do so by amendment prior to designation for lottery.

#### C. Settlements

27. In the *Notice* we proposed to encourage pre-lottery settlements by giving settling parties the cumulative number or chances in a lottery that they would have had in the absence of a settlement.<sup>50</sup> Applicants who settle after the issuance of a lottery designation will have the settlement formally acted upon after the lottery. The group must select one application for processing. The legal qualifications of each group member as well as the technical qualifications of the group's chosen application will be considered in deciding whether to grant the application. Adopting this procedure is in the public interest because by providing an incentive to settle, it encourages settlements and thereby fosters rapid implementation of service and reduces or eliminates administrative burdens.

#### D. Miscellaneous

28. Contemporary has requested that we clarify a reference in the *Notice*. There we described an extended DEMS network as consisting of "commonly owned, managed, and interconnected DTS facilities in at least 30 SMSAs."<sup>51</sup> We agree with Contemporary that we did not intend to change the rules for extended networks by this passing reference. As long as each DTS is under the common control of the licensee, the title owner of the equipment need not be the licensee, and the stations themselves need not be immediately managed by the licensee. Of course, as Contemporary points out, the licensee must have control over the management of the station; in this sense, the licensee is ultimately responsible for the actions of its managers.

#### IV. Administrative Provisions

29. Authority for this rulemaking is contained in Sections 1, 4 (i) and (j), 303, and 309 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154 (i) and (j), 303, and 309.

30. We have concluded our final regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 604. That

analysis is contained in Appendix A to this order.

#### V. Ordering Clause

31. Accordingly, it is hereby Ordered that Parts 1 and 21 of the rules are amended as specified in Appendix B.

32. The Secretary shall cause a copy of this order to be published in the *Federal Register*. The rules promulgated hereby shall become effective thirty days after the date of publication.

Federal Communications Commission.  
William J. Tricarico,  
Secretary.

#### Appendix A—Final Regulatory Flexibility Analysis

##### I. Need for and Purpose of Rules

This action will allow lotteries to be used instead of comparative hearings to select from among mutually exclusive digital termination system (DTS) applications in the common carrier Digital Electronic Message Service. This action is expected to reduce significantly the delay, as well as to lower the cost and speed the process of granting DTS permits and licenses in situations with mutually exclusive applications.

##### II. Issues Raised by the Public in Response to the Initial Analysis

No comments were received by the Commission in response to the Initial Regulatory Flexibility Analysis. One commenter pointed out in comments in the main proceeding that the consolidation of extended network applications (for different service areas where there exists an identity of applicants) might have a disproportionate effect on smaller companies, because larger companies presumably have enough applications that they could lose the consolidated lottery and still have at least thirty other applications from which an extended network could be formed. However, as explained in the order, in addition to being unsubstantiated this assertion does not flow logically, because not all cities are interchangeable from the standpoint of network planning. See Order at ¶ 26, n.46.

##### III. Alternatives That Would Lessen Impact

Alternatives to a lottery would include utilization of auctions or streamlining the comparative hearing process. The Commission declines to use the former because it is unclear whether legal authority exists for the auctioning of permits or licenses. With regard to the latter, streamlining the

<sup>50</sup> 50 FR 11,405, ¶ 20.

<sup>51</sup> 50 FR 11,402, ¶ 4.

comparative hearing process would be insufficient to achieve the goal of expediting DEMS service to the public, and would be far more costly.

#### Appendix B

Parts 1 and 21 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

### PART 1—PRACTICE AND PROCEDURE

#### Subpart E—Complaints, Applications Tariffs and Reports Involving Common Carriers

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

Authority: Secs. 4, 303, 309, 48 Stat. 1066, 1082, as amended; 96 Stat. 1087; 47 U.S.C. 4, 303, 309; Implement, 5 U.S.C. 552, unless otherwise noted.

2. In Part 1, § 1.821 is amended by adding paragraph (d), as follows:

#### § 1.821 Scope.

(d) Digital Electronic Message Service.

3. In Part 1, a new § 1.825 is added to read as follows:

#### § 1.825 Random selection procedures for Digital Electronic Message Service

(a) If there are mutually exclusive applications for an initial permit or license for a digital termination system, the Commission may use the random selection process to select the permittee or licensee. Each such random selection shall be conducted under the direction of the Office of Managing Director in conjunction with the Office of the Secretary. The random selection shall rank order the applications. No preferences shall be awarded to participants. Following the random selection, the Commission shall announce the rank order of the applications to determine whether the first ranked tentative selectee is qualified to receive the permit or license. If the Commission determines that the tentative selectee is qualified, it shall grant the application. The Commission shall then determine which of the alternate applications, in rank order, can also be granted and whether those alternate tentative selectees are qualified to receive the permit or license. If the Commission determines that the alternate tentative selectees are qualified, it shall grant the applications.

(b) Petitions to deny applications for digital termination system authorizations, and responsive pleadings, shall be filed prior to conducting the random selection, pursuant to the requirements of § 21.30. Following the random selection,

petitions against tentative selectees' applications shall be resolved by the Commission.

### PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

#### Subpart B—Applications and Licenses

4. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4, 303, 309, 48 Stat. 1066, as amended; 1082; 96 Stat. 1087; 47 U.S.C. §§ 154, 303, 309, unless otherwise noted.

5. In Part 21, § 21.23 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 21.23 Amendment of applications.

(a) Any pending application may be amended as a matter of right if the application has not been designated for hearing or for comparative evaluation pursuant to § 21.35, provided, however, that the amendments shall comply with the provisions of § 21.29 as appropriate. An MMDS application tentatively selected by the random selection process may be amended as a matter of right up to 14 days after the date of the public notice announcing the tentative selection, provided, however, that the amendments shall comply with the provisions of § 21.29 as appropriate.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing or for comparative evaluation, or tentatively selected by the random selection process, only if a written petition demonstrating good cause is submitted and properly served upon the parties of record, except that MMDS applications tentatively selected in a random selection process may be amended as a matter of right under paragraph (a) of this section.

6. In § 21.30, paragraph (a)(4) is revised to read as follows:

#### § 21.30 Opposition to applications.

(a) \* \* \*  
(4) be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding in the Multichannel Multipoint Distribution Service (unless the Commission otherwise extends the filing deadline); and

7. Section 21.33 is amended by redesignating paragraph (b) as new paragraph (c), and by adding a new paragraph (b) to read as follows:

#### § 21.33 Grants by random selection.

(b) If an application for an initial permit or license for a digital termination system in the Digital Electronic Message Service is mutually exclusive with another such application, the applications may be included in the random selection process set forth in Part 1, §§ 1.821 *et seq.* Renewal applications shall not be included in a random selection process. If an identity of extended network applicants have mutually exclusive applications in more than one service area, these applications may be consolidated for the purpose of conducting one random selection procedure to select one permittee or licensee for all of the service areas involved.

[FR Doc. 85-25884 Filed 10-31-85; 8:45 am]  
BILLING CODE 6712-01-M

### DEPARTMENT OF TRANSPORTATION

#### Office of the Secretary

#### 49 CFR Part 1

[OST Docket No. 1; Amdt. 1-204]

#### Organization and Delegation of Powers and Duties; Federal Highway Administration; Drinking Age and Speed Limit

#### Correction

In FR Doc. 85-25196, beginning on page 43165 in the issue of Thursday, October 24, 1985, make the following correction:

On page 43166, first column, amendatory instruction 2 should have appeared on page 43165, third column, above the section heading for § 1.48.

BILLING CODE 1505-01-M

### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Listing *Hoffmannseggia Tenella* as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines a plant, *Hoffmannseggia tenella* (slender rush-pea), to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act).

as amended. Historically, this plant has been reported from three localities in Nueces and Kleberg Counties, Texas. Currently, only two populations are known to exist in Nueces County. The species is threatened by destruction of the Blackland Prairie and by encroachment of exotic plants into the native prairie. *Hoffmannseggia tenella* is vulnerable due to a low number of known populations and its restricted distribution. This action implements the protection provided by the Act.

**DATES:** The effective date of this rule is December 2, 1985.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Charles McDonald, Botanist, Region 2, Office of Endangered Species, P.O. Box 1308, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

**SUPPLEMENTARY INFORMATION:**

**Background**

Historically, this plant has been known from two Texas counties. It was first collected by Mrs. F.E. Clements between Robstown and Alice, Nueces County, Texas on November 22, 1931. B.C. Tharp and L.O. Williams subsequently described the plant as *Hoffmannseggia tenella* (Williams, 1936). Another collection was made in 1964 from the King Ranch in Kleberg County. Until April 1985, the only other known records were collections from Nueces County by Mary Johnson in 1976 and Geyata Ajilvsgi in 1982. A field survey in 1982 located one population containing three individual plants. This population was found in Nueces County near Petronila Creek and State Highway 70 in an eroded area and along the highway in a gravel dump. Two plants in the population were on private property, and one plant was on adjacent State Highway right-of-way (Ajilvsgi, Texas A&M University, pers. comm., 1984). In April 1985, Ms. Jackie Poole located approximately 25 plants at this site, and approximately 10,000 plants at a new locality, in a rural cemetery in southern Nueces County (Jackie Poole, Texas Natural Heritage Program, pers. comm., 1985).

*Hoffmannseggia tenella* is a perennial in the pea family (Fabaceae) with stems 8 to 15 centimeters (3-6 inches) tall terminating in 3 to 5 flowered inflorescences without glands. The flowers are orange and approximately 5 millimeters (.2 inch) long with 10

stamens. The leaves are bipinnately compound; petioles are up to 13 centimeters (5 inches) long, leaflets are oblong, 2 to 4 millimeters (0.08-0.16 inches) in length and 1 to 2 millimeters (.04-.08 inches) broad in 5 or 6 pairs on each of 3 to 7 pinnae. The legumes are 12 to 15 millimeters (0.5 inches) long, 4 to 6 millimeters (0.2-0.3 inches) broad, and contain 2 to 4 seeds. Flowering usually occurs from early March to June, then sporadically thereafter depending on rainfall.

The two known populations of *Hoffmannseggia tenella* occur in the Blackland Prairie area of the Gulf Coastal Prairie. At the larger population, plants occur intermixed with native buffalo grass (*Buchloe dactyloides*) and Texas speargrass (*Stipa leucotricha*) (Poole, pers. comm., 1985). At the smaller population, plants occur in barren hard clay soil of creek banks where King Ranch bluestem (*Bothriochloa ischaemum* var. *songarica*) and Bermuda grass (*Cynodon dactylon*) are absent (Mahler, 1982). These latter grasses have been introduced for roadside management and range improvement and have replaced much of the native vegetation of the region. Based on the two known populations it appears *Hoffmannseggia tenella* is a component of slightly to highly disturbed prairie and can persist until crowded out by competition from other encroaching species. The population biology and ecology of this species, however, are relatively unknown and additional studies will be needed when management plans are developed.

Federal action involving this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Hoffmannseggia tenella* was included in the Smithsonian petition and the 1976 proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, Federal Register (44 FR 70796), the Service published a notice withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. A revised list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, Federal Register (45 FR 82480), and it included *Hoffmannseggia tenella* as a category 1 species. Category 1 comprises taxa for which the Service presently has sufficient biological information to support the appropriateness of their being listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Hoffmannseggia tenella*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Hoffmannseggia tenella* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published November 21, 1984 (49 FR 45884), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

A status report compiled by Dr. W.F. Mahler in 1982 and investigations carried out by Service botanists and Ms. Jackie Poole of the Texas Natural Heritage Program have provided new biological data that are included in this final rule. These new data include recent documentation of the species' limited distribution and threats to the species.

**Summary of Comments and Recommendations**

In the November 21, 1984, proposed rule (49 FR 45884) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested

parties were contacted and requested to comment. A newspaper notice was published in the *Corpus Christi Caller Times* on Wednesday, December 12, 1984, which invited general public comment. Seven comments were received and are discussed below. No public hearing was requested or held.

The International Union for Conservation of Nature and Natural Resources (IUCN) noted that the correct spelling of the plant's generic name is *Hoffmannseggia* rather than *Hoffmanseggia* as it appeared in the proposed rule. The spelling has been corrected in the final rule. The IUCN also supported the proposal. The Soil Conservation Service stated that if the plant is a pioneer species, as the Service suggests in the proposed rule, then disking, rototilling, or prescribed burning near the known population might result in the germination of dormant seeds. The Service agrees that this may be a useful management technique and it will be considered along with other alternatives in the recovery of this species. Mr. Harold E. Beaty, leader of the Texas Plant Recovery Team, commented that Dr. W.F. Mahler, Ms. Geyata Ajilvsgi, and others are very knowledgeable about this plant and that their observations substantiate the need for listing the species. Dr. Duane Isley of Iowa State University suggested that other regional herbaria in Texas be checked for specimens and that, as only one population is presently known, it would appear that the species warrants listing. The Service responds that regional herbaria were checked by Dr. William Mahler as part of the status report. Other information was solicited from Texas botanists resulting in a response from Dr. George G. Williges of Texas A&I University, who reported one specimen from near Bishop, Texas. The National Park Service stated that the species does not occur on its lands and it therefore had no specific recommendations regarding the proposed listing. Letters received from James W. Kessler and Ms. Geyata Ajilvsgi supplied no new substantive information about the species and made no specific comments on the proposal.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hoffmannseggia tenella* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424)

were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hoffmannseggia tenella* Tharp and L.O. Williams (slender rush-pea) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** The most serious threat to the continued existence of *Hoffmannseggia tenella* is habitat alteration. The Petronila Creek population in Nueces County was found growing in an eroded area, which indicates these plants do better in the absence of competition (Ajilvsgi, pers. comm., 1984). At the cemetery site, the plant occurs in association with buffalo grass and Texas speargrass (Poole, pers. comm., 1985). Buffalo grass is a grass that increases or invades after disturbance of the climax dominant, little bluestem (*Schizachyrium scoparium*) on the Blackland prairies (Gould, 1975). *Hoffmannseggia tenella* may be more successful in disturbed situations. Disturbed and native grassland habitat suitable for *Hoffmannseggia tenella* in the Texas Gulf Coastal Prairie has been severely limited because nonnative, introduced grasses, such as King Ranch bluestem and Bermuda grass, have been extensively used for range improvement and have escaped into uncultivated areas. As a result, native grasses and forbs are being eliminated. Management, through seeding with King Ranch bluestem and Bermuda grass, has reduced available habitat along public roads and highways. These practices, along with grazing and cultivation, have destroyed the natural system of the Texas Gulf Coastal Prairie that formerly provided more widespread habitat for *Hoffmannseggia tenella*. With only two known populations in Nueces County, this species is extremely vulnerable, and may be subject to complete elimination if there is modification of its remaining habitat.

**B. Overutilization of commercial, recreational, scientific, or educational purposes.** Commercial trade in this plant is not known to exist; however, because of its restricted range, collecting and vandalism pose a threat to the survival of this species. The existing populations are not located on Federal lands and therefore would not be protected from taking by the Endangered Species Act. Excessive recreational and scientific use is not known nor anticipated to occur.

**C. Disease or predation.** No threats are known.

**D. The inadequacy of existing regulatory mechanisms.** Currently, *Hoffmannseggia tenella* is not protected by either Federal or State laws.

**E. Other natural or manmade factors affecting its continued existence.** The specific habitat requirements of *Hoffmannseggia tenella*, and the limited distribution and small number of populations, make the existence of this species especially precarious in the event of any activity that results in the loss of a significant number of individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hoffmannseggia tenella* as endangered without critical habitat. Endangered status seems appropriate because there are only two known populations of this species, and the native grass habitat necessary to this plant is rapidly decreasing because of agricultural development, grazing, and the introduction of King Ranch bluestem and Bermuda grass. The reasons for not designating critical habitat are discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time due to its restricted geographical distribution and easy accessibility. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem for *Hoffmannseggia tenella*, whose habitat is easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Determining critical habitat for this species would make it more vulnerable to taking by collectors and by vandalism. Therefore, it would not be prudent to determine critical habitat for *Hoffmannseggia tenella* at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition

through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. However, *Hoffmannseggia tenella* is not known to occur on Federal lands, and there are no known Federal actions that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Hoffmannseggia tenella*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply

to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition now applies to *Hoffmannseggia tenella*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. At present, no populations of *Hoffmannseggia tenella* are known to exist on Federal land. It is expected that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, RM. 600-Broyhill Bldg., U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Gould, F.W. 1975. Texas Plants—a checklist and ecological summary. The Texas Agricultural Experiment Station, College Station, Texas.  
Mahler, W.F. 1982. Status report on *Hoffmannseggia tenella*. U.S. Fish and Wildlife Service, Office of Endangered

Species, Albuquerque, New Mexico. 10 pp.  
Williams, L.O. 1936. Field and herbarium studies, IV. Annals of the Missouri Botanical Garden 23:451-452.

#### Authors

The primary authors of this final rule are Heather A. Stout and Charles B. McDonald, Endangered Species Office, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). A preliminary listing package was provided by Catherine Coats, Herbarium, Southern Methodist University, Dallas, Texas 75275. The editor was E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975). Status information was provided by Dr. W.F. Mahler, Herbarium, Southern Methodist University, Dallas, Texas 75275.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

#### PART 17—AMENDED

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*  
(h) \* \* \*

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Fabaceae—Pea family; <i>Hoffmanniseggia tenella</i>	Slender rush-pea	U.S.A. (TX)	E	209	NA	NA

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-26130 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Cereus eriophorus* var. *fragrans* (Fragrant Prickly-Apple)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines the fragrant prickly-apple (*Cereus eriophorus* var. *fragrans* (Small) L. Benson) to be an endangered species under provisions of the Endangered Species Act of 1973, as amended (Act). Critical habitat has not been designated for this species. This cactus occurs only within a limited area of St. Lucie County, Florida, where it is subject to threats from habitat destruction and potential collecting for horticultural purposes. This final rule provides the fragrant prickly-apple with the protection of the Act.

**DATES:** The effective date of this rule is December 2, 1985.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael M. Bentzien (904/791-2580 or FTS 946-2580); see ADDRESSES section above.

#### SUPPLEMENTARY INFORMATION:

#### Background

*Cereus eriophorus* var. *fragrans* (fragrant prickly-apple) is a columnar species of the cactus family, Cactaceae, which is now only known from St. Lucie County, Florida (Austin, 1984). It has cane-like stems which measure 1-5 meters (3-16 feet) long, and sprawl over surrounding vegetation as they become larger. The cylindrical succulent stems measure 2.5-5 centimeters (1-2 inches)

in diameter and have numerous spines. The nocturnal flowers are scented, white or pink in color, and 7.5-10 centimeters (3-4 inches) in diameter.

The orange-red fruits measure 5-6 centimeters (2 inches) long. This cactus is endemic to the east coast of Florida and occurs in coastal hammock vegetation types. These native vegetation types have largely disappeared from coastal Florida due to increasing urbanization which has taken place in recent years.

The fragrant prickly-apple was collected first by John K. Small in 1917 on sand dunes south of Ft. Pierce, St. Lucie County, Florida, and was described as *Harrisia fragrans*. Subsequently, the cactus has been reported from a number of additional localities along the Florida east coast, but as Austin (1984) points out, this is the result of confusion in the botanical literature between *Cereus eriophorus* var. *fragrans* and *Cereus gracilis*. Benson (1982) describes the distribution of *Cereus eriophorus* var. *fragrans* as the Florida Atlantic coast and two sites in Monroe County, Florida. Florida botanists recently searched the two Monroe County sites, but no *Cereus eriophorus* was located, and it is speculated that earlier accounts of *Cereus eriophorus* at these sites may have been due to misidentification of *Cereus gracilis*. Based on recent field work by Florida botanists, the only population of *Cereus eriophorus* known to exist today is the St. Lucie County population. *Cereus eriophorus* var. *fragrans* is only positively known historically from two populations, the one near Port St. Lucie, St. Lucie County, and a now extirpated population near Malabar, Brevard County, Florida.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of

the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Cereus eriophorus* var. *fragrans* was included in the Smithsonian Institution's report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication, which also determined 13 plant species to be endangered or threatened species (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired.

The July 1, 1975, notice of review was replaced on December 15, 1980, by the Service's publication in the *Federal Register* (45 FR 82480) of a new notice of review for plants which included *Cereus eriophorus* var. *fragrans*. No comments on this taxon have been received in response to the 1980 plant notice.

On February 15, 1983, the Service published a notice in the *Federal Register* (48 FR 6752) of its prior petition finding that sufficient information existed to show that the listing of this taxon may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982. On October 13, 1983, and October 12, 1984, petition findings were made that listing *Cereus eriophorus* var. *fragrans* was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. In the *Federal Register* of March 6, 1985 (50 FR 9089), the Service published a proposal to list *Cereus eriophorus* var. *fragrans* as an endangered species. Publication of the proposal constituted the finding.

required by October 13, 1985, that the petitioned action was warranted.

In August 1984, personnel from the Service's Vero Beach Office conducted a survey of the then known sites for this species. The field notes of Dr. Daniel Austin of Florida Atlantic University were used to compare the distribution as of 1980 with the present distribution (also see Austin *et al.*, 1980). Plants were observed at two of the three sites reported by Austin; and additional locality was also discovered. All three localities were within approximately 300 meters of one another, and probably constitute one biological population. Only 14 plants were located.

The area where the three groups of cactus were found in a high sandy ridge approximately 5 hectares (13 acres) in area. All plants are on private land, although in proximity to lands owned by the Florida Department of Natural Resources. There are no roads into the area and thus access is somewhat limited; however there is a evidence that off-road vehicles use the area.

#### Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9089) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Fort Pierce, Florida, *News Tribune* on March 23, 1985. Six comments were received and are discussed below.

The listing proposal was supported by three official comments: the Florida Department of Agriculture and Consumer Services, the Florida Game and Fresh Water Fish Commission, and the Florida Natural Areas Inventory. The statewide organization and a local chapter of the Florida Native Plant Society also supported the proposal. A private landowner reported a previously unknown site for the fragrant prickly-apple cactus. The new locality is near the other known sites, and is considered to represent the same population.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cereus eriophorus* var. *fragrans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations

promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cereus eriophorus* var. *fragrans* (Small) L. Benson (fragrant prickly-apple) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Cereus eriophorus* var. *fragrans* is known from one extremely limited area in east-central Florida. At the time this species was proposed as an endangered species, only 14 individual plants were known. The discovery of an additional site has increased the known number to about 200 individuals. While access to these areas is somewhat restricted, the Service's August 1984 survey showed tracks from off-road vehicles within 15 meters (49 feet) of the cactus at one locality. An additional locality was only 4 meters (13 feet) from a recently graded railroad right-of-way, and thus could easily be affected by routine maintenance. The cactus is known to have been extirpated from its other known population near Malabar, Florida, and one of Austin's localities from 1980 at the Port St. Lucie population could not be located in 1984. Because of the low number of plants and their clumped distribution at the Port St. Lucie population, this cactus is very susceptible to inadvertent destruction or modification of its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is not known to be in commercial trade. However, many species of cacti are commercially exploited, and it is likely that, because of rarity and the attractive nature of this species, it could be subject to collection if the exact location of the remaining plants became known. Near one of the three localities of the Port St. Lucie population, there is an area that has been extensively dug up by shovel. While there is no proof, it is a possibility that some individual plants could have been removed.

C. *Disease and predation.* Not known to be a problem with this species.

D. *The inadequacy of existing regulatory mechanisms.* *Cereus eriophorus* var. *fragrans* is listed as threatened under the Preservation of the Native Flora of Florida Law, section 581.185 of the Florida Statutes. This statute includes prohibitions concerning taking, transport, and the sale of listed plants, but provides no habitat protection such as that afforded by section 7 of the Act.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This Convention regulates export of this plant, but does not regulate interstate trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to this species. The Endangered Species Act would offer needed additional protection.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tend to intensify any adverse effects upon the populations or the habitats of any rare plant. This is certainly true for *Cereus eriophorus* var. *fragrans* and is intensified by the loss of habitat which has already taken place.

The small remaining population of this cactus is also threatened by natural factors such as powerful storms. Small (1917) describes the destruction and damage of similar species due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus* makes it particularly vulnerable to this natural phenomenon. As more of the natural vegetation of coastal Florida is destroyed, the buffering against storms by nearby vegetation will decrease and the vulnerability of the remaining cacti will increase.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Cereus eriophorus* var. *fragrans* as endangered. Only about 200 individual plants in a single population are known, and the remaining habitat is extremely limited. The decision not to designate critical habitat for *Cereus eriophorus* var. *fragrans* is discussed in the following section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service finds that the designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of collection or

malicious destruction, which might be increased by the required publication of a critical habitat description and map. The Service is aware of the land ownership of all known colonies of *Cereus eriophorus* var. *fragrans*. Landowners will be contacted as appropriate in order to develop conservation measures for this species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal actions affecting *Cereus eriophorus* var. *fragrans* are known at this time. The species is currently known only from private lands.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Cereus eriophorus* var.

*fragrans* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Cereus eriophorus* var. *fragrans* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to this cactus. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. *Cereus eriophorus* var. *fragrans* does not occur on Federal lands; it is anticipated that few collecting permits for the fragrant prickly-apple will ever be requested.

In March 1973, all members of the family Cactaceae were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that an export permit is required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species. If plants are certified as artificially propagated, international shipment requires export documents under CITES, and commercial shipments may be allowed.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, Rm. 600-Broyhill Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the

authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Austin, D.F. 1994. Resume of the Florida taxa of *Cereus* (Cactaceae). Florida Scientist 47(1):68-72.
- Austin, D.F., C.E. Naaman, and B.E. Tatje. 1980. Endangered and threatened plant species survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Final report on contract 14-16-004-78-105 to U.S. Fish and Wildlife Service.
- Benson, L. 1982. The cacti of the U.S. and Canada. Stanford University Press, Stanford, California.
- Small, J.K. 1917. The tree cactus of the Florida Keys. J. New York Bot. Garden 18:199-203.

#### Author

The primary author of this final rule is Dr. Michael M. Bentzien, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Scientific name	Species Common name	Historic range	Status	When listed	Critical habitat	Special rules
Cactaceae—Cactus family <i>Cereus antiochus</i> var. <i>fragrans</i>	Fragrant prickly-apple	U.S.A. (FL)	E	208	NA	NA

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-26129 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Florida Mints

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines two plants in the mint family, *Dicerandra frutescens* (scrub mint) and *Dicerandra cornutissima* (longspurred mint), to be endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. *Dicerandra frutescens* is known only from two areas in Highlands County, Florida, and *Dicerandra cornutissima* from a single area in Marion County, Florida. Presently known sites for both species are on privately owned land, and the plants are not protected by State or Federal laws. Rapidly expanding commercial and residential development in central Florida has been detrimental to these species in the past and poses a severe threat to their continued survival. This rule will implement the Federal protection and recovery provisions afforded by the Act for these two mints.

**DATES:** The effective date of this rule is December 2, 1985.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

**FOR FURTHER INFORMATION CONTACT:** Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580, or FTS 946-2580).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Dicerandra frutescens* was first collected in Highlands County, Florida, by Small and Matthauss in 1925, near Lake Sterns (now known as Lake June in

Winter). J.B. McFarlin subsequently collected the species from the same area in 1936. A few additional collections were made during the 1940's and 1950's from the same general area.

Specimens from these collections were variously identified as already described species in the genera *Conradina*, *Dicerandra*, and *Ceranthera*, until Shinnars (1962) recognized them as representing a new species which he named *Dicerandra frutescens*.

When Shinnars described *Dicerandra frutescens*, he included in that species specimens from Sumter County, Florida. It was not until 1981 that Huck recognized that the Sumter County specimens, as well as specimens from collections in adjacent Marion County, comprised a distinct species which she described under the name *Dicerandra cornutissima*. *Dicerandra cornutissima* was first collected in Sumter County by West and Arnold in 1938; in 1975, Cooper and Martin collected the species in Marion County. Few collections have been made since then, all from a single relatively small area in Marion County. At present, the Sumter County population is thought no longer to exist, and all extant populations of *Dicerandra cornutissima* are believed to be in Marion County. *Dicerandra frutescens* appears to be confined entirely to Highlands County.

*Dicerandra frutescens* is a strongly aromatic plant ranging up to 0.5 meter (1.6 feet) tall, with erect non-woody shoots growing from a woody base. The leaves are 1.5-2.5 centimeters (0.6-1.0 inch) long, narrowly oblong with entire margins and blunt tips, and covered with conspicuous sunken glands. The leaves are borne opposite one another on the stems, with usually two smaller leaves at each node. The flowers are borne in pairs. The corolla (petals) of the flower is about 1.5 centimeters (0.6 inch) long, tubular with upper and lower lips, and white or pale pink with purplish-rose dots. The four stamens protrude from the flowers. Each half of the anther is tipped by a filamentous horn or spur less than 1 millimeter (.04 inch) long.

*Dicerandra cornutissima* is also a strongly aromatic plant up to 0.5 meter (1.6 feet) tall, with erect, non-woody flowering shoots growing from a woody base. Leaves are about 1.5 centimeters (0.6 inch) long, linear, with entire margins, and covered with conspicuous

sunken glands. The leaves are borne opposite one another on the stems, often with two smaller leaves at each node. Flowers are borne in groups in the axils of the leaves on the upper parts of the stems. The corolla is 7 millimeters (0.3 inch) long, tubular, two-lipped, bent at a 90 degree angle in the middle, and purplish-rose with deep purple markings and a whitish throat. The four stamens protrude from the flower; each half of the anther is tipped by a horn or spur about 1.2 millimeters (0.05 inch) long.

Although *Dicerandra cornutissima* was for a long time confused with *Dicerandra frutescens*, the two are readily distinguished. *Dicerandra cornutissima* has narrower leaves, purple-rose flowers (white or pale pink in *frutescens*), the style with few hairs or naked (hairy in *frutescens*), and the anther appendage usually over 1 millimeter (0.04 inch) long (usually less than 1 millimeter long in *frutescens*). Both species exude a strong, pleasant, minty smell.

*Dicerandra frutescens* is endemic to Highlands County, Florida. It occurs in the Southern Central Florida Ridge Sandhill geographical province and in sand pine communities, growing primarily on well-drained Paola yellow fine sand soils. *Dicerandra cornutissima* at one time occurred in Sumter and Marion Counties, Florida, but now is apparently confined to Marion County. It is found only in open areas in sand pine scrub or oak scrub, and in the ecotones between these and turkey oak communities. Both species are known only from private lands and are primarily threatened by commercial development.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3)). On June 16, 1976, the Service published a proposed rule in the Federal Register (42 FR 24523) to

determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. *Dicerandra frutescens* (including the populations later named *Dicerandra cornutissima* by Huck in 1981) was included in the Smithsonian report, the notice of July 1, 1975, and the proposal of June 6, 1976.

The 1978 Endangered Species Act Amendments required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had expired, along with four other proposals that had expired (44 FR 70796). On December 15, 1980, the Service published a revised notice of review in the *Federal Register* (45 FR 82480); *Dicerandra frutescens* (again including the populations later named *Dicerandra cornutissima*) was included as a category-2 species (species for which data in the Service's possession indicate listing is possibly appropriate). On November 28, 1983, the Service published in the *Federal Register* (48 FR 53640) a supplement to its 1980 revised notice of review. This supplement listed *Dicerandra cornutissima* as a category-2 species, since Huck had described the plant as distinct from *Dicerandra frutescens* in 1981. Additional biological data have now been gathered on both species that fully support this final rule.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Dicerandra frutescens* and *Dicerandra cornutissima* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and again on October 12, 1984, the Service found that the petitioned listing for *Dicerandra frutescens* and *Dicerandra cornutissima* was warranted, and that although pending proposals had precluded their proposal, expeditious progress was being made to list other species. The proposed rule to list *Dicerandra frutescens* and *Dicerandra cornutissima* as endangered species was published in the *Federal Register* (50 FR 12587) on March 29, 1985. That proposal constituted the next 1-year finding required on or before October 13, 1985.

In the proposed rule, the common names "scrub balm" and "longspurred

balm" were used for *Dicerandra frutescens* and *Dicerandra cornutissima*, respectively. The Service now feels that "scrub mint" and "longspurred mint" are more suitable for them, and the common names have therefore been changed in this final rule.

#### Summary of Comments and Recommendations

In the March 29, 1985, proposed rule (50 FR 12587) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Lake Placid Journal* and in the *Ocala Star Banner* on April 18, 1985. Six communications were received on the proposal and are discussed below.

Communications were received from the Archbold Biological Station, the Florida Department of Natural Resources, the Florida Game and Fresh Water Fish Commission, the Highlands County Audubon Society, Dr. Robin B. Huck, and a Marion County Commissioner. All were in favor of listing the plants as endangered.

The Marion County Commissioner stated that there is a high probability that *Dicerandra cornutissima* exists in the Cross Florida Barge Canal right-of-way and urged the Service to re-examine these lands while they are still in public ownership. The Service intends to act on this recommendation as soon as possible.

The Archbold Biological Station noted that the information relating to its activities, in the "Summary of Factors Affecting the Species" section of the proposed rule, was not entirely accurate. The Station pointed out that a major portion of its approximately 4,300 acre property is under a fire management plan that will maintain sufficient open-type scrub habitats to assure long-term survival of *Dicerandra frutescens*. The present rule has been modified to incorporate this information. The Station also noted that, although the species is certainly in serious jeopardy in Highlands County, it probably occurs in more than the two places mentioned in the proposal. The Service has not been able to confirm any additional populations to date would welcome any such information.

The four other communications on the proposal supported the listing of the two

plants without additional comments that require response.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Dicerandra frutescens* and *Dicerandra cornutissima* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Dicerandra frutescens* Shimmers (scrub mint) and *Dicerandra cornutissima* Huck (longspurred mint) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Dicerandra frutescens* apparently has always been rare and confined to a small region in Highlands County in central Florida. Today, it is known from only two areas in Highlands County, one near Lake June in Winter, and the other on the Archbold Biological Station. The species does not occur at three sites where it formerly was found in Highlands County. At one of these sites, the habitat is no longer present; the second is now planted in citrus groves; and the third has been clear-cut. The populations that still occur on the Archbold Biological Station are largely in areas undisturbed by people, except for vehicular traffic on the fire lanes. A major portion of the Station's approximately 1,740 hectares (4,300 acres) is under a fire management plan that will maintain sufficient open-type scrub habitat to assure long-term survival of the species. In the Lake June in Winter area, the present sites for the species are surrounded by developments along U.S. Highway 27. The habitat of this species in the pine scrub community near Highway 27 is prime property for development (Wunderlin, 1984a).

*Dicerandra cornutissima* was formerly known from both Sumter and Marion Counties, but the possible site where it occurred in Sumter County is no longer suitable habitat. In Marion County, several of the sites where the species formerly occurred are no longer suitable habitat or are being developed. The species is now known from only a single area approximately 17-18 kilometers (11 miles) south-southwest of Ocala. Much of this area is being

developed, and such development could eliminate the species. Fewer than 4,000 plants are estimated to be present where it still occurs (Wunderlin, 1984b).

Peninsular Florida has one of the highest population growth rates in the United States, and development pressures on the limited area in which these two species occur can only be expected to intensify over the next decade.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Both *Dicerandra frutescens* and *Dicerandra cornutissima* are members of the mint family and have the pleasing, strongly aromatic odor associated with mints. They are highly visible, and can be easily identified by the general public; both occur in areas close to highways and human habitation. Because of these factors, they are vulnerable to taking and vandalism. Although they are of no commercial or horticultural interest, sporadic collection for scientific purposes does occur (Wunderlin, 1984a,b).

**C. Disease or predation.** Not applicable.

**D. The inadequacy of existing regulatory mechanisms.** These plants are not protected by State or Federal laws, and do not occur on land under Federal or State jurisdiction (Wunderlin, 1984a,b). Neither of these plants is currently covered by the Preservation of Native Flora of Florida Act.

**E. Other natural or manmade factors affecting its continued existence.** Both species are extremely restricted in range and occur in small numbers. These factors increase their vulnerability to disturbance and natural disasters.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Dicerandra frutescens* and *Dicerandra cornutissima* as endangered. Both species are extremely restricted in range and occur in areas that are prime property for development. All of the populations are on private land, and there are no Federal or State laws that offer them protection. Several sites where they formerly occurred have been lost to commercial and residential development already, and both species are in danger of extinction. Critical habitat is not determined for *Dicerandra frutescens* or *Dicerandra cornutissima* for the reasons discussed in the following section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. *Dicerandra frutescens* and *Dicerandra cornutissima* are mints that have pleasing aromatic odors and would be of interest to the general public. They are very visible and readily identifiable and occur in areas with easy access, near human habitations and highways. There are no Federal and State laws that protect them, so it would not be possible to safeguard them from curiosity seekers or vandals. To delineate precisely where these plants occur, through publication of critical habitat descriptions and maps in the Federal Register, would therefore increase the threats to the species. These plants are found only on privately owned lands where no Federal involvements are known at present.

Should future Federal activities take place in the areas in which *Dicerandra frutescens* and *Dicerandra cornutissima* occur, the Service believes that such activities will be brought to its attention without the designation of critical habitat. Since a determination of critical habitat could create a threat to these species by increasing the possibility of taking and/or vandalism by the public and would provide the plants with no additional protection, it would not be prudent to determine critical habitat for them at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species

that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for both *Dicerandra frutescens* and *Dicerandra cornutissima* are on privately owned land, there will be no effect on Federal agencies from the above requirement unless a private action requires some Federal involvement.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and expectations that apply to all endangered plant species. With respect to *Dicerandra frutescens* and *Dicerandra cornutissima*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since these species are neither in cultivation nor common in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition will apply to *Dicerandra frutescens* and *Dicerandra cornutissima*; however, since neither species is known at present from Federal lands, this prohibition would not have a substantive effect. Permits for exceptions to this prohibition are available through revised regulations published September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. Requests for copies of the regulations on

plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, Rm. 600-Broyhill Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

**Literature Cited**

Huck, R.B. 1981. *Dicerandra cornutissima*: A new woody labiate from Florida. *Phytologia* 47:313-316.

Shinners, L.H. 1962. Synopsis of *Dicerandra* (Labiatae). *Sida* 1:89-91.

Wunderlin, R.P. 1984a. Status report on *Dicerandra frutescens* Shinners. Unpublished report prepared under contract with U.S. Fish and Wildlife Service, 30 pp.

Wunderlin, R.P. 1984b. Status report on *Dicerandra cornutissima* Huck. Unpublished report prepared under contract with U.S. Fish and Wildlife Service, 25 pp.

**Authors**

The primary authors of this final rule are John L. Paradiso and David Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 153 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under Lamiaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Scientific name	Species Common name	Historic range	Status	When listed	Critical habitat	Special rules
Lamiaceae—mint family						
<i>Dicerandra cornutissima</i>	Longspurred mint	U.S.A. (FL)	E	207	NA	NA
<i>Dicerandra frutescens</i>	Scrub mint	U.S.A. (FL)	E	207	NA	NA

Dated: October 8, 1985.  
 P. Daniel Smith,  
 Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.  
 [FR Doc. 85-26128 Filed 10-31-85; 8:45 am]  
 BILLING CODE 4310-55-M

# Proposed Rules

Federal Register

Vol. 50, No. 212

Friday, November 1, 1985

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

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

[Doc. No. 2775S]

#### General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule and withdrawal of previous proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Standards for Approval; Agency Sales and Service Agreement as contained in 7 CFR Part 400—Subpart C. Concurrent with this action, FCIC hereby withdraws the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on Friday, August 23, 1985, at 50 FR 34155. The intended effect of this proposed rule is to modify requirements of the Standards for Approval of the Agency Sales and Service Agreement regarding licensing and certification; errors and omissions insurance; submission of a Certified Public Accountant audit; change the word "agreement" to "contract" in the title and throughout this subpart, and provide for codification of OMB information collection control numbers. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than December 2, 1985, to be sure of consideration.

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

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is September 1, 1990.

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

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

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

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

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

FCIC proposes to revise and reissue the Standards of Approval-Agency Sales and Service Agreement, as contained in 7 CFR Part 400—Subpart C, to be effective for the 1986 contract year, to incorporate the following elements:

#### 1. License and Certification

Contractor representatives will be required to be certified by FCIC for the

crop or crops they will be selling and servicing and to hold a current license for the sale of insurance issued by each State in which they will be selling or servicing FCIC crop insurance in one or more of the following lines: (a) Multi-peril crop insurance; (b) crop hail insurance; (c) casualty insurance; (d) property insurance; or (e) liability insurance. Representatives who are not licensed but who are presently active representatives and permitted by FCIC to solicit or conduct business will be allowed until July 1, 1986, to secure the required license.

Contractors who held an Agency Sales and Service Agreement for 1985 will be allowed until July 1, 1986, to become the holder of authority to act as an insurer or to conduct business as an insurance agency in the State of domicile.

This issue has been under consideration by FCIC for a number of years for the purposes of increasing the professionalism of those who sell and service FCIC's policies and of upgrading the program image.

Subsection 507(c)(3) of the Federal Crop Insurance Act, as amended, requires that FCIC:

... to the maximum extent possible . . . encourage the sale of Federal crop insurance through licensed private insurance agents and brokers and give the insured the right to renew such insurance for successive terms through such agents and brokers \* \* \*

Many of the contractors and representatives presently certified and selling Federal Crop Insurance also sell and service other types of insurance and are therefore now State licensed.

Though FCIC itself will not be licensed and the State will have no authority over policy language or interpretation, the State through its licensing authority will provide another safeguard to protect the integrity of the Federal crop insurance program.

This requirement should also reduce the conflict which has, in the past, occurred between the State licensing authorities and FCIC because of the sale of Federal crop insurance by unlicensed agents. This regulation will allow those representatives and contractors who presently are not licensed or authorized to operate by States but who are active in the sale of Federal crop insurance, until July 1, 1986, to obtain the necessary State license or authority to operate.

## 2. Errors and Omissions Liability Insurance

FCIC will require errors and omissions liability insurance coverage as part of the contractor's responsibilities in order to provide indemnification to FCIC in the event an error or omission by the contractor or its representatives, causes a loss to FCIC under the contract.

In addition, FCIC will require that the errors and omissions liability insurance, if issued on a claims made basis, be maintained for at least two years beyond the termination of the Agency Sales and Service Contract.

Errors and Omissions Liability Insurance Coverage is presently a factor to be considered by FCIC when determining whether a waiver may be granted when a Certified Public Accountant (CPA) has issued an adverse or qualified opinion on the contractor's financial statement. That reference to errors and omissions liability insurance is removed in this context since errors and omissions liability insurance will now be required of all contractors.

Through July 31, 1985, 587 claims in the total amount of \$3,234,493.06 have been filed against FCIC under the provisions of the "Good Faith Reliance on Misrepresentation" section contained in each crop insurance regulation. The amount of \$860,448.03 was paid under this provision in FY 1984 alone. Although some of these claims are the result of FCIC error, the majority of these claims are the direct result of errors by the contractor or the representative. Some way must be found to reduce this outlay of funds and still maintain program credibility with the insured.

Although FCIC cannot now determine which losses under this clause are caused by licensed as opposed to unlicensed representatives, we believe that the additional professionalism and knowledge which may be required by State licensing authorities and the additional supervision which may attend such licensing, including dispute resolution available in some states between the insured and the licensed agent, should reduce the number of claims under this clause.

## 3. Certification of Submission

Each Contractor will be required to submit to FCIC financial statements certified by a Certified Public Accountant (CPA) following an audit if such a CPA Audit is available. If the Contractor does not have CPA audited financial statements, the Contractor will be required to submit a financial

statement, certified by the Chief Executive Office and Treasurer, that the financial statement fairly represents the financial condition of the Contractor on the date of submission.

In many instances, it is not possible to submit a CPA audited statement, particularly in the case of a newly formed company (one newly organized and in business for less than one year). By requiring a CPA audited statement, if one is available or later becomes available, and requiring a certified financial statement if a CPA audited statement is not available, FCIC has modified a restrictive clause in the standards for approval.

In addition, in modifying this requirement, FCIC has eliminated specific reference to the amount of reserves a contractor must maintain. This proposed rule requires only that the financial statements of the Contractor show a positive net worth and the ability to meet current liabilities by the use of current assets.

## 4. OMB Control Numbers

FCIC is required to codify the control numbers assigned by the Office of Management and Budget (OMB) to FCIC's information gathering requirements contained in its forms etc. These control numbers are included herein.

Finally, FCIC changes the references to Agency Sales and Service Agreement in the title and throughout Subpart C to "Agency Sales and Service Contract" to conform with the title of the document entered into between the contractor and FCIC.

On Friday, August 23, 1985, FCIC published a notice of proposed rulemaking (NPRM) in the *Federal Register* at 50 FR 34155, requiring licensing, certification, and errors and omissions insurance coverage under an Agency Sales and Service Contract; changing "agreement" to "contract" in the title and throughout this subpart; and, providing for codification of OMB information collection control numbers, effective for the 1986 and subsequent contract years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. Comments have been received on the previous proposals. FCIC will retain those comments and consider them in evaluating this present proposal.

Therefore, FCIC hereby withdraws the proposed rule at 50 FR 34155, and replaces it with the proposed rule herein contained to revise and reissue the Standards for Approval—Agency Sales and Service Agreement, effective for the 1986 contract year.

## List of Subjects in 7 CFR Part 400

Crop insurance, Administrative practices and procedure; Agency sales and service contract, Standards of approval.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues 7 CFR Part 400, Subpart C, the General Administrative Regulations; Standards for Approval—Agency Sales and Service Agreement, effective for the 1986 and subsequent contract years, to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

### Subpart C—Standards for Approval—Agency Sales and Service Contract; Regulations for the 1986 and Subsequent Contract Years

Sec.	
400.27	Applicability of standards.
400.28	Definitions.
400.29	Certification of submission.
400.30	Notification of deviation from standards.
400.31	Denial or revocation of contract, and transfer of business.
400.32	Qualifications for acceptability.
400.33	Representative licensing and certification and contractor authorization.
400.34	Errors and omission liability insurance.
400.35	OMB control numbers.

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

### Subpart C—Standards for Approval—Agency Sales and Service Contract; Regulations for the 1986 and Subsequent Contract Years

#### § 400.27 Applicability of standards.

The Standards contained herein shall be applicable to the 1986 and subsequent Agency Sales and Service Contract (1986 Contract).

#### § 400.28 Definitions.

For the purpose of these Standards:

(a) "Agency Sales and Service Contract" (1986 Contract) means the contract between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing Federal Crop Insurance policies.

(b) "Claims made basis" means the type of liability insurance policy under which indemnification is payable by the insurance carrier for an act which is made known to the insured party during

the period the liability is in force, whether or not the act itself occurred during the period the liability insurance was in force.

(c) "CPA" means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

(d) "CPA Audit" means a professional examination by a CPA meeting certain standards on the basis of which the auditor expresses an independent professional opinion respecting the fairness of presentation of the Financial Statements.

(e) "Current assets" means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

(f) "Current Liabilities" means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(g) "Financial Statements" means the document(s) submitted to the Corporation by a Contractor which reflects the financial position, result of operations, and change in financial position of the Contractor.

#### § 400.29 Certification of submission.

If available, each Contractor shall submit to the Corporation financial statements certified by a CPA following an audit. If such CPA audited financial statements are not available, the Contractor shall submit financial statements certified by the Chief Executive Officer and Treasurer that said statements fairly represent the financial condition of the Contractor on the date of submission to the Corporation. If the Contractor submits statements certified by the Chief Executive Officer and Treasurer, the Contractor shall file with the Corporation CPA audited financial statements if the same become available as soon as they become available.

#### § 400.30 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor deviates from the requirements of these standards. The Corporation may require the Contractor to confirm compliance during the contract year if the Corporation determines that such submission is necessary. Deviation from the requirements herein contained may result in revocation of the contract and

transfer of business in accordance with § 400.31 of this part.

#### § 400.31 Denial or revocation of contract, and transfer of business.

Non-compliance with these standards shall be grounds for the denial of a contract or shall be grounds for revoking an existing Contract. In the event of revocation of the Contract, all crop insurance policies obtained by the Contractor, and all business pertaining thereto, shall be transferred to another Contractor or shall revert to the Corporation in accordance with the Contract.

#### § 400.32 Qualifications for acceptability.

The financial statements of the Contractor must show a positive net worth and the ability of the Contractor to meet current liabilities by the use of current assets.

#### § 400.33 Representative licensing and certification and contractor authorization.

The contractor and its representatives who sell and service policies or represent the contractor in sales or service of policies must:

(a) In the case of representatives, hold a current license as issued by each State in which they sell FCIC policies authorizing the sale of insurance in one of the following lines: (1) Multiple peril crop insurance; (2) crop hail insurance; (3) casualty insurance; (4) property insurance; or (5) liability insurance;

(b) In the case of representatives, be certified by FCIC for each crop for which they sell or service insurance;

(c) In the case of the contractor, be authorized by the State in which the contractor is domiciled to act as an insurer or to conduct business as an insurance agency in any line of property or casualty insurance pursuant to the laws or regulations of such State; and

(d) In the case of the contractor, submit evidence, satisfactory to the Corporation, verifying the type of State authority held and the date of expiration of such authority.

(e) Any representative shall have until July 1, 1986, to submit verification of State licensing if such representative is certified by FCIC and has earned compensation for the sale or service of Federal Crop Insurance policies for the 1985 or 1986 crop year.

(f) Any contractor who held an Agency Sales and Service Agreement for 1985 shall be exempt from the requirements of paragraphs (c) and (d) of this section until July 1, 1986.

#### § 400.34 Errors and omission liability insurance.

The contractor must:

(a) Have an errors and omissions liability insurance policy having limits of not less than \$500,000.00 and a deductible of not more than \$5,000.00 at the time of application for the Agency Sales and Service Contract;

(b) Maintain such coverage for the same period of time as the period of contractor's performance under the Agency Sales and Service Contract; and

(c) If said policy is written on a claims made basis, maintain such coverage for at least two years beyond the termination of the Agency Sales and Service Contract.

#### § 400.35 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

Done in Washington, D.C., on September 30, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-26165 Filed 10-31-85; 8:45 am]

BILLING CODE 3410-06-M

### Agricultural Marketing Service

#### 7 CFR Part 989

#### Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions on Pricing Reserve Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This notice of proposed rulemaking invites comments on suspending one sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence would allow the Raisin Administrative Committee (Committee) to continue for another year the inventory adjustment program for Zante Currants implemented last season. The proposal was recommended by the Committee which works with USDA in administering the marketing order.

**DATE:** Comments must be received by December 2, 1985.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the Federal

Register and will be available for public inspection in the Office of Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:**

Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250. Telephone (202) 447-5053.

**SUPPLEMENTARY INFORMATION:** This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of 1985 crop reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. Allowing the use of 1985 crop Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset the financial losses incurred by packers in connection with the sale of those raisins in competition with lower-priced foreign-produced Zante Currants. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

This proposal would suspend for Zante Currant raisins, through July 31, 1986, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No 989, both as amended (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same

varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the Committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: *Provided*, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee."

The carryover into the 1984-85 crop year from the 1983 Zante Currant, production totalled 2,472 tons and was valued at \$1,150 per ton (producer's price) while the 1984 producer price was only \$625 per ton. Although an inventory adjustment program was initiated last season, a significant portion of that carryover was not adjusted because only 524 tons of 1984 crop reserve Zante Currants were available for the program. Continuation of that program will allow handlers the opportunity to continue to adjust the value of their 1983 crop carryover of Zante Currant raisins by authorizing the purchase of 1985-86 reserve Zante Currants at \$100 per ton for each ton of 1983 crop Zante Currant raisins held in inventory on July 31, 1984, thereby averaging the price per ton for the 1983 crop inventory down to \$625. Allowing the use of 1985 crop Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset financial losses incurred by packers in connection with the sales of those raisins during the 1984-85 crop year.

The sentence to be suspended would require reserve raisins to be offered at a price well above the \$100 level needed to devalue the 1983 crop carryover inventory and thus would not allow the necessary price adjustments to be accomplished.

Producers and packers of Zante Currant raisins have been conducting their operations based on the premise that the Zante Currant inventory adjustment program would be continued into the 1985-86 crop year if a reserve was established. In price negotiations between raisin packers and the bargaining association, packers agreed to the 1984 crop free tonnage price of \$625 contingent upon the establishment of the Zante Currant inventory

adjustment program. Without such a program, packers would have accepted 1984 crop Zante Currants only on a consignment basis.

**List of Subjects in 7 CFR Part 989**

Marketing agreements and orders, Grapes, Raisins, and California.

1. The authority citation for 7 CFR Part 989 continues to read as follows

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

**PART 989--[AMENDED]**

2. The proposal is as follows:

**§ 989.67 [Amended]**

The penultimate sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1986.

Dated: October 25, 1985

William T. Manley,

Deputy Administrator, Marketing Programs  
[FR Doc. 85-26101 Filed 10-31-85; 8:45 am]

BILLING CODE 3410-02-M

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 19, 21, 30, 40, 50, 70, 71, 73 and 110**

**Authority for the Copying of Records and Retention Periods for Security Records**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; Withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have provided for specific authority for NRC representatives to copy licensee records maintained pursuant to Commission requirements and would have specified retention periods for required security records. The retention periods for security records will be included in a separate proposed rulemaking entitled "Retention Periods for Records."

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7890.

**SUPPLEMENTARY INFORMATION:** On November 22, 1982, the Nuclear Regulatory Commission published proposed amendments to 10 CFR Parts 19, 21, 30, 40, 50, 70, 71, 73 and 110 in the *Federal Register* (47 FR 52452, November 22, 1982) that would have provided

specific authority for Commission representatives to make and remove copies of licensee records maintained pursuant to Commission requirements and would have specified retention periods for existing physical security records.

This rulemaking was originally proposed to remedy the lack of explicit authority to copy licensee records which might have had an adverse impact on the agency's ability to conduct inspections and investigations. However, most of the public comments received on the proposed rule expressed concern regarding the inadvertent disclosure of proprietary information. Given the history of satisfactory cooperation by the licensees and the increased potential for disclosure of proprietary information that may result from the rule, the Commission concluded there is no need at this time for a generic resolution of the problem. The Commission has the ability to obtain necessary records by appropriate enforcement action in accordance with Subpart B of 10 CFR Part 2.

The need still exists for a rulemaking to specify record retention periods for physical security records (10 CFR Part 73). It will be satisfied by incorporating this part of the rulemaking into another proposed rulemaking dealing generally with record retention periods.

In view of these considerations, the proposed rule published on November 22, 1982, is withdrawn.

Dated at Washington, DC, this 28th day of October, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-26155 Filed 10-31-85; 8:45 am]

BILLING CODE 7590-01-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

#### Veterans Education; Entitlement Charges for Overpayments

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

**SUMMARY:** Interest, administrative costs of collection, court costs, and marshal fees are charged to veterans or eligible persons with outstanding overpayments of educational assistance allowance. The pertinent section of the Code of Federal Regulations governing charges to entitlement of a veteran or eligible person does not state whether a charge against entitlement will be made for the amount of accrued interest, administrative costs of collection, court

costs and marshal fees when such an overpayment is discharged in bankruptcy, is waived or is compromised. This proposal provides that an unrecovered portion of interest, administrative costs of collection, court costs or marshal fees will not result in a charge against a veteran's or eligible person's entitlement. This will be done by first deducting the amount of any such outstanding costs.

**DATE:** Comments must be received on or before December 3, 1985.

**ADDRESSES:** Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 17, 1985.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

**SUPPLEMENTARY INFORMATION:** 38 CFR 21.1045(h) is amended to show how the VA (Veterans Administration) will calculate the charge against entitlement when a veteran's or eligible person's overpayment of educational assistance allowance is discharged in bankruptcy, or is waived, or is compromised, and outstanding administrative collection costs, court costs, marshal fees or interest have been added to the beneficiary's debt to the United States.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

Pursuant to 5 U.S.C. 605(b), the proposed amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposal affects only individuals. It will have no significant

economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117.

#### List of Subjects in 38 CFR Part 21

Civil rights, claims, education, grant programs-education, loan programs-education, reporting and recordkeeping requirements, schools, veterans, vocational education, vocational rehabilitation.

Approved: September 19, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

#### PART 38—(AMENDED)

38 CFR Part 21 is amended by revising § 21.1045, paragraph (h) to read as follows:

#### § 21.1045 Entitlement charges.

\* \* \* \* \*

(h) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived, and is not recovered, or is compromised. (38 U.S.C. 1661)

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by:

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (b)(3)(i) of this section from

the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment (38 U.S.C. 1671)

[FR Doc. 85-28131 Filed 10-31-85; 8:45 am]  
BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA Action NE 1754; A-7-FRL-2917-5]

#### Revision to State Implementation Plans; Nebraska

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

**ACTION:** Proposed rulemaking.

**SUMMARY:** On April 12, 1985, EPA received a State Implementation Plan (SIP) revision from the Governor of Nebraska for the Omaha carbon monoxide (CO) nonattainment area. A transcript of the public hearing was submitted on May 16. The State also requested redesignation of the Omaha CO nonattainment area to attainment of the CO standard on February 22, 1985, based on eight quarters of monitored air quality data and a modeling analysis which was submitted with the April 12 revision.

The purpose of today's notice is to propose action on the Omaha CO SIP and redesignation request. The public is invited to submit comments regarding EPA's preliminary findings and today's proposed action.

**DATE:** Comments must be received on or before December 2, 1985.

**ADDRESSES:** Comments should be addressed to Mary C. Carter, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available for inspection during normal business hours at the above address and at the following locations: Nebraska Department of Environmental Control, Air Quality Division, Box 94877,

Statehouse Station, 301 Centennial Mall South, Lincoln, Nebraska 68509; and the Metropolitan Area Planning Agency, 2222 Cuming Street, Omaha, Nebraska 68102-4328.

**FOR FURTHER INFORMATION CONTACT:** Mary C. Carter at (913) 236-2893, FTS 757-2893.

#### SUPPLEMENTARY INFORMATION: Background

On March 3, 1978, EPA designated over 400 areas as nonattainment for one or more primary or secondary National Ambient Air Quality Standards (NAAQS). Omaha, Nebraska, was designated as nonattainment of the CO standard at that time. A revision to the State Implementation Plan (SIP) to meet the requirements of Part D and section 110 of the Clean Air Act was required to all nonattainment areas by January 1979. In July 1979, EPA imposed a construction ban pursuant to section 110(a)(2)(I) of the Clean Air Act on all nonattainment areas whose plans were required to contain such a ban, but did not, including the Omaha CO nonattainment area.

Although Nebraska submitted a CO plan in 1982, EPA was not able to approve it due to violations of the CO standard that were monitored in Omaha during 1982. Consequently, acting under section 110(a)(2)(H) of the Act in February 1984, EPA asked the Governor of Nebraska to withdraw the inadequate CO plan and to develop and submit a new plan to attain the CO standard. On April 27, 1984, Governor Kerrey officially withdrew the CO SIP for Omaha. On April 12, 1985, EPA received a new SIP revision from Governor Kerrey for Omaha. This notice will review and propose action on the Omaha CO plan revision and on the request from the State received on February 25, 1985, for redesignation of Omaha from nonattainment to attainment of the CO standard.

#### Summary of Plan

The analysis in the Omaha SIP of the CO violations that caused the area to receive a section 110(a)(2)(H) call for SIP revision, indicates that the violations were caused by construction related traffic congestion in the vicinity of the monitor. Bridge construction on 72nd Street over the Papillion Creek caused a narrowing of 72nd Street from four lanes of traffic to two lanes. Due to concurrent construction on potential alternate routes in the area, traffic was not significantly reduced during the period of construction. The 1982 average daily traffic was 31,200 vehicles with 30,000 vehicles per day counted during the

construction period. Thus, the construction caused excessive congestion and severe queuing conditions on 72nd Street and the crossing streets in the vicinity of the construction.

The SIP documents the circumstances surrounding the 1982 period of CO violations. First, the period began in July and ended in November. Although CO violations are normally related to winter conditions of thermal inversions, the highest recorded CO levels in Omaha were in July. Second, these high levels did not occur before or after the period of time in which construction occurred. Third, the problem was very localized in the vicinity of the construction and no violations were recorded at the monitor at 30th and Fort. Finally, the violations began on July 14 and ended on November 18, while the construction began on July 11 and ended on November 19. There has only been one exceedance of the standard since that time.

A modeling analysis was performed using 1982 data, the Hotspot Guidelines, and the Caline 3 Model to recreate the conditions and pollution levels observed during 1982. This analysis predicted levels of CO which closely approximated the 1982 second highest eight-hour average of 15.6 ppm. Using this value as the design value for the area, and including the on-going street improvements and traffic signalization improvements, the model predicted attainment by 1984. The highest predicted CO level was 8.6 ppm at the 72nd and Dodge receptor. Two additional scenarios were modeled to ensure continued compliance with the CO standard in the future. Both scenarios show continued improvement in Omaha's air quality, and maintenance of the CO standard for the years 1987 and 2000. A contingency plan included in the SIP gives additional measures which would be implemented if the standard were not maintained.

#### Plan Evaluation

EPA has evaluated the plan to determine compliance with the requirements of Part D and Section 110 of the Clean Air Act.

1. **Expedient Attainment**—The plan demonstrates attainment of the standard before the end of 1984. Recent monitored values support the attainment demonstration.

2. **Public Notice**—A public hearing was announced and the plan was made available to the public on January 30, 1985. The plan was adopted by the

Nebraska Environmental Control Council on March 1, 1985, after a public hearing.

3. All Reasonably Available Control Measures—EPA has interpreted this as requiring all reasonably available control measures which are necessary to attain the standards as expeditiously as practicable. The plan includes transportation control measures (street improvements and traffic signalization improvements) and the Federal Motor Vehicle Control Program and demonstrates attainment of the CO standard before the end of 1984, with maintenance modeled through the year 2000. Since current monitoring indicates that the area has attained the CO standard, EPA believes the requirement to implement all reasonably available control measures has been met. The plan reports that mobile sources are responsible for 99.3 percent of the CO emissions in Omaha. There is only one major stationary source of CO in Omaha which is controlled through design efficiencies to a degree considered by EPA to be RACT.

4. Emission Inventory—The plan contains a current inventory of stationary and mobile source CO emissions.

5. Reasonable Further Progress—The SIP includes a demonstration of continued attainment and a 20 percent improvement in air quality by the year 2000.

6. Identify Emissions Growth—The SIP indicates that over 99 percent of the CO emissions are transportation-related. The 1987 modeled scenario includes a 4.5 percent increase in traffic, while the year 2000 modeled scenario uses stable traffic for the area since this part of the metropolitan area is nearly fully developed at present.

7. Permit Program for New Stationary Sources—On July 23, 1984, (49 FR 29597) EPA approved the Nebraska regulations for new source review as meeting all the requirements of section 172(b)(6) and section 173 of the Clean Air Act, and the requirements for new sources in nonattainment areas published on August 7, 1980.

8. Identify and Commit Resources—The street construction projects on 69th and 90th Streets were completed by the City of Omaha in 1984. The traffic signal improvements project was completed by the Omaha Public Works Department in the Spring of 1985. These were the projects identified in the plan that were necessary to achieve attainment as expeditiously as practicable. There are

no projects pending that were identified in the plan to achieve expeditious attainment. Consequently, no future resources are needed to implement the provisions for attainment of the standard.

9. Emission Limitations and Compliance Schedules—The nonattainment area contains only one major source of CO which is controlled at RACT. The transportation control measures committed to in the SIP have been completed and do not need compliance schedules.

10. Public, Local Government, and State Involvement in Accordance with Section 172(b)(9)—The SIP contains evidence of public, local government, and State involvement in SIP planning, development and implementation. The plan contains an analysis of the economic, health, air quality, and energy effects of the plan provisions. No verbal or written public comments on the analysis were received.

11. Evidence of Adoption of the Necessary Requirements, Schedules, and Timetables for Compliance, and Commitments to Implement and Enforce These Plan Elements—The control measures in the plan necessary to achieve attainment of the standards have been implemented by the responsible agencies. Consequently, commitments to implement the plan elements are unnecessary.

#### Indirect Source Review

On May 30, 1985 (50 FR 23031), EPA proposed to approve the State's deletion of indirect source review requirements for the State of Nebraska except as they pertain to the Omaha and Lincoln CO nonattainment areas. EPA stated that the indirect source review program would be retained in these areas until the State could adequately demonstrate whether this program should be part of the control strategy for attaining and maintaining the CO standards in these CO nonattainment areas. The reader is referred to the May 30 proposal for further information.

The Nebraska SIP for the OMAHA CO nonattainment area demonstrates expeditious attainment and continued maintenance of the CO standard without the use of the indirect source review program in the control strategy. Consequently, EPA proposes to approve the deletion of the indirect source review program for the Omaha area.

#### Omaha Redesignation Request

On February 22, 1985, the State of Nebraska requested redesignation of the

Omaha CO nonattainment area to attainment of the CO standard based on eight consecutive quarters of monitored air quality data. The data show that Omaha had no violations of the CO standard in 1983 or 1984.

A modeling analysis submitted with the April 12, 1985, Omaha SIP demonstrates attainment of the CO standard by 1984 due to the implementation and completion of the control strategy contained in the Omaha SIP. Maintenance of the standard is modeled for the years 1987 and 2000. EPA has confirmed the State's modeled attainment demonstration and believes the Omaha area meets the requirements for redesignation to attainment of the CO standard.

#### Proposed Action

(1) EPA proposes to approve the Omaha CO revision to the Nebraska SIP; (2) EPA proposes to approve the revocation and deletion from the Nebraska SIP of indirect source review rules as they pertain to Omaha; and (3) EPA proposes to redesignate Omaha to attainment of the CO standard.

EPA is soliciting comments on the State's submissions for Omaha and on the actions proposed in this document. The Administrator will consider relevant comments received from public in deciding to approve or disapprove this submission. Final approval of this action would remove the construction ban on stationary sources of CO for this area, which was imposed in July 1979.

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.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

#### List of Subjects

##### 40 CFR Part 52

Air pollution control, Carbon monoxide.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7641.

Dated: July 31, 1985.

Morris Kay,

Regional Administrator,

[FR Doc. 85-26115 Filed 10-31-85; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposal To Remove the Tinian Monarch Flycatcher From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Tinian monarch (*Monarcha takatsukasae*) is endemic to the island of Tinian in the Mariana Archipelago. Its numbers in 1945 were thought to be critically low due to the removal of native forests for sugarcane production, and due to the destruction of forest by the activities of World War II. The monarch was afforded protection under the U.S. Endangered Species Act in 1970, though there had been no surveys of its status in the preceding two decades. Since the end of World War II, most of Tinian has been revegetated by a shrubby legume (*Leucaena leucocephala*), which was seeded by the U.S. military. The Tinian Monarch has adapted well to this new cover type and now thrives in abundance throughout Tinian. This proposed rule acknowledges the increase in suitable habitat and numbers, and would remove the monarch from the List of Endangered and Threatened Wildlife. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by December 31, 1985. Public hearing requests must be received December 16, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

**SUPPLEMENTARY INFORMATION:**

## Background

The Tinian monarch was first recognized as a species in 1931, when it was described by Y. Yamashina (Takatsukasa and Yamashina 1931). It is a small (15 centimeters; 6 inches)

songbird with light rufous underparts, olive-brown upperparts, dark brown wings and tail, and white rump and undertail coverts (Baker 1951). The monarch is endemic to the island of Tinian, where it inhabits a variety of forest types from introduced second growth to well-developed native forests. Its numbers had apparently been reduced by 1945 due to the clearing of forests by the Japanese for sugarcane production and the destruction of remaining forest by military action during World War II (Coultas 1931, Owen 1974).

Since 1945, most of Tinian has been revegetated by a shrubby legume (*Leucaena leucocephala*) seeded by the U.S. military. The monarch has adapted well to this introduced, woody shrub, and is now found abundantly throughout Tinian. Biologists who have visited Tinian over the last 10 years have commented on the general abundance of the monarch (Owen 1974; Pratt, *et al.* 1979), and forest bird surveys conducted by the Service in 1982 found the monarch to be the second most abundant bird on the island with a population estimate of 10,000 (Engbring and Ramsey in prep.). It seems very likely that the species had recovered to near its pre-1945 abundance by the time the Service listed it in 1970. The listing was based upon the report of Baker (1951), which was for field work done in the late 1940's.

Though agricultural development and human population growth is expected to remove portions of forest on Tinian in future years, ecological disruption should never approach the severity that was witnessed in the war. Most land on Tinian is now leased by the U.S. Navy for a training area, and development there is expected to be minimal. The amount of forest remaining on Tinian should assure the continued existence of the Tinian monarch, which has shown itself to be a resilient and adaptable species.

The Tinian monarch was classified as endangered June 2, 1970 (35 FR 6495). No surveys had been made in the preceding 20 years. No critical habitat was designated. This delisting action merely acknowledges the fact that this species is no longer threatened or endangered and removes it from protection under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for listing, reclassifying, or removing species from

the Federal lists. The term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man. The term "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The data used to support a removal must be the best scientific and commercial data available to substantiate that the species is neither endangered nor threatened. Factors leading to delisting include extinction, recovery of the species, or the original data for classification were in error. The factors in Section 4(a)(1) and their application to the Tinian monarch are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** Most of Tinian is expected to remain in a forested condition in future years. Even though agricultural development, military development, and a growing human population is expected to remove portions of forest, peak development is not likely to be approached as occurred during the Japanese era. Much of the forest that remains on Tinian will be scrubby, second growth habitat in which the monarch thrives.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** The monarch is a small song bird and is not threatened by or sought for commercial, recreational, scientific, or educational purposes.

**C. Disease or predation.** There are no known disease or predation problems on Tinian. There is concern, as there is for all islands in Micronesia, that disease or predators might someday be introduced and pose a threat. On Guam in the southern Mariana Islands, all native forest birds have been disappearing over in the last 20 years. This decline appears due to an introduced predator, the brown tree snake (*Boiga irregularis*), or other factors that are now being investigated at that location. With the military becoming more active in training exercises on Tinian, the chance of an accidental introduction from Guam to Tinian is increased. The principal potential source for introducing the snake on Tinian is the U.S. military. The Department of Defense is working with

the Service towards the control of the snakes on Guam, particularly around transport centers (docks and airfields). The Service is very actively investigating methods of controlling the snakes on Guam, in part, to reduce the threat of introduction to the other islands in this area of Pacific. At present, however, nearly all bird species on Tinian appear to have healthy populations and are not known to be affected by serious disease or predation problems.

**D. The inadequacy of existing regulatory mechanisms.** The monarch is presently protected by the Commonwealth of the Northern Marianas Fish and Game Law, as well as the U.S. Endangered Species Act, but will not be protected by the Endangered Species Act if delisted. There are few, if any, enforcement problems, since the monarch is not harvested for commercial, recreational, or other purposes. Perhaps more important than regulations specifically protecting the monarch are laws that protect the overall integrity of the island ecosystem, such as quarantine laws. Quarantine regulations have been promulgated and are enforced by the Commonwealth government at airports and ports of entry. The U.S. military is self-regulatory, and enforces its own quarantine regulations.

**E. Other natural or manmade factors affecting its continued existence.** The monarch is not known to be threatened by any other natural or manmade factors.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, which indicates that the monarch has rebounded from depressed 1945 population levels, the preferred action is to remove the Tinian monarch from the List of Endangered and Threatened Wildlife. The rules governing listing of endangered and threatened species (§ 424.21) require revision of the list whenever obvious changes in status occur. The Service's listing regulations at § 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. In the case of the Tinian monarch, both (2) and (3) apply. The monarch has recovered from formerly depleted numbers following World War II and, at the same time, a reassessment of the original classification data indicate that the monarch was probably not endangered when actually listed in 1970.

#### Effects on Rule

The rule merely acknowledges that the Tinian monarch is not threatened with becoming endangered or in danger of extinction and that further protection under the Act is not required. Those prohibitions and conservation measures under the Act, sections 7 and 9, in particular, would no longer be applicable to this species if this rule is made final. As there are no specific preservation or management programs for the species in effect, there will be no impact on any agency or individuals.

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Tinian monarch;
- (2) The location of any additional populations of the Tinian monarch;
- (3) Additional information concerning the range and distribution of this species;
- (4) Current or planned activities in the subject area and their possible impacts on the Tinian monarch.

Final promulgation of the regulation on the Tinian Monarch will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination

was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Baker, R.H. 1951. The avifauna of Micronesia, its origin, evolution, and distribution. University of Kansas Publications, Museum of Natural History, 3:1-359.
- Coultas, W.F. 1931. Whitney South Sea Expedition Journals, Vol. W, journal and letters. Unpublished field notes. American Museum of Natural History. pp. 132-137 and 256-260.
- Engbring, J., and F. Ramsey. In prep. Micronesian forest bird survey, 1982; Saipan, Tinian, Agiguan, and Rota. U.S. Fish and Wildlife Service. 224 pp.
- Owen, R.P. 1974. Environmental impact study on the terrestrial fauna and flora of Tinian with respect to the proposed establishment of a U.S. military base on that island. Unpublished Report, Trust Territory Conservation Office, Koror, Palau. 22 pp.
- Pratt, H.D., P.L. Brunner, and D.G. Berrett. 1979. America's unknown avifauna: the birds of the Mariana Islands. *American Birds* 33(3):227-235.
- Takatsukasa, S., and Y. Yamashina. 1931. Some new birds from the Palau and Mariana Islands. *Dobutsu. Zasshi* 43:484-487.

#### Author

The primary author of this proposed rule is John Engbring, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

#### § 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by removing the entry "Flycatcher, Tinian monarch" under BIRDS from the List of Endangered and Threatened Wildlife.

Dated: October 8, 1985.

Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-26125 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposed Endangered and Threatened Status for Three Florida Shrubs

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine *Deeringothamnus pulchellus* (beautiful pawpaw) and *Deeringothamnus rugelii* (Rugel's pawpaw) to be endangered species, and *Asimina tetramera* (four-petal pawpaw) to be a threatened species pursuant to the Endangered Species Act of 1973 (Act). Critical habitat is not proposed. *Deeringothamnus pulchellus* is restricted to Pine Island, Lee County, and southern Charlotte County, Florida. *Deeringothamnus rugelii* is known from near New Smyrna Beach, Volusia County, Florida. Both species of *Deeringothamnus* are endangered by the destruction of their habitats for residential, commercial, and agricultural purposes. *Asimina tetramera* inhabits scrub vegetation on dunes near the Atlantic coast in Martin and northern Palm Beach Counties, Florida. It is threatened by destruction of its habitat for commercial and residential construction, and by successional changes in its habitat. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for these three shrubs. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by December 31, 1985. Public hearing requests must be received by December 18, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:****Background**

These three species of pawpaw are shrubs of the custard-apple family (Annonaceae), a family that includes a dozen trees and shrubs of the southeastern United States. John K. Small (1924) established the genus

*Deeringothamnus* to accommodate the newly-discovered *D. pulchellus*, which differed from *Asimina rugelii* to *Deeringothamnus*. Rehder and Dayton (1944) and Wilbur (1970) merged *Deeringothamnus* into *Asimina*, but the distinctness of *Deeringothamnus* has been upheld in studies by Kral (1960) and Walker (1971). A recent study of leaf anatomy in the Annonaceae shows *Deeringothamnus* to be very distinctive (John L. Roth, Jr., personal communication, July, 1984). The genus *Deeringothamnus* consists of only the two Florida endemic species covered here. Both species inhabit poorly-drained slash pine-saw palmetto flatwoods. They are low shrubs with stout taproots. The leaves are oblong and leathery. The fruits are cylindrical berries with pulpy flesh, 3-6 centimeters (1-3 inches) long, and yellow-green when ripe. Seeds are about the shape and size of brown beans. The annual or biennial stems are 10-20 centimeters (4-8 inches) tall, rarely taller. The plants resprout readily from the roots after the tops are destroyed by fire or mowing. The absence of such disturbance leads to the eventual demise of *Deeringothamnus* (Norman and Brothers, 1981).

*Deeringothamnus pulchellus* has flowers with linear, creamy white petals that are straight when the flower opens, becoming recurved. The flowers are pleasantly scented. J.K. Small coined the whimsical common name of "squirrel banana" (Small 1926a). It was discovered "in the uninhabited pineland wilderness between Punta Gorda and Fort Myers" (Small, 1924), probably near Tuckers Corner in what is now the Cecil M. Webb Wildlife Management Area (L. Campbell, Webb Area manager, personal communication, March 14, 1985). Subsequently, it was found at several sites in southern Charlotte County and in Lee County near Fort Myers (Wunderlin *et al.*, 1981). Despite searches by botanists, *Deeringothamnus* has not been collected in these sites since the 1950's. Urbanization has destroyed several known sites in the Fort Myers area. A population has been known on Pine Island, Lee County, since 1930. At the present time, this species is known from grassy flatwoods on Immokalee sand and Punta fine sand soils on Pine Island. It is relatively abundant on road edges and partly developed subdivision lots that are regularly mowed, but where chopping or other soil disturbances have not occurred. A second population is known from grassy flatwoods and a road edge on Myakka fine sand soil along county highway 765 near Pirate Harbor, in southern Charlotte County (R.W.

Repenning, report to Florida Natural Areas Inventory, May 2, 1985). Until recently, the flatwoods inhabited by *Deeringothamnus* were kept relatively free of large shrubs and saw palmetto by frequent ground fires. With the coming of development, fires were controlled and mechanical means have been used to clear and maintain open areas. Infrequent mowing of undeveloped lots and road edges has replaced fire as an acceptable means of removing larger shrubs that can shade out *Deeringothamnus*. Frequent low mowing could prove detrimental.

*Deeringothamnus rugelii* has flowers with straight, oblong, canary yellow petals. It was first collected by Ferdinand Rugel in 1848. It was not validly described as a species until B.L. Robinson published the name *Asimina rugelii*, based on Rugel's specimens, in 1897. J.K. Small rediscovered this plant in 1924, assigned it to his genus *Deeringothamnus*, and called it the "yellow squirrel banana" (Small, 1930). The next collections were made by R. Kral in 1956 and 1958 (Wunderlin *et al.*, 1980). The present distribution of these plants has been determined by Norman and Brothers (1981). They found seven populations containing a total of fewer than 500 plants. About half of the plants were in pine flatwoods used for cattle pasture. Most of the rest were in a powerline right-of-way and a recently-burned flatwoods. All of these populations are in southern Volusia County, Florida. One population is 12 miles southwest of New Smyrna Beach. The rest are in an area of about 3 square miles, about 5 miles west of the center of New Smyrna Beach.

*Asimina tetramera* is a large shrub or small tree, 1-3 meters (3-9 feet) tall, with one to several upright main stems. The flowers have 4 sepals (occasionally 3 or 5), and usually 6 petals in 2 sets of 3 each. The petals are pink to maroon, and the flowers have a fetid odor. The four-petal pawpaw inhabits sand pine scrub on old dunes inland from the present Atlantic coast in Martin and northern Palm Beach Counties. It was discovered by J.K. Small in 1924 at Rio, just north of Stuart and was subsequently named by him (Small, 1926b). Small (1933) placed six species of *Asimina*, including *A. tetramera*, in a new genus, *Pityothamnus*. This genus has been rejected by other taxonomists (Kral, 1960). *Asimina tetramera* responds well to the occasional several fires and hurricane damage that typify its habitat, because new sprouts grow readily from the roots. In the absence of such disturbance, *Asimina tetramera* is usually shaded out by evergreen oaks.

and sand pines. Most of its habitat has been destroyed by urban development (Austin and Tatje, 1979; Austin *et al.*, 1980). Only several hundred plants exist in the wild at the present time (R. Moyroud, Mesozoics Landscapes, Inc., personal communication, 1985). Over 100 plants were destroyed through land development in 1984 alone (P. Quincy, Florida Power and Light, personal communication, 1984).

Federal Government actions on these species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In this report, *Asimina tetramera* was listed as endangered, and *A. pulchella* and *A. rugelii* were listed as threatened. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). The above three taxa were included in the notice.

On June 16, 1978, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94-51 and the July 1, 1978, *Federal Register* publication. *Asimina tetramera* was included in the proposed rule. The 1978 Endangered Species Act Amendments required the withdrawal of all proposed rules over two years old, except that a 1-year grace period was allowed for proposals already over two years old. On December 10, 1979, the Service withdrew that portion of the June 16, 1978, proposal that had expired (44 FR 70796). On December 15, 1980, the Service published a notice of review for plants (45 FR 82479), which included *Asimina tetramera* and *Deeringothamnus rugelii* as category-1 candidates (species for which data in the Service's possession indicate listing is warranted). *Deeringothamnus pulchellus* was included as a category-2 candidate (species for which data in the Service's possession indicate listing is possibly appropriate but for which additional biological information is needed to support a proposed rule). One comment on *Deeringothamnus* was

received in response to the 1980 plant notice, favoring action to ensure the survival of these species. On November 28, 1983, the Service published in the *Federal Register* (48 FR 53640) a supplement to the 1980 notice of review. The supplement treated *Deeringothamnus pulchellus* as a category-1 candidate, based on field work by Wunderlin *et al.*, 1981.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Asimina tetramera* and for both species of *Deeringothamnus* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 13, 1985, the Service found that the petitioned listing of these three species was warranted, and that, although other pending proposals had precluded their proposal, expeditious progress was being made to list these species. Publication of the present proposal constitutes the next 1-year finding that is required on or before October 13, 1985.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424); promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Deeringothamnus pulchellus* Small (= *Asimina pulchella* (Small) Rehder & Dayton), beautiful pawpaw; *Deeringothamnus rugelii* (B. L. Robinson) Small (= *Asimina rugelii* B.L. Robinson), Rugel's pawpaw; and *Asimina tetramera* Small (= *Pityothamnus tetramerus* (Small) Small), four-petal pawpaw are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The former geographic ranges of the two species of *Deeringothamnus* are somewhat uncertain because few herbarium specimens were ever collected. A single specimen collected at Bithlo, Orange County, Florida in 1929, indicates wider former distributions. Efforts to relocate the Bithlo plants have failed (Norman and

Brothers, 1981). *Deeringothamnus pulchellus* has disappeared from most of its former range, which included what is now the Fort Myers urban area. The existing populations are quite vulnerable to real estate development (Wunderlin *et al.*, 1981.) since the Fort Myers area is one of the fastest-growing regions in Florida. *Deeringothamnus rugelii* has declined greatly in numbers since Kral collected specimens in 1956-1958. Real estate development is now a severe threat to this plant because all but one of the populations are within 1 mile of Interstate 95 at New Smyrna Beach. Areas that are not developed may also become unsuitable for *Deeringothamnus* due to modification of their habitats. Both species of *Deeringothamnus* are adapted to grassy flatwoods, where ground fires destroy the above-ground parts of the plant every several years. The plants resprout from the roots. *Deeringothamnus* can tolerate occasional mowing, but disruption of the root system is fatal. *Deeringothamnus rugelii* thrives in flatwoods converted to cattle pasture with bahia grass (*Paspalum notatum*), but conversion of the pastures to turf grass farming destroys the plants. Pine plantations, with fire protection and dense understory vegetation, cause *Deeringothamnus rugelii* to be shaded out. One population of *Deeringothamnus rugelii* is threatened by expansion of a cemetery (Norman and Brothers, 1981). Also, *Deeringothamnus pulchellus* is affected by trash dumping within part of its range.

Most of the original sand pine scrub habitat of *Asimina tetramera* is now urbanized. The species is now essentially confined to scrub vegetation in Jonathan Dickinson State Park, Hobe Sound National Wildlife Refuge, and several privately-owned tracts. Small areas of the State Park are used for military navigation facilities, which could be altered in the future and affect *Asimina* habitat. The four-petal pawpaw may occur on areas on and near the Refuge where the Army Corps of Engineers holds easements for disposal of dredge spoils from the Intracoastal Waterway. On the remaining privately-owned sites, native vegetation is susceptible to removal and alteration. Where the vegetation is allowed to remain, survival of the pawpaws is uncertain in the long run, because *Asimina tetramera* is a root-sprouting shrub that may be rejuvenated by having its above-ground stems destroyed. In the absence of fires or hurricanes, scrub oaks are likely to shade out *Asimina tetramera*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera* are so limited in distribution and population size that indiscriminate scientific or other collecting could adversely affect these species. Collecting is not known to occur at this time, but caution will be necessary to ensure that increased publicity does not spark such collecting.

C. *Disease or predation.* *Deeringothamnus rugelii* is heavily damaged by the caterpillar of an unknown moth (Norman and Brothers, 1981). *Deeringothamnus pulchellus* also shows insect damage to leaves and flowers (Wunderlin *et al.*, 1981). No herbivory has been reported on *Asimina tetramera*.

D. *The inadequacy of existing regulatory mechanisms.* *Asimina tetramera* is listed as endangered under the Preservation of the Native Flora of Florida Law (Section 581.165 of the Florida Statutes). *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are not protected by this law at the present time. The Florida law regulates taking, transport, and the sale of plants, but it does not provide habitat protection. *Asimina tetramera* and *Deeringothamnus rugelii* were listed as endangered by the Florida Committee on Rare and Endangered Plants and Animals (Ward, 1979), but this listing confers no protection under law. The few plants of *Asimina tetramera* on Hobe Sound National Wildlife Refuge are protected from collecting (50 CFR 27.51).

E. *Other natural or manmade factors affecting its continued existence.* *Deeringothamnus pulchellus* is affected by all-terrain vehicles within part of its range. *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are both vulnerable to successional changes in the vegetation. Both species require frequent fire (or its equivalent, such as bush-hogging or mowing) to maintain an open, grassy understory vegetation, and to stimulate the production of new flowering shoots (Wunderlin *et al.*, 1981; Norman and Brothers, 1981). *Asimina tetramera* occurs in evergreen oak-sand pine scrub habitats where fires are infrequent but more intense. Because *A. tetramera* sprouts from its roots, it recovers quickly from fires. Eventually scrub oaks or sand pines overtop and shade out the pawpaws. As a result, protecting the vegetation from fire constitutes a threat to *Asimina tetramera*. Both Jonathan Dickinson State Park and Hobe Sound National Wildlife Refuge are implementing plans

for prescribed burning of vegetation. Tracts of scrub on private land where the *Asimina* exists need to be renewed by other methods, such as cutting (Austin and Tatje, 1979). Restriction to specialized habitats and small geographic ranges tends to intensify any adverse effects upon the populations of any rare plant. This is certainly true of these three species and is exacerbated by the loss of habitat which has already taken place.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* as endangered species and to list *Asimina tetramera* as a threatened species. The two former species have been extirpated from most of their historic ranges. The remaining habitat is vulnerable to development, so these species could become extinct in the near future. All the populations are on private land, and there are no State or local laws that offer them protection. Most of the range of *Asimina tetramera* is now urbanized. The remaining habitat of this species requires attention to prevent encroachment, and to ensure its continued suitability for the pawpaw. Critical habitat is not being proposed for these species for the reasons described in the next section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. Designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The populations of *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are so small and geographically limited that excessive scientific collecting or, especially, vandalism could seriously damage the remaining populations of these species. Publication of critical habitat maps in the Federal Register would increase the likelihood of such activities. Similarly, it would not be prudent to publish maps of the known sites for *Asimina tetramera*. While collecting is generally prohibited in Jonathan Dickinson State Park and in Hobe Sound National Wildlife Refuge, these prohibitions are difficult to enforce. The Service believes that Federal involvement in the areas where

these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, since such designation can be expected to increase the degree of threat from taking or other human activity.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites for both *Deeringothamnus pulchellus* and *Deeringothamnus rugelii* are on privately-owned land, there will be no effect on Federal agencies from the above requirements unless the private owners request some Federal involvement in managing their lands. *Asimina tetramera* occurs primarily on State and private property. A few plants exist on Hobe Sound National Wildlife Refuge, where existing management

plans for prescribed fire should help to ensure its survival. The Army Corps of Engineers holds easements for dredge spoil disposal on the Refuge. The four-petal pawpaw may occur in scrub vegetation on these disposal areas. Section 7 consultation may be required if spoil is to be deposited at the plant sites.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, for endangered, and 17.71 and 17.72, for threatened, set forth a series of general trade prohibitions that apply to endangered and threatened plant species. With respect to *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. It is anticipated that few trade permits would be sought or issued; although *Asimina tetramera* is already in cultivation, it is expected to be of limited use as an ornamental.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. Permits for exceptions to this prohibition are available through revised regulations promulgated September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. Neither *Deeringothamnus pulchellus* nor *Deeringothamnus rugelii* is known from Federal lands, but *Asimina tetramera* occurs on part of Hobe Sound National Wildlife Refuge. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Deeringothamnus pulchellus*, *Deeringothamnus rugelii*, and *Asimina tetramera*;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the ranges and habitats of these species and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

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### Author

The primary author of this proposed rule is David Martin, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 98 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical

order under Annonaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) \* \* \*

SPECIES		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Annonaceae—Custard-apple family.						
<i>Asimina totramera</i>	Four-petal pawpaw	U.S.A. (FL)	T		NA	NA
<i>Deeringothamnus pulchellus</i> (= <i>Asimina pulchella</i> )	Beautiful pawpaw	do	E		NA	NA
<i>Deeringothamnus rugellii</i> (= <i>Asimina rugellii</i> )	Rugell's pawpaw	do	E		NA	NA

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-26127 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Flattened Musk Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to list the flattened musk turtle (*Sternotherus depressus*) as a threatened species. The flattened musk turtle is found only in Alabama in the upper Black Warrior River system from Bankhead Dam northward. About 15 percent of this habitat seems to contain healthy, reproducing populations. The flattened musk turtle is threatened by overcollecting and habitat degradation from water pollution from mining, forestry, agriculture, and industrial and residential sewage effluents. This proposal, if made final, would implement the protections provided by the Endangered Species Act of 1973, as amended. The Service requests comments and data from the public on this proposal.

**DATES:** Comments from all interested parties must be received by December 31, 1985. Public hearing requests must be received by December 16, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 318, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis B. Jordan at the above address (601/960-4900 or FTS 490-4900).  
**SUPPLEMENTARY INFORMATION:**

#### Background

The flattened musk turtle is a small aquatic turtle having a distinctly flattened carapace up to 119 mm (4.7 in) long, with keels virtually, if not altogether, lacking (Mount, 1981). The carapace is dark brown to orange with dark bordered seams and is slightly serrated behind (Ernst and Barbour, 1972). The plastron is pink to yellowish. The head is greenish with a dark reticulum that often breaks up to form spots on the top of the snout (Mount, 1981). Stripes on the top and sides of the neck, if present, are narrow. There are two barbels on the chin, all four feet are webbed, and males have thick, long, spine-tipped tails (Ernst and Barbour, 1972).

The flattened musk turtle was described by Tinkle and Webb (1955) as *Sternotherus depressus*. Seidel and Lucchino (1981) and Seidel, Reynolds, and Lucchino (1981) considered *S. depressus* a full species, based on electrophoretic analysis. Other herpetologists have considered it to be a subspecies of *Sternotherus minor* (Mount, pers. comm.). Estridge (1970) found evidence of interbreeding between *S. depressus* and *S. minor peltifer*, and Mount (1981) collected 16 intergrade specimens at four sites. Iverson (1977a) hypothesized that the elimination of fast water environments over the shale substrates of the upper Black Warrior by extensive impounding could promote interbreeding between *S. minor* and *S. depressus*. In any case, the flattened musk turtle is a morphologically distinct turtle that is found only in the upper Black Warrior River system of Alabama (Seidel and Lucchino, 1981).

According to unpublished data of David Close (Mount, 1981), male flattened musk turtles mature in four to six years at a body length of 60-65 mm (2.4-2.6 in), whereas females mature in six to eight years at a body length of 70-75 mm (2.8-3.0 in). Females lay two clutches of eggs each season with an average of three eggs per clutch.

Although the flattened musk turtle is capable of living in a variety of streams and lakes, its optimum habitat appears to be a free-flowing large creek or small river having vegetated shallows about 2 feet deep alternating with pools 3.5-5 feet deep, these with a detectable current and with an abundance of submerged rocks with crevices between them, overlapping flat rocks, or accumulations of boulders. There should be abundant molluscan fauna, low silt load and deposits, low nutrient content and bacterial count, moderate temperature, and minimal pollution (Estridge, 1970; Mount, 1981).

Historically, the flattened musk turtle was found in the upper Black Warrior River system of Alabama from the fall line northward (Tinkle, 1959; Estridge, 1970; Mount, 1978; Mount, 1981; Ernst *et al.*, 1983). Present populations are believed to exist only upstream from Bankhead Dam in Blount, Cullman, Etowah, Fayette, Jefferson, Lawrence, Marshall, Tuscaloosa, Walker, and Winston Counties. A number of populations have been extirpated, reduced, or otherwise affected.

Herpetologists have been concerned about the status of the flattened musk turtle since it was first collected in 1952 and 1953. Tinkle (1958) stated, "The remarkable isolation . . . in the upper drainage of the Black Warrior is inexplicable at present, but may indicate imminent extinction." Estridge (1970) stated that "the population density seems to be declining." Iverson (1977b) wrote, in reference to the flattened musk turtle and a subspecies of the pretty shiner, *Notropis bellus*, "Continued

habitat destruction in the area will undoubtedly result in the extinction of at least these two Black Warrior endemics." Seidel and Lucchino (1981) stated "It is likely that continued habitat disturbance in the upper Black Warrior will completely eliminate remnants of the rocky stream environments and therefore seriously threaten the status of *S. depressus*."

A symposium sponsored by the Alabama Department of Conservation and Natural Resources resulted in the publication of a list, endorsed by the Department, which included the flattened musk turtle as a threatened species (Mount, 1976). Based on such evidence, the Service included the flattened musk turtle in a notice of review of the status of 12 species of turtles, published in the Federal Register for June 6, 1977 (42 FR 28903).

Information was solicited to determine if this species should be listed under the Endangered Species Act. Information obtained from herpetologists, including Drs. Robert Mount, James Dobie, Carl Ernst, John Iverson, R. Bruce Bury, Stephan Edwards, and George Pisani, suggested that the flattened musk turtle should be listed as threatened.

In view of the concern expressed by herpetologists and comments received on the Notice of Review, the Service contracted in 1980 with Dr. Robert H. Mount to help verify the status of the flattened musk turtle. His study, conducted during 1981, contributed additional evidence that the continued existence of the flattened musk turtle is threatened. The following year, the Service included the flattened musk turtle as a category 1 species in a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (December 30, 1982; 47 FR 58454). Category 1 comprises taxa for which the Service has substantial information on hand to support the biological appropriateness of proposing to list the species.

The status survey of Mount (1981) investigated 68 sites (50 above Bankhead Dam) in the upper Black Warrior River system during 1981. Even though a one-season study with one or a few collections at each site has limited application, comparisons with earlier collections and habitat conditions can be made. Prior to 1981, only 29 sites (19 above Bankhead Dam) had been collected. Sites that were collected both in 1981 and prior to 1981 can be aggregated into 10 areas. No healthy flattened musk turtles were collected at four of these areas in 1981.

Mount was able to collect flattened musk turtles at 22 of his 50 sites above Bankhead Dam. However, the

specimens collected at 6 of these sites had abnormal appearance or behavior. At 7 other sites he found no juveniles (the percentage of juveniles collected in 1981, 22 percent, was less than the percentage before 1981, 58 percent). Thus only 9 of the 50 sites Mount examined appeared to have healthy, reproducing populations.

Mount (1981) categorized the flattened musk turtle habitat based upon his collections and field observations. From his observations, a major problem was siltation. He collected no healthy specimens at any site that showed heavy siltation, with one exception.

A correlation can be shown between Mount's field observations and U.S. Geological Survey (USGS) water quality records from 1965 through 1981 (USGS 1959-1981, 1974-1982, 1980a and 1980b). The average of 2,825 sediment records from sites where Mount collected no specimens in 1981 was 190 milligrams per liter (average of sites—107 milligrams per liter) and the average of 160 records where specimens were collected was 84 milligrams per liter (average of sites—60 milligrams per liter). There was also a correlation with specific conductance records. The average of 746 records where no specimens were collected was 276 micromhos (average of sites—350 micromhos) and the average of 321 records where specimens were collected was 131 micromhos (average of sites—157 micromhos). According to E. R. German (U.S. Geological Survey), specific conductance values greater than 175 micromhos probably indicated acid mine drainage (Knight and Newton, 1977). Based on USGS water quality records, and Mount's collections, field observations, and habitat characterizations, only 15 percent (142 out of 947 river miles) of streams in the Black Warrior River Basin remain good quality habitat for the flattened musk turtle.

Following review of the Mount status survey, the Alabama Department of Conservation indicated in 1982 its support of any Federal regulations that might be forthcoming in regard to the flattened musk turtle. The Reptiles and Amphibians Committee at the Alabama Non-Game Wildlife Conference on July 15 and 16, 1983, assigned the status of "Threatened and Declining" to this turtle. Dr. Karen Bjorndal and Dr. Don Moll of the Freshwater Chelonian Specialist Group of the International Union for Conservation of Nature/Survival Service Commission recommended listing the flattened musk turtle because of its limited distribution and negative impacts of soil erosion, pollution and overcollecting.

The Alabama Coal Association sponsored additional study and survey work on the flattened musk turtle during 1983, under the project directorship of Dr. Carl A. Ernst. A report by Ernst and his field assistants (Ernst *et al.*, 1983), which contained a smaller appended report compiled by personnel of Drummond Coal Company (Hubbard *et al.*, 1983), was released for review by the Service in November, 1984. The following observations pertain to the data or conclusions presented by Ernst *et al.*, in many instances as they relate to the earlier study by Mount (1981).

Wire net trapping at night was the primary survey method in these studies, supplemented by hand capture while wading. Ernst *et al.* used ¾ inch mesh traps, while Mount used 1 inch mesh traps. The 1983 study was more intensive, recording 1250 trap nights or 4.6 times as many as the Mount study (272 trap nights). A proportionately greater number of turtles was taken in 1983, but the overall density suggested by 509 turtles or 0.407 per trap night is very close to Mount's 1981 trap yield of 110 turtles or 0.404 per trap night. Hand capture results were also similar, with 0.26 turtles per man hour of search in the later study and 0.23 turtles per man hour in Mount's study. Ernst *et al.* collected no flattened musk turtles at 46 percent of the sites trapped, and categorized only 27 percent of the 67 sites they examined as having "moderate to high density" populations. They collected some turtles in at least three locations where Mount had collected none, but Mount had assessed two of those as likely to support populations. Several of the sites where Ernst *et al.* reported no turtles were listed by Mount as unlikely to support populations.

Ernst *et al.* (1983) found habitat that was heavily degraded by surface mining, forestry, agriculture, and impoundments, as well as evidence of declining flattened musk turtle populations. However, they think there is evidence that populations are apparently recovering on one stream from severe past pollution from surface mining, which occurred over 20 years ago. The included report of Hubbard *et al.* (1983) found flattened musk turtles at two of five sites sampled below mined areas and concluded that viable, reproducing populations can exist in a stream receiving runoff from surface mines. One of these sites contained a strong population of flattened musk turtles, whereas the other site contained intergrades with *S. minor peltifer*.

Conclusions and recommendations of Ernst *et al.* (1983) were different from those of Mount (1981) as follows: (a) The

major source of sediment seems to be agriculture, not surface mining; (b) sand does not seem to be harmful unless it is so deep that all boulders are covered, although there is indeed an inverse correlation between silt and clay particles and population densities; (c) chemically, the waterways appear to be improving; (d) the emphasis on trapping over hand collecting in both studies may have biased the samples against juveniles and thus weakened the case for low reproduction (this opinion is not supported by site comparisons in either study); (e) the biggest future threat is commercial collecting; (f) flattened musk turtles are more numerous than the Mount study indicates; (g) the species should be treated as a case of special concern, not listed as threatened.

Other than the number of trap hours, there are few substantive differences in the findings of the reports by Ernst *et al.* (1983) and Mount (1981). Both show that the majority of the historic habitat at present lacks viable populations of the flattened musk turtle.

On December 1, 1983, the Service received a petition to list the flattened musk turtle, dated November 30, 1983, from the Environmental Defense Fund. Findings were published in the *Federal Register* on April 5, 1984 (49 FR 13558), and July 18, 1985 (50 FR 29238), that the petition contained substantial biological information to indicate that a listing action is warranted. This proposed rule constitutes a second required 12-month finding on that petition that the action requested is warranted.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the flattened musk turtle (*Sternotherus depressus*) are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* Siltation appears to be a primary factor affecting the habitat of the flattened musk turtle. Adverse effects of silt seem to be: (1) the extirpation or reduction in populations of mollusks and other invertebrates on which the turtles feed, (2) physical alteration of the rocky habitats where the turtles seek food and cover, and (3) development of a substrate in which heavy metals and other chemicals that

may be toxic to the turtles tend to accumulate.

The entire upper Black Warrior River Basin is underlain by the Black Warrior and Plateau Coal Fields. Accelerated erosion (in 3 percent of the Basin) produces 69 percent of the sediment yield. Mining was responsible for 50 percent of the accelerated erosion in 1975 and is projected to still provide over 20 percent in 2020. The U.S. Department of Agriculture (USDA) Soil Conservation Service based this projection on adherence to the existing 1975 Surface Mine Regulations (USDA, 1980). The Alabama Surface Mine Commission notes the annual rate of coal production by surface mining increased about 30 percent from 1975 to 1985. The area disturbed by surface mining in the flattened musk turtle range through 1975 was 117 square miles. The estimated probable area to be disturbed from 1975 to 1990 is 129 square miles and from 1990 to 2020 is 419 square miles, an increase of 350 percent over 1975, assuming, because of other energy source competition, no increased rate past 2000 (USDA, 1980).

The timber removal rate is projected to increase from 50 cubic feet per acre per year in 1980 to 90 cubic feet per acre per year in 2020, which is almost a twofold rate increase. The projected annual gross erosion from commercial forest land in the Black Warrior River Basin increases from 5,350 thousand tons in 1980 to 9,542 thousand tons in 2020, a 78 percent increase. Also, the soil to be lost from crop land and pasture land is projected to be 2,569,600 tons above the "allowable annual erosion" (soil naturally replaced) by the year 2020 (USDA, 1980).

For fisheries, the desirable sediment yield, according to EPA, is 3.6 million tons per year of total sediment production. The projected annual sediment yield is 8.7 million tons by 2020, almost three times the desired yield (USDA, 1980).

The flattened musk turtle is susceptible to chemical and sewage pollution that may cause shell erosion, infections, and loss of mollusks and other invertebrate food organisms (Mount, 1981). Some of the sources of pollution are acid mine drainage, agricultural chemicals, and industrial and residential effluents. Water pollution in the Black Warrior River Basin has already resulted in the degradation of the fishery resource (USDA, 1980).

Some of Alabama's most severe water quality problems are located in the Black Warrior River Basin, particularly in the Birmingham area. There are 13 streams classified only for agricultural

and industrial water supply or industrial operations in the Basin (USDA, 1980). The human population in the Black Warrior Basin is projected to increase 33 percent between 1975 and 2020 (USDA, 1980), which may aggravate the water quality problem.

The most pervasive class of environmental contaminants found in aquatic ecosystems originates from non-point sources such as agriculture, energy-related activities, surface mining, and urban development (U.S. Fish and Wildlife Service, USFWS, 1983). According to a study reported by the Geological Survey of Alabama (1983), on the Tyro Creek watershed of the Black Warrior River Basin, contaminant concentrations increased in accordance with the percent of the Basin surface-mined. The upper Basin is also subject to acid mine drainage, except for streams above Smith Lake and the upper section of Mulberry Fork (USDA, 1980).

A study of surface mining effects in southeastern Virginia (Matter *et al.*, 1978) concluded that: (1) The total abundance of fish and benthic invertebrates (and biomass of fish) was reduced in streams draining abandoned mines, and these reductions bore some relation to the degree of sedimentation; (2) taxonomic richness, for both fish and invertebrates, was reduced in streams with abandoned mines in their watersheds; and (3) sulfate, total hardness, and silt indices were elevated in streams draining abandoned mines.

Vaughan *et al.* (1978), in a study of the New River drainage basin of Tennessee, found that: (1) Insect species richness and equitability recover 20 years after mining; however, a qualitative analysis of community structure demonstrates alteration in species composition; (2) fish populations in streams, where upstream migration was possible, could recover to premining species diversity; (3) diatom communities did not completely recover, although there were significant increases in species diversity with increased time since mining; and (4) contour mining for coal profoundly affects population size, species richness, and equitability of the different groups of organisms studied, but it seems that streams can return to a "healthy" condition over a period of perhaps 20 years.

Navigation and flood control projects will alter flattened musk turtle habitat; however, the magnitude of that effect is unknown. There is an existing navigation channel on the Black Warrior River covering approximately 88 river miles (U.S. Army Corps of Engineers, USACE, 1982). There are also potential projects on Valley Creek and Village

Creek, tributaries of the Black Warrior (USACE, 1984). There is one completed Soil Conservation Service project (Bristow's Creek) and one project authorized for construction (Mud Creek) in the upper Black Warrior River Basin (USDA, 1984).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** The flattened musk turtle has been listed for sale on several dealer price lists at prices above \$80 each. Documented collections have included 169 individuals from two streams, 136 turtles from a four-mile stretch of one stream, and 20 to 30 specimens from a single pool at one time. Most of the formerly good populations have been considerably reduced in this way in recent years. As discussed under Factor "D," below, measures to prohibit this have been enacted by the State. Because it favors clean, shallow water, this turtle is highly vulnerable to overcollecting, and one or a few knowledgeable collectors can seriously reduce the population in a short period of time.

**C. Disease or predation.** Flattened musk turtles are susceptible to shell erosion and infections, especially as a secondary effect of water pollution (Mount, 1981). Mount (1981) also noticed unusual basking behavior that he believed was induced directly or indirectly by one or more contaminants in the stream. A commercial collector reported returning almost 15 percent of the turtles captured to the stream because of some "defect." Estridge (1970) found three out of seven specimens parasitized by a protozoan agent of turtle malaria. Ernst *et al.* (1983) found some specimens heavily parasitized by a leech that carries the protozoan.

Natural predation has not been well documented or quantified on the flattened musk turtle. The greatest impact of predation by fish, birds, mammals, and reptiles is most likely to be on the eggs and hatchlings, although even adults are small enough to be susceptible to the larger predators.

**D. The inadequacy of existing regulatory mechanisms.** Permits for discharges from surface mining and wastewater treatment plants are granted by the U.S. Environmental Protection Agency through the Alabama Department of Environmental Management. The U.S. Forest Service and Soil Conservation Service have agency guidelines to reduce siltation from timber and agricultural operations. Environmental impact studies are required for projects and permitted activities by the U.S. Army Corps of Engineers, the Federal Highway Administration, and other Federal

agencies. However none of these presently consider the specific effects of particular actions on the flattened musk turtle. Conduct of Federal activities, permits, and funding considered likely to affect the flattened musk turtle in consultation with the Service, pursuant to Section 7 of the Endangered Species Act, as amended, would help to secure survival and recovery for the species.

A recent bill by the Alabama legislature (May 21, 1984) prohibiting the taking of flattened musk turtles in Alabama may be a deterrent to commercial overexploitation.

**E. Other natural or manmade factors affecting its continued existence.** Several biological characteristics of the flattened musk turtle increase its vulnerability to the threats discussed previously. This turtle does not mature sexually until 4-8 years of age, and lays only two clutches of eggs per year with an average of three eggs per clutch (Mount, 1981). This low reproductive rate reduces the ability of the species to recover rapidly from adverse habitat changes or respond to conservation activities. Since the flattened musk turtle occurs only in the upper Black Warrior River Basin, it evidently has rather specific habitat requirements. This factor increases the likelihood of adverse impact from habitat modifications. Flattened musk turtles feed primarily on mollusks, which are particularly susceptible to siltation and water pollution. The turtles also feed and spend virtually all of their time at the stream bottom and thus are in almost constant contact with any toxic bottom sediments that may be present.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the flattened musk turtle as threatened. It appears that the flattened musk turtle is likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range as indicated by the following: (1) Absence from historical sites, (2) low reproductive rate, (3) diseased specimens and abnormal behavior, (4) loss of suitable habitat due to accumulated sediment, (5) loss of food organisms, (6) degraded water quality from siltation, altered specific conductance, chemicals, and sewage, (7) projected increase of all threats listed above, (8) susceptibility to over collecting, and (9) biological characteristics, such as low reproduction, habitat requirements, food habits, and behavior, which magnify

adverse impacts. Critical habitat is not being designated, for reasons discussed in the next section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the above "Summary of Factors affecting the Species," the flattened musk turtle is threatened by taking, an activity difficult to detect and prohibit. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the flattened musk turtle at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(A) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that

activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Several Federal activities are expected to involve the welfare of the stream habitats in the Black Warrior River Basin and could be affected by the listing of the flattened musk turtle as threatened. In most instances the magnitude of possible effects would need to be determined in consultation with the Fish and Wildlife Service. Examples are: U.S. Forest Service activities such as a clear cutting, road building, and chemical application that could discharge silt and chemicals into the Black Warrior River system; mineral leases issued by the Bureau of Land Management; projects by the Federal Highway Administration that could discharge silt and chemicals into the Black Warrior River system; and certain U.S. Army Corps of Engineers' projects and permits, such as dredging and soil disposal, that could alter flattened musk turtle habitat. Projects funded by the U.S. Department of Agriculture through the Agricultural Stabilization and Conservation Service and Soil Conservation Service may produce both beneficial and adverse effects.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances,

permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

If listed under the Act, the Service will review this species to determine whether it should be considered for placement on the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the flattened musk turtle;

(2) The location of any additional populations of the flattened musk turtle and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of the flattened musk turtle; and

(4) Current or planned activities in the subject area and their possible impacts on the flattened musk turtle.

Final promulgation of the regulation of the flattened musk turtle will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the

Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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A more complete list of references and associated documents not referenced here are available for inspection along with the remainder of the administrative record as indicated under the **ADDRESSES** section in this document.

**Author**

The primary author of this proposed rule is Mr. John J. Pulliam, III (see **ADDRESSES** section) at 601/960-4900,

FTS 490-4900. Dr. George Drewry of the Service's Washington Office of Endangered Species served as editor.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Proposed Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Reptiles," to the List of Endangered and Threatened Wildlife.

**§ 17.11 Endangered and threatened wildlife.**

• • • • •  
(h) • • •

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Turtle, flattened musk	<i>Sternotherus depressus</i>	U.S.A. (AL)	Entire	T		NA	NA

Dated: October 9, 1985.  
 P. Daniel Smith,  
 Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.  
 [FR Doc. 85-26126 Filed 10-31-85; 8:45 am]  
 BILLING CODE 4310-55-M

# Notices

Federal Register

Vol. 50, No. 212

Friday, November 1, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Members of Performance Review Board; Revision of List

AGENCY: ACTION.

ACTION: Revision of list of Performance Review Board Positions.

**SUMMARY:** ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

**FOR FURTHER INFORMATION CONTACT:** Veronica D. Trietsch, Director of Personnel ACTION, 806 Connecticut Avenue, NW., Washington, DC 20525 (202) 634-9261.

**SUPPLEMENTARY INFORMATION:** The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more performance review boards to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the appointing authority concerning the performance of the senior executive.

The positions listed below will serve as members on the ACTION Performance Review Board.

1. Deputy Director, ACTION, Chairman.
2. Associate Director for the Office of Domestic Operations, ACTION.
3. Associate Director for the Office of Management and Budget, ACTION.
4. Deputy General Counsel, ACTION.
5. Assistant Director for Performance Management, Office of Personnel Management.
6. General Counsel, ACTION.

### 7. Deputy Director of Personnel, General Services Administration.

Issued in Washington, DC on October 18, 1985.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 85-26079 Filed 10-31-85; 8:45 am]

BILLING CODE 6050-01-M

### Schedule for Awarding Senior Executive Service Performance Awards: (Bonuses)

AGENCY: ACTION.

ACTION: Notice.

**SUMMARY:** Notice is hereby given of the schedule for awarding senior executive service bonuses.

**FOR FURTHER INFORMATION CONTACT:** Veronica D. Trietsch, Director of Personnel, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525, (202) 634-9261.

**SUPPLEMENTARY INFORMATION:** Office of Personnel Management Guidelines require that each agency publish a notice in the Federal Register of the agency's schedule for awarding Senior Executive Service Bonuses at least 14 days prior to the date on which the awards will be paid.

### Schedule for Awarding Senior Executive Service Bonuses

ACTION intends to award Senior Executive Service Bonuses for the 1984-1985 rating cycle. Payouts will occur before December 31, 1985. Issued in Washington, D.C. on October 18, 1985.

Donna M. Alvarado,

Director, ACTION.

[FR Doc. 85-26078 Filed 10-31-85; 8:45 am]

BILLING CODE 6050-01-M

## COMMISSION ON CIVIL RIGHTS

### Michigan Advisory Committee; Meeting and Agenda

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 Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on November 21, 1985, at the Michigan Inn, 16400 J.L. Hudson Dr., Southfield, Michigan. The purpose of the

meeting is to discuss planning for Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Charles H. Tobias or Clark Roberts, Director of the Midwestern Regional Office, at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office 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, October 28, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-26095 Filed 10-31-85; 8:45 am]

BILLING CODE 6335-01-M

### Mississippi Advisory Committee; Meeting and Agenda

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 Mississippi Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 5:30 p.m. on November 22, 1985, at the Tunica Facility Building, Moon Landing Road, Tunica, Mississippi. The purpose of the meeting is to discuss equality in municipal services in Tunica, Mississippi.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Louis Westerfield or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office 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, October 25, 1985.

Bert Silver,

*Assistant Staff Director for Regional Programs.*

[FR Doc. 85-26066 Filed 10-31-85; 8:45 am]

BILLING CODE 6335-01-M

#### **New Mexico Advisory Committee; Meeting and Agenda**

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 New Mexico Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 9:00 p.m. on November 22, 1985, at the Howard Johnson's Motor Lodge, Roadrunner Room, 2600 S. Valley Drive, Las Cruces, New Mexico. The purpose of the meeting is to receive briefings on civil rights developments in southern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent Montoya or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office 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, October 28, 1985.

Bert Silver,

*Assistant Staff Director for Regional Programs.*

[FR Doc. 85-26067 Filed 10-31-85; 8:45 am]

BILLING CODE 6335-01-M

#### **DEPARTMENT OF COMMERCE**

##### **International Trade Administration**

#### **The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting**

A meeting of the MCTL Implementation Technical Advisory Committee will be held November 21, 1985, 9:30 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Export Administration in the implementation of the Militarily Critical Technologies List (MCTL) into

the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

#### **Agenda:**

1. Introduction of members and attendees.
2. Presentation of papers or comments by the public.
3. Remarks by the Acting Chairman.
4. Election of Chairman.

#### **Executive Session**

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: October 28, 1985.

Milton M. Baltas,

*Director, Technical Programs Staff, Office of Export Administration.*

[FR Doc. 85-26133 Filed 10-31-85; 8:45 am]

BILLING CODE 3015-DT-M

#### **Applications for Duty-Free Entry of Scientific Instruments; New York Medical College et al.**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-851; 80 Stat. 897; 15 CFR Part 301),

we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-087R. Applicant: New York Medical College, Biochemistry Department, Valhalla, NY 10595. Instrument: Automatic Recording Spectropolarimeter, Model J-500. Original notice of this resubmitted application was published in the *Federal Register* of February 27, 1985.

Docket No. 85-117R. Applicant: Auburn University, Department of Chemical Engineering, 230 Ross Hall, Auburn, AL 36849. Instrument: Secondary Ion Mass Spectrometer with Accessories. Original notice of this resubmitted application was published in the *Federal Register* of April 8, 1985.

Docket No. 85-172R. Applicant: U.S. Geological Survey, Water Resources Division, 1950 Constant Avenue, University of Kansas, Lawrence, KS 66046. Instrument: Terrain Conductivity Meter. Original notice of this resubmitted application was published in the *Federal Register* of June 11, 1985.

Docket No. 85-302. Applicant: Virginia Commonwealth University, Medical College of Virginia, Department of Physiology & Biophysics, Box 551, 1101 E. Marshall Street, Richmond, VA 23298. Instrument: Micromanipulator (hydraulic) with 3-axes of motion, Model MO-102. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use: The instrument is intended to be used for studies of chloride transport mechanisms in epithelial cells in experiments conducted to determine the intracellular ion activity changes with ion sensitive double-barreled microelectrodes. Application received by Commissioner of Customs: September 25, 1985.

Docket No. 85-303. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: X-Ray Streak Camera System, Model C1936. Manufacturer: Hamamatsu Corporation, Japan. Intended use: Research and study of phenomena related to the diagnosis of fast particle (electron and proton) beams

and plasmas created by the vaporization of materials by high energy, very high energy density particle and photon beams. The results of the research will be used to optimize these properties for generation of microwave energy and transport of particle beams. Application received by Commissioner of Customs: September 25, 1985.

Docket No. 85-308. Applicant: University of Southern California, University Park, Los Angeles, CA 90089. Instrument: Electron Paramagnetic Resonance Spectrometer, Model ER 1200 with ER/251 ENDOR Accessory. Manufacturer: Bruker-Physik AG, West Germany. Intended use: The article is intended to be used for research projects that include the study of organic metals/conducting polymers such as polyacetylene, metalloproteins such as nitrogenase which plays the critical role in nitrogen fixation, fluorocarbons being developed for potential use as blood substitutes, spin-labeled proteins which play critical roles in cellular structure and function, and of fundamental free radical mechanisms in organic chemistry. All properties to be investigated relate to paramagnetism and include electron nuclear hyperfine coupling constants and tensors, electron Zeeman interactions, electron relaxation rates, and concentrations of paramagnetic species. In addition, the instrument will be used in formal and informal courses to train scientists in the use of the instrument and in subsequent analysis and application of data. Application received by Commissioner of Customs: October 1, 1985.

Docket No. 85-309. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Monodisperse Aerosol Generator. Manufacturer: Lavoro E Ambiente, Italy. Intended use: The instrument will be used in research to determine how the inhalation of aerosol boli containing oil droplets may serve as a valuable clinical test of lung function. In the experiments, human subjects inhale the bolus to a known volumetric depth in the lungs, breath hold for a known period of time during which some of the particles settle onto airway walls, and then fully exhale. Measurements of airway size at each volumetric lung depth are made by comparing the number of particles inhaled and exhaled as a function of breath holding time. Measurements of convective gas transport are made in the same fashion except that the subject does not breath hold. By comparing measurements of airway size and

convective gas transport in healthy persons, with those made in smokers and patients with diagnosed lung disease it will be possible to evaluate whether these tests provide clinically relevant information. Application received by Commissioner of Customs: October 1, 1985.

Docket No. 85-310. Applicant: Cornell University, 120 Maple Avenue, Ithaca, NY 14853. Instrument: Electric Field Boom Assemblies, Model 3600. Manufacturer: SAAB Space, Seden. Intended use: The instrument will be used to investigate the magnitude and direction of electric fields in space during NASA CRIT Rocket Flight experiments. Application received by Commissioner of Customs: October 1, 1985.

Docket No. 85-312. Applicant: Our Lady of the Lake Regional Medical Center, 5000 Hennessy Boulevard, Baton Rouge, LA 70809. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument is intended to be used to investigate ultrastructural morphology of nucleated blood cells during experiments conducted to categorize leukemic cells using ultrastructure parameters. In addition biopsies of human liver will be studied to determine which metabolic disease can be categorized or diagnosed on the basis of ultrastructural morphologic characteristics alone. Experiments will also be conducted to determine if there are morphologic features which permit the identifications of subgroups of the various diseases, with different prognoses, types of treatment, etc. The instrument will also be used to instruct pathology residents and physicians in the use of a technique for the diagnosis of otherwise unclassifiable malignant tumors, the categorization of various types of glomerulonephritis, the specific identification of certain infectious processes, and the classification of various metabolic diseases. Application received by Commissioner of Customs: October 3, 1985.

Docket No. 85-313. Applicant: Boston University School of Medicine, 80 E. Concord Street, Boston, MA 02118. Instrument: Rotating Anode X-Ray Generator, Model GX-20 with Accessories. Manufacturer: Marconi Avionics, Limited, United Kingdom. Intended use: The instrument is intended to be used for the examination of the physical and molecular interactions of lipids (fats) and proteins in living systems, to compare these properties to those of model systems, to learn how physical state affects

metabolism and vice-versa. Investigations will also be conducted to understand the molecular basis of normal lipid transport and membrane function, and ultimately to understand the molecular basis of conditions in which lipids accumulate, such as atherosclerosis. Application received by Commissioner of Customs: October 3, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-26134 Filed 10-31-85; 8:45 am]

BILLING CODE 3510-06-M

#### Applications for Duty-Free Entry of Scientific Instruments; University of Notre Dame et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-314. Applicant: University of Notre Dame, Radiation Laboratory, Notre Dame, IN 46556. Instrument: FT Interferometric Spectrophotometer, Model DA3.10 with Accessories. Manufacturer: Bomem, Incorporated, Canada. Intended use: The instrument will be used to study molecular intermediates and products of chemical reactions induced by ionizing radiation. Samples will be irradiated in cobalt gamma ray sources or with ultraviolet light and analyzed with the instrument to determine the structures and rates of (dis)appearance of intermediate or product species thus making it possible to infer the chemical reaction mechanism involved in radiation chemistry. In addition, the instrument will be used for thesis research toward the Ph.D. degree in physical chemistry. Application received by Commissioner of Customs: October 3, 1985.

**Docket No. 86-001. Applicant:** Brigham Young University, Chemistry Department, Business Office, 105 NICB, Provo, UT 84602. **Instrument:** Nitric acid annular diffusion denuder with Accessories. **Manufacturer:** Flow General Company, Italy. **Intended use:** The instrument is intended to be used for characterization of nitric acid chemistry in the plume of a gasfired power plant with emphasis on chemistry in the ambient environment. The primary educational benefits will relate to Chem 597, Research Techniques, for about 10 to 12 graduate students. **Application received by Commissioner of Customs:** October 10, 1985.

**Docket No. 86-002. Applicant:** University of New Mexico, School of Medicine, North Campus, Albuquerque, NM 87131. **Instrument:** Scanning Electron Microscope, Model S-800 and Accessories. **Manufacturer:** Hitachi Instruments, Japan. **Intended use:** The instrument will be used in image analysis and examination of normal and abnormal biological specimens. **Principal application will be in biomedical research.** Most of the experiments planned will involve analysis of cell and tissue organization as well as localization and quantitation of experimentally applied probes. **Application received by Commissioner Customs:** October 10, 1985.

**Docket No. 86-003 Applicant:** Georgia Scientific and Technical Research Foundation, Georgia Institute of Technology, Office of V.P. Research, Room 285, Atlanta, GA 30332. **Instrument:** Mass Spectrometer, Model MMZAB-E with Gas Chromatograph and Accessories. **Manufacturer:** VG Analytical Limited, United Kingdom. **Intended use:** Studies of proteins, nucleic acids, carbohydrates, and lipids from biological origins. Samples are obtained directly from living organisms and sediments as well as natural and synthetic wastes. Studies are directed at identifying metabolic products of biological reactions and samples related to health effects and environmental contamination. **Application received by Commissioner of Customs:** October 10, 1985.

**Docket No. 86-004 Applicant:** University of Utah, Purchasing Department, Room 151, Annex Building, Salt Lake City, UT 84112. **Instrument:** Shielded Demagnetizer, Model MSA2. **Manufacturer:** Molsin Limited, United Kingdom. **Intended use:** The instrument will be used for the study of Natural Remanent Magnetization (NRM) of geologic specimens in rock magnetic and paleomagnetic investigations. Specific

work includes: NRM of lower crustal rocks and NRM and paleomagnetic study of combustion-metamorphic rocks in southern Utah. **Application received by Commissioner of Customs:** October 10, 1985.

**Docket No. 86-005 Applicant:** Rensselaer Polytechnic Institute, Troy, NY 12180-3590. **Instrument:** Spot Profile Analysis Low-energy Electron Diffractometer (SPA-LELD). **Manufacturer:** Leybold-Heraeus GmbH, West Germany. **Intended Use:** Ordering in two-dimensional chemisorbed overlayers. The experiments to be conducted will involve oxygen chemisorption on tungsten (112) surface for accurate determination of the two dimensional and critical exponents. In addition, the instrument will be used in the course Physics of Surface Analysis to educate graduate students on the capabilities and limitations of the commonly used surface analysis techniques: Low energy Electron Diffraction, Auger Electron Spectroscopy, X-ray Photoelectron Spectroscopy and other emerging techniques. **Application received by Commissioner of Customs:** October 10, 1985.

**Docket No. 86-006 Applicant:** Purdue University, West Lafayette, IN 47907. **Instrument:** Free Flow Electrophoresis Apparatus, Model Elphor Vap 22 with Accessories. **Manufacturer:** Bender and Holbein GmbH, West Germany. **Intended use:** The instrument is intended to be used to subfractionate Golgi apparatus of rat liver into component cisternae with subfractionation along the functional polarity axis of the organelle with complete separation of cis and trans face cisternae. Additionally, the instrument will be used for other cell and organelle separations based on small differences in charge such as separation of tonoplast and plasma membrane from plants, removal of small amounts of mitochondrial contamination from endoplasmic reticulum, purification of lysosomes and removal of plasma membrane contamination from Golgi apparatus or lysosome fractions and vice versa. **Application received by Commissioner of Customs:** October 10, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 85-26135 Filed 10-31-85; 8:45 am]

**BILLING CODE 3510-D9-M**

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1986; Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Deletions from Procurement List.

**SUMMARY:** This action deletes from Procurement List 1986 services provided by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** November 1, 1985.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On August 2 and August 30, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 31408 and 50 FR 35288) of proposed additions to and deletions from Procurement List 1986, October 15, 1985 (50 FR 41809).

### Deletions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following services are hereby deleted from Procurement List 1986:

Microfilming Contract Files, Department of the Navy, OICC Trident, Bremerton, Washington

Tax Form Order Fulfillment Service, Internal Revenue Service, Buffalo, New York

**E.R. Alley, Jr.,**

*Acting Executive Director.*

[FR Doc. 85-26120 Filed 10-31-85; 8:45 am]

**BILLING CODE 6820-33-M**

### Procurement List 1986; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1986 a commodity to be produced by

and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: December 4, 1985.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

#### Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

#### Commodity

Test Set, Lead, 6625-01-121-0510

#### Services

Food Service Attendant, Homestead Air Force Base, Florida

Janitorial/Custodial, U.S. Appraisers' Stores, 408 Atlantic Avenue, Boston, Massachusetts

Janitorial/Elevator Operator, Potomac Annex Buildings 1-7, 23rd & E Streets, N.W.; Central, East & South Buildings, 2430 E Street, N.W., and 1724 F Street, N.W., Washington, D.C.

E.R. Alley, Jr.

*Acting Executive Director.*

[FR Doc. 85-26119 Filed 10-31-85; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 9:00 a.m., Wednesday, November 13, 1985 and at 8:30 a.m., Thursday, November 14, 1985.

**ADDRESS:** The meeting will be held at Sandia National Laboratories, Albuquerque, New Mexico 87185.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer,  
Department of Defense.*

October 29, 1985.

[FR Doc. 85-26182 Filed 10-31-85; 8:45 am]

BILLING CODE 38-01-M

## Department of the Air Force

### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

EXISTING COLLECTION IN USE  
WITHOUT AN OMB NUMBER.

### Application for AFROTC Membership (AFROTC Form 20)

This form is used by college students to apply for the Senior Air Force Reserve Officer Training Corps (AFROTC) Program. The information provided is used in determining the applicants' eligibility to participate in a program which could result in the applicant receiving a commission in the United States Air Force.

Individuals

Responses 17,000

Burden hours 8,500

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from TSgt. C. L. Harrell, AFROTC/RRFP, Maxwell, AFB, AL 36112-6663, telephone number (205) 293-7841.

Patricia H. Means,

*OSD Federal Register Liaison Officer,  
Department of Defense.*

October 29, 1985.

[FR Doc. 85-26181 Filed 10-31-85; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Army Advisory Panel on ROTC Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), an announcement is made of the following panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.

Date of Meeting: November 19 & 20, 1985.

Place: The Pentagon, Washington, DC.

Time: 8:00 a.m.-4:30 p.m., November 19, 1985; 8:00 a.m.-11:30 a.m., November 20, 1985.

Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Prillaman and the Chairman of the Panel, Dr. Wilson, any administrative matters requiring attention will be resolved. The Panel will be then briefly addressed by a senior member of the Army staff. Following a short recess, the Department of the Army Scientific and Engineering ROTC Cooperative Program will be explained to the Panel. This

program allows ROTC cadets to participate in scientific and engineering projects at US government installations. Discussion of this promising Army initiative will follow. In a continuation of discussions from the July Panel meeting at Fort Bragg, the Panel will once again examine the Demographic Issue, i.e., the problems expected due to the decline in the number of military age males between now and the end of the century. This problem impacts on ROTC, the Army and the academic world. Following lunch, the Panel will consider proposed changes in the ROTC organization. On the morning of November 20, the Panel will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations and to select a date for the Panel summer meeting.

**John P. Prillaman,**

*Major General, US Army Commander, ROTC.*

[FR Doc. 85-26093 Filed 10-31-85; 8:45 am]

BILLING CODE 3710-08-M

## Defense Nuclear Agency (DNA)

### Membership of the Defense Nuclear Agency Performance Review Boards

**AGENCY:** Department of Defense, Defense Nuclear Agency.

**ACTION:** Notice of membership of the Defense Nuclear Agency Performance Review Boards.

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

**EFFECTIVE DATE:** The effective date of service for the appointees of the DNA PRBs is November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Allen I. Barke, Chief, Civilian Personnel Management Division (MPCV), Defense Nuclear Agency, Washington, DC. 20310-3398 (202) 325-7591/92.

**SUPPLEMENTARY INFORMATION:** The names and titles of the members of the DNA PRBs are set forth below. All are DNA officials unless otherwise identified:

#### Board I

Myers, Lawrence S. Jr., Scientific Advisor to Director, Armed Forces Radiology Research Institute (AFRRRI)  
Somers, James W., Chief, Lethality and Hardening Division

Rubenstein, Morton J., Assistant to Deputy Director (Science & Technology) for Theoretical Research  
Sevin, Eugene, Assistant to Deputy Director (Science & Technology) for Experimental Research  
Cikotas, Bronius, Chief, Electromagnetic Pulse Effects Division  
Macomber, Mark M., Deputy Director for Systems and Techniques, Defense Mapping Agency

#### Board II

Falter, Vincent E., MG, USA—Deputy Director (Operations & Administration)  
Sevin, Eugene—Assistant to Deputy Director (Science & Technology) for Experimental Research  
Linger, Don A., Chief, Strategic Structures Division  
Carew, Paul, Comptroller  
Soper, Gordon, Scientific Assistant to Deputy Director (Science & Technology)  
Ulrich, George W., Chief, Aerospace Systems Division  
Dr. Robert Lyons—Deputy Director, Office of Advanced Technology, Defense Communications Agency  
Roberta K. Peters, Deputy Staff Director, Civilian Personnel, Defense Logistics Agency (Alternate)

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

October 29, 1985.

[FR Doc. 85-26183 Filed 10-31-85; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before December 2, 1985.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed

to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 426-7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: October 29, 1985.

**Linda M. Combs,**

*Deputy Under Secretary for Management.*

### Office of Elementary and Secondary Education

Type of Review Requested: New.  
Title: Performance Status Report for Magnet Schools Assistance Program.  
Agency Form Number: A10-8P.  
Frequency: Annually.  
Affected Public: State or local governments.

Reporting Burden—Responses: 44;  
Burden Hours: 132.

Recordkeeping Burden—  
Recordkeepers: 44; Burden Hours: 88.

Abstract: Grantees under the Magnet Schools Assistance Program are required to submit a performance status report annually. Reports are used to monitor compliance with terms and conditions of grant awards.

### Office of Postsecondary Education

Type of Review Requested: Extension.

Title: Certification of Project Costs for College Housing Loan and Academic Facilities Programs.

Agency Form Number: ED 1143.

Frequency: Close-out.

Affected Public: Businesses or other for-profit; Non-profit institutions.

Reporting Burden—Responses: 155; Burden Hours: 155.

Recordkeeping Burden—

Recordkeepers: 0; Burden Hours: 0.

Abstract: Information on project costs is required of recipients of funds under the College Housing Loan and Academic Facilities Programs in order to account for all the costs incurred under the subsidized project. The purpose of the data collection is to determine costs eligible for Federal assistance under these programs.

#### Office of Special Education and Rehabilitative Services

Type of Review Requested: Extension.

Title: Report of Children Transferring to Local Agency Programs

Recordkeeping.

Agency Form Number: NA.

Frequency: Annually.

Affected Public: State governments.

Reporting Burden—Responses: 0; Burden Hours: 0.

Recordkeeping Burden—

Recordkeepers: 10,000; Burden Hours: 10,000.

Abstract: The State educational agency must maintain data each year on the number of children who leave State institutions and return to local school systems.

[FR Doc. 85-26122 Filed 10-31-85; 8:45 am]

BILLING CODE 4000-01-M

#### Intergovernmental Advisory Council on Education; Meeting

**AGENCY:** Intergovernmental Advisory Council on Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a meeting of the Executive Committee of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** November 18, 1985.

**ADDRESS:** Department of Education, 400 Maryland Avenue SW., Room 4003, Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline E. McGregor, Executive Director, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Washington, D.C. 20202. (202) 472-6464.

**SUPPLEMENTARY INFORMATION:** The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education. The meeting of the executive committee is open to the public. The meeting is scheduled from 11 a.m. to 2 pm on November 18.

The proposed agenda includes:

—Budget

—Timetable for Council Activities

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education 300 7th Street SW., Room 513, Washington, D.C.

Signed at Washington, D.C. on Monday, October 28, 1985.

**A. Wayne Roberts,**

*Deputy Under Secretary for Intergovernmental and Interagency Affairs.*

[FR Doc. 85-26102 Filed 10-31-85; 8:45 am]

BILLING CODE 4000-01-M

#### Office of Educational Research and Improvement

##### Awards and Grants; Applications

**AGENCY:** Department of Education.

**ACTION:** Application. Notice for New Awards under The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1986.

##### Programmatic and Fiscal Information

Applications are invited for new projects for Special Projects Grants authorized under sections 5(c)(2) and 5(d)(2) and Title IV of the Library Services and Construction Act, as amended by Pub. L. 98-480 (20 U.S.C. 351 *et seq.*).

The Secretary awards Special Projects Grants on a competitive basis in accordance with § 772.31 of the program regulations to (1) eligible Indian tribes that have received Basic Grants and have proposed projects designed to establish or improve public library services for Indians residing on or near reservations, and (2) organizations primarily serving and representing Hawaiian natives, recognized by the Governor of Hawaii, that propose projects designed to establish or improve public library services for Hawaiian natives. After consultation with the Secretary of the Interior, the

Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services.

The Department of Education has not requested funds for the Special Projects Grants to Indian Tribes and Hawaiian Natives Program for fiscal year (FY) 1986. However, in the event that funds are appropriated for the program, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year.

In FY 1985 two percent (\$2,360,000) of the appropriation for LSCA Titles I, II, and III, was set aside for LSCA Title IV, Library Services for Indian Tribes and Hawaiian Natives Program (\$1,770,000 for Indian Tribes and \$590,000 for Hawaiian Natives). Special Projects Grants are awarded from the funds remaining after basic grants are made. In FY 1985, 131 basic grants were awarded in the amount of \$457,907, leaving \$1,311,128 to be awarded for Special Projects Grants on a competitive basis. With these funds, 18 grants were made. A basic grant of \$590,000 was awarded to Hawaii, leaving no funds for Special Projects Grants to Hawaiian natives. These grants were intended for use between October 1, 1985, and September 30, 1986.

The number and amounts of Special Projects Grants awarded in FY 1985 do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant in FY 1986, unless that amount is otherwise specified by statute or regulations.

##### Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before February 24, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.163), 400 Maryland Avenue, SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except

Saturdays, Sundays, and Federal holidays.

#### Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program in 34 CFR Part 772 (50 FR 33185).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

##### The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State post-secondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The State of Hawaii has established a process, has designated a single point of contact, and has selected this program for review.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact Hawaii's single point of contact to find out about, and to comply with, the State's process under the Executive Order. This single point of contact for Hawaii is included in the application package for this program.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, area-wide,

regional, and local entities must be mailed or hand delivered by April 25, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA 84.163, 400 Maryland Avenue, SW, Washington, DC 20202. Proof of mailing will be determined on the same basis as applications.

**PLEASE NOTE THAT THE ABOVE 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.**

**APPLICATION FORMS:** Application forms and program information packages are expected to be available by November 29, 1985. These may be obtained by writing to the Library Education, Research and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 725, Brown Building, Washington, DC 20202-1630, Attention: LSCA Title IV.

**FURTHER INFORMATION:** For further information contact Frank A. Stevens, Chief, or Beth P. Fine, Education Program Specialist, Division of Library Programs, Library Education, Research and Resources Branch, Room 725, Brown Building, 400 Maryland Avenue, SW., Washington, DC 20202-1630. Telephone: (202) 254-5090.

**PROGRAM AUTHORITY:** (20 U.S.C. 351 *et seq.*).

(Catalog of Federal Domestic Assistance Number 84.163, Special Projects Grants to Indian Tribes and Hawaiian Natives Program)

Dated: October 29, 1985.

Chester E. Finn, Jr.,  
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-26123 Filed 10-31-85; 8:45 am]

BILLING CODE 4000-01-M

#### DEPARTMENT OF ENERGY

##### National Petroleum Council; U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Date Change for Meeting

The date and location of the October 31, 1985, eighth meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been changed. The new date and location should read: Thursday, November 14, 1985, starting at 1:00 p.m., in the Conroe Room of the Four Seasons Hotel, 1300 Lamar Street, Houston, Texas. Notice of this meeting first appeared in 50 FR 41562, Friday, October 11, 1985 (FR DOC 85-24434).

Issued at Washington, D.C., October 24, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.  
[FR Doc. 85-26186 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

##### National Petroleum Council; Worldwide Refining Trends Task Group; Date Change for Meeting

The date and location of the November 7, 1985, seventh meeting of the Worldwide Refining Trends Task Group has been changed. The new date and location should read: Thursday, November 14, 1985, starting at 9:00 a.m., in the Conroe Room of the Four Seasons Hotel, Houston Center, 1300 Lamar Street, Houston, Texas. Notice of this meeting first appeared in 50 FR 42753, Tuesday, October 22, 1985 (FR DOC 85-25161 filed 10/21/85).

Issued at Washington, D.C., October 24, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.  
[FR Doc. 85-26187 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

#### Bonneville Power Administration

##### Usk Loop Project; Finding of No Significant Impact

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of finding of no significant impact for BPA's proposed Usk Loop Project.

**SUMMARY:** BPA proposes to construct a new 230-kV double-circuit wood pole transmission line between the existing Bell-Boundary No. 2 line and a proposed substation at Usk, Washington. The new Usk Substation will be located at the site of a new papermill that the Ponderay Newsprint Co. proposes to build. The proposed line would be about 5 miles long and of wood pole H-frame construction; it would loop one of the lines from the BPA transmission corridor about 5 miles into the new substation.

The proposal would provide power transmission for Pend Oreille County Public Utility District (PUD) resources to Usk in order that the PUD may serve increased loads on its system. These loads will be caused by the addition of the proposed papermill and associated increase in business and residential growth.

**SUPPLEMENTARY INFORMATION:** The proposed newsprint mill consists of two separate operations: (1) A chip storage

and pulping facility and (2) a paper machine facility with paper finishing equipment. The PUD has indicated that it has sufficient resources to serve both its existing load and operations of the new mill. So long as the PUD serves the electrical needs of the newsprint mill with the PUD's own resources (which it has specifically dedicated to serving the mill), BPA resources will not be used to serve this load.

It is not expected that the PUD would ever ask BPA to serve the chip storage and pulping facility because (1) the PUD currently has enough resources to serve the load and (2) if it asked, the load would likely be a "new large single load" under Pacific Northwest Power Act 3(13), which means it would have to be served at the relatively high Pacific Northwest Power Act 7(f) rate (for example, the new resources rate). Therefore, it is most likely that the chip storage and pulping facility will be served by the PUD, adding no new demands on BPA's resources.

This transmission project is jointly proposed by BPA and the PUD; BPA would design, construct, and provide testing of the proposed double-circuit loop line. BPA would also provide relaying, controls, communication, and monitoring equipment associated with the two line terminals and transformer terminals at the proposed PUD Usk Substation. BPA work would be performed at PUD expense; final arrangements between BPA and the PUD will be made after this environmental finding.

The Environmental Assessment (EA) prepared for this proposal (DOE/EA-0275) covers the transmission/substation facilities that would be constructed or modified by BPA and summarizes the effects of the papermill which are covered in the Washington State EIS. Transmission plans evaluated were: (a) A single-circuit line from BPA's Cusick Substation to the proposed Usk Substation, and (b) a double-circuit loop from the BPA Bell-Boundary No. 2 line to the proposed Usk Substation. Three route alternatives for the plans (one for Plan A and two for Plan B) were evaluated in the EA. The summary below of the reasons why the proposal will not have a significant impact on the human environment pertains to the two route alternatives associated with the double circuit loop (Plan B in the EA). Other alternatives considered were: (1) Other construction options and (2) no action. The other construction options consist of a 57-mile PUD transmission line from Boundary Dam or a 10-mile BPA transmission line from BPA's Sacheen Substation, with very extensive

expansion at Sacheen. These other alternatives were eliminated from further study because the increased reliability and the customer cost benefits derived from the two plans evaluated would not occur.

For further discussion of the need for the project, the proposal, scope of analysis, and the alternatives, see the EA.

Reasons impacts are not significant are presented below, with references to appropriate sections of the EA.

#### 1. Short-Term Disturbance and Compaction in Agricultural Areas From Heavy Equipment Used To Build the Line

Disturbance of crops would be incidental because the line is scheduled to be built between September 1 and October 31, 1986, after most harvesting has been completed. Construction during these two months will minimize compaction and rutting by use of heavy equipment because only light precipitation is received in the county during the late summer and early fall. If soils are compacted and if requested by a property owner, BPA will arrange for a contractor or the farm operator to do the subsoiling. The farm operator will be contacted to determine her/his preferred methods. Restoration work will be done within 30 days after completion of work on each tract, unless a shorter period is required to prevent further damage or a longer period is required to avoid crop damage or unstable conditions. [4.2]

#### 2. Land at the Base of H-Frame Structures Taken Out of Agricultural Production

This could be about 800 square feet per structure (worst case) and could provide an area for weed growth as well. The alternative traversing the greatest amount of cropland (B-1) would remove about 0.25 acres from production. This amounts to an insignificant loss considering the thousands of acres of arable land under production in the Cusick Flats area of the county [4.2].

#### 3. Noxious Weeds Will Be Controlled

To mitigate any new infestation of weeds that may be caused by construction of the proposed line, BPA will take these actions as part of the proposed action: (1) Prior to construction, BPA will undertake a weed survey to determine whether noxious weeds are present in the impact area of the proposed line; (2) construction machinery will be washed before and after entering the construction zone under standard construction contract specifications to

prevent accidental infestation; (3) after construction, BPA will make a second survey to determine whether construction has caused or worsened any weed infestation; (4) in case BPA's actions have caused or worsened a noxious weed infestation, BPA will consult the local weed control district and landowners and adopt a plan to eradicate or control weeds; and (5) it is BPA's policy to cooperate with the local weed control district, landowners, and land managers over the life of the line to control noxious weed infestations.

#### 4. Temporary Disturbance From Construction Activities

Construction activities will temporarily disturb residents of the area. Construction is not expected to exceed two months and would be similar to a small-scale logging operation or minor road work, which have already occurred in the area. Disturbances to the local population, therefore, are expected to be minor and short term. [4.3]

#### 5. Addition of Visual Elements to the Landscape

Other than brief foreground viewing by travelers on Highways 20 and 211, each construction alternative would be visible only to a few residents in the area. In addition, the contrast between the structures and their background would be low and the scale of the structures consistent with nearby features. [4.4]

#### 6. In Forested Areas, Removal of From 18 to 45 Acres of Trees From the Right-of-way, Taking Land out of Production for the Life of the Line

There is much forest cover in the general area; the amount removed by this project would be a very small portion of the total in the county (0.008 percent). [4.4]

#### 7. Possible Archeological Finds Due to Proximity to Newsprint Mill Site, Where Numerous Camas Ovens Have Already Been Found

Because the proposal may have an effect on archeological resources, BPA will undertake an intensive cultural resources survey of the selected transmission corridor before construction begins. Any cultural properties located during the survey will be evaluated in consultation with the Washington State Historic Preservation Officer (SHPO) for their significance and eligibility for inclusion in the *National Register of Historic Places*. BPA, in conjunction with the SHPO and the Advisory Council on Historic

Preservation, would develop appropriate mitigation measures to protect any properties found to be eligible for inclusion in the *National Register*. In the event that a cultural resource is newly identified, construction in the immediate vicinity will be stopped until all applicable consultation procedures protecting the integrity of the resource have occurred. [4.11]

Other resource areas not summarized above are those for which predicted impacts were readily identified as negligible or nonexistent; they are listed below with references to appropriate EA sections:

Air Quality [4.1]	Water Resources [4.8]
Developed Land Use [4.3]	Social Impacts [4.10]
Recreation [4.5]	Economic Effects [4.9]
Fish and Wildlife [4.6]	Noise [4.27]
Electrical and Biological Effects [4.26]	

The 100-year floodplain will be crossed; however, the 4-10 structures required will be placed in previously disturbed areas as much as possible and will be designed to withstand normal flooding, should it occur. Crossing this area is unavoidable because the power source is on the west side of the floodplain and the proposed substation is on the east side. Therefore, a determination has been made that there is no practicable alternative to construction within the floodplain and that the proposed action includes all practicable measures to minimize harm to or within the floodplain.

Except at Calispell Creek, no wetlands as defined in the U.S. Fish and Wildlife Service classification will be crossed. Towers in stream-crossing areas will be placed to eliminate construction in the wetland.

Components of Wild and Scenic River, National Trail, and Wilderness Area systems are not present.

#### Related Documents

An environmental impact statement (EIS) on the proposed mill has been prepared by the State of Washington in compliance with the Washington State Environmental Policy Act (SEPA) and has been made available to federal and state agencies, as well as to the general public. Concurrently, actions to ensure consistency with federal and state requirements have been taken by the applicants. The state EIS covers the proposed mill construction and associated power requirements, focusing on the mill. Environmental impacts identified in the state EIS are summarized and incorporated by reference in BPA's EA.

#### Public Availability

Copies of this Finding will be mailed directly to interested parties and agencies. Copies of the EA, this Finding, and related documents are available upon request from the Environmental Manager or from the Upper Columbia Area Engineer, at the addresses below.

**FOR FURTHER INFORMATION CONTACT:** Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208, telephone (503) 230-5136; or Area Engineer, Bonneville Power Administration, Upper Columbia Area Office, West 920 Riverside Avenue, Spokane, Washington 99201.

#### Determination

On the basis of the information in the Environmental Assessment and related studies, the Department of Energy finds that the proposed project is not a major federal action significantly affecting the human environment in the meaning of the National Environmental Policy Act, 42 USC 4321 *et seq.* Therefore, an environmental impact statement will not be prepared.

Issued in Washington, DC, October 22, 1985.

William A. Vaughan,  
Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 85-26077 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

#### Economic Regulatory Administration

[Docket No. ERA-FC-85-034; OFP Case No. 64012-9295-20-24]

#### Acceptance of Petition for Exemption and Availability of Certification by Klondike Equity Enterprises, Inc.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Acceptance of Petition for Exemption and Availability of Certification by Klondike Equity Enterprises, Inc.

**SUMMARY:** On September 30, 1985, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike I (b) facility in Oceanside, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any

such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigerator package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas & Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a

statement of reasons therefor, would be published in the *Federal Register*.

**DATES:** Written comments are due on or before December 16, 1985. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Coal & Electricity Division, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-85-034 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Steven Mintz, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Phone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252-6947

**SUPPLEMENTARY INFORMATION:** KEE proposes to construct and operate a cogeneration facility in Oceanside, California, which will (1) generate electrical power for sale to San Diego Gas & Electric, and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR § 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed

above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the *Federal Register* as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on October 25, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-26189 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-032; OFP Case No. 55192-9292-20-24]

**Acceptance of Petition for Exemption and Availability of Certification by Kelco Division of Merck and Co. Inc.**

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Acceptance of Petition for Exemption and Availability of Certification by Kelco Division of Merck and Company, Inc.

**SUMMARY:** On September 17, 1985, Kelco Division of Merck and Company, Inc., (Kelco), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for the cogeneration facility at its Kelco plant

located in San Diego, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The Kelco cogeneration facility, for which the petition was filed, consists of three gas turbine generators, each equipped with a waste heat boiler in a cogeneration configuration. The cogeneration plant is capable of producing approximately 27 megawatts of electricity. The excess over Kelco's requirements of about 7 megawatts is sold to San Diego Gas and Electric, the local utility. Since this constitutes more than 50% of the electricity generated by the facility, it is considered an electric powerplant pursuant to the definition contained in 10 CFR § 500.2 Kelco's steam requirements of approximately 180,000 lbs/hr are also supplied. The facility burns natural gas or liquid fuel and will consume up to 120,000,000 Btu/hr (low heating value) per unit with a maximum of 360,000,000 Btu/hr if this exemption is granted.

The facility is currently operational but operates below 100,000,000 Btu/hr (low heating value) per unit and as such, is nonjurisdictional under the Act. Kelco desires to operate at the fuel consumption rates stated for which the exemption is requested.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available

upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

**DATES:** Written comments are due on or before December 16, 1985. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Coal and Electricity Division, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-85-032 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puskowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20584, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20584, Telephone (202) 252-6947

**SUPPLEMENTARY INFORMATION:** ERA, on December 7, 1981, published in the Federal Register (46 FR 59872) final rules to implement the provisions of Title II of FUA. These rules became effective on January 6, 1982. Effective August 6, 1982 (47 FR 29209), additional rules were issued by ERA. The FUA prohibits the use of natural gas or petroleum in any new major fuel burning installations and powerplants without the capability to use an alternate fuel as a primary energy source unless an exemption for such use has been granted by ERA.

Kelco proposes to optimize the engine efficiency of its natural gas/liquid fuel-fired 27 megawatt cogeneration facility at its manufacturing location in San Diego, California. The electricity produced by this facility in excess of its needs is to be sold to San Diego Gas and Electric. The project also provides Kelco's manufacturing facility with

steam for its process needs (designed at 180,000 lbs/hr—maximum with supplemental firing). The major components of the cogeneration facility are three gas turbine generators, three waste heat recovery boilers, and associated support equipment.

The modifications will permit more efficient operation by increasing the fuel input to 120 million Btu/hr on a single unit (360 million Btu/hr for all three units together). Kelco estimates that the facility will save  $1.05 \times 10^{12}$  Btu of oil and gas equivalent per year. The incremental savings resulting from this increased fuel input amounts to  $270.5 \times 10^9$  Btu/yr of oil and gas equivalent. The facility is currently operating and will commence operation at the higher fuel input if ERA provides its approval.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Kelco has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Kelco has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and  
2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an

Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Kelco is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on October 22, 1985.

Robert L. Davies,

Director of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-26188 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. OFU-007, 008]

**Order Granting Rescission of Certain Prohibition Orders Issued to Iowa Public Service Co.**

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Order Granting Rescission of Certain Prohibition Orders Issued to Iowa Public Service Company Pursuant to the Energy Supply and Environmental Coordination Act of 1974.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) <sup>1</sup> hereby gives notice that, acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended (15 U.S.C. 792(f)) and implemented by 10 CFR 303.130(b), it is granting a request by Iowa Public Service Company (IPS) to rescind the prohibition orders issued on June 30, 1975, to the powerplants named below:

Owner	Docket No.	Generating Station	Unit No.	Location
Iowa Public Service Company	OFU-007	George Neal	1	Salix, IA.
	OFU-008	Maynard	14	Waterloo, IA.

<sup>1</sup> Effective October 1, 1977, the responsibility for supplementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy

Administration to the DOE pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*).

This action is taken in accordance with the provisions of 10 CFR Part 303, subpart j ("Modification of Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. The basis for ERA's action is provided in the "SUPPLEMENTARY INFORMATION" section below.

**DATES:** In accordance with 10 CFR 303.10(a) this action and its provisions shall take effect on publication in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone: (202) 252-4523  
 Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW, Room 6A-113, Washington, D.C. 20585, Telephone: (202) 252-8947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**SUPPLEMENTARY INFORMATION:** In accordance with the procedural requirements of 10 CFR 303.134(a), ERA published its Notice of Consideration of a request by IPS to rescind certain prohibition orders issued to the company pursuant to the ESECA in the Federal Register on June 21, 1985 (50 FR 25753), commencing a 45-day public comment period. During that period interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed August 5, 1985. No comments were received and no hearing was requested.

The prohibition order to George Neal Generating Unit No. 1 (Neal No. 1) was made effective by the issuance of a Notice of Effectiveness (NOE) on October 16, 1978, to IPS with the prohibition order becoming effective on that date. The actual prohibition on the use of natural gas was to begin on November 15, 1978, and continue through December 31, 1984, pursuant to section 2(f)(2) of ESECA.

The FUA amended section 2(f)(2) ESECA by removing the time limits on DOE's authority to issue prohibition orders. By letter dated December 21, 1978, DOE issued an amended NOE, which eliminated the prohibition order

termination date of December 31, 1984. In effect, this extended the prohibition against the burning of natural gas as the primary energy source of Neal No. 1, indefinitely.

The prohibition order to IPS's Maynard Generating Unit No. 14 (Maynard No. 14) was made effective by the issuance of an NOE on April 19, 1977, with the prohibition order becoming effective on the following day. By letter dated December 21, 1978, an amended NOE was issued to Maynard No. 14. The amended NOE superseded the NOE issued to the facility on April 19, 1977. This extended the prohibition against burning petroleum products or natural gas as the primary energy source in Maynard No. 14, indefinitely.

By letter dated September 26, 1984, IPS requested that the prohibition orders issued to the company's Neal No. 1 and Maynard No. 14 generating units be rescinded because of a substantial change in the facts and circumstances upon which these orders are based. IPS has informed ERA that their powerplants, because of their age and economic dispatch, are no longer being used as baseload generating stations. The company wants to operate these powerplants as peaking facilities. They cannot be effectively operated as peaking units if they must use coal. The rescission of the prohibition orders to Neal No. 1 and Maynard No. 14 would permit these units to be used efficiently as peaking powerplants burning natural gas.

**Decision and Order**

Accordingly, based upon information received from IPS and the entire record of this proceeding, ERA has determined that as a result of significantly changed circumstances with respect to the prohibition orders issued to IPS's Neal No. 1 and Maynard No. 14 generating units as set forth in 10 CFR 303.136(b), that these powerplants should be allowed to operate as peaking units. Pursuant to § 303.137(a), EFA hereby grants the rescission request of IPS and hereby orders that the prohibition orders to these units be rescinded.

Pursuant to 10 CFR 303.100(a) and (b), any person aggrieved by this order has not exhausted his administrative remedies until an appeal has been filed with DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 10

days of the publication of this order in the Federal Register in accordance with the requirements of § 303.102.

Issued in Washington, D.C., on October 25, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-26191 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

**Federal Energy Regulatory Commission**

[Docket No. ER86-34-000]

**Central Hudson Gas & Electric Corp. et al.; Filing**

October 29, 1985.

Take notice that Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, and the Power Authority of the State of New York on October 17, 1985, tendered for filing proposed changes to the New York Power Pool Agreement. The changes are in the form of a new Agreement among the Member Systems to allocate the costs or compensation resulting from a new Schedule 6.02 of the NYPP-PJM Interconnection Agreement.

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, 385.214). All such motions or protests should be filed on or before November 5, 1985. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26193 Filed 10-31-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL86-3-000]

**Bangor Hydro-Electric Co., Maine Public Service Co.; Petition for Declaratory Order**

October 25, 1985.

Take notice that on October 17, 1985, Bangor Hydro-Electric Company (Bangor) and Maine Public Service Company (Maine Public) filed a petition for declaratory order making certain determinations regarding the ratemaking treatment of their unrecovered investments in Units 1 and 2 of the Seabrook nuclear generating project so as to satisfy certain conditions contained in agreements that Bangor and Maine Public have entered into with Eastern Utilities Association (EUA) for the sale of their respective ownership interests in the Seabrook Project to EUA Power Corporation, a new wholly owned subsidiary of EUA. Bangor and Maine Public request that the declaratory order be issued promptly so as to permit the timely consummation of the sale under the terms of the agreements.

Bangor and Maine Public state that they do not request changes in rate by the instant petition, but only that future changes may properly reflect the requested ratemaking treatment.

Specifically, Bangor and Maine Public seek a declaratory order determining that their respective future wholesale rates may properly reflect the same treatment of their unrecovered Seabrook investments to be afforded them by the Maine Public Utilities Commission (MPUC). As to Bangor, such rate treatment is in the form of a compromise reached in a Stipulation which has been approved by the MPUC. Pursuant to the Stipulation, Bangor would be permitted to recover in rates only 70% of its investment in Seabrook Unit 1 as of December 31, 1984 (including all associated AFDC) reduced by: (1) 30% of the non-fuel portion of the \$12.6 million initial price and (2) all delay payments received from EUA Power. Such net amount would be amortized over 30 years, with full rate base treatment to be afforded the unamortized balance.

Bangor will be requesting that it also be permitted to recover through rates the AFDC that has accrued on its December 31, 1984 investment in Seabrook 1 from May 31, 1985 to the implementation date of the Stipulation (about \$800,000 per month), an amount reflective of the income tax impact of the recovery of capitalized carrying costs (to the extent not being paid by EUA Power). Bangor anticipates requesting that such amounts be added to the unamortized balance of the Seabrook 1 investment.

For Seabrook Unit 2, Bangor would be permitted to recover in rates only 80% of its investment, to be amortized over 7 years with full rate base treatment to be afforded the unamortized balance.

Maine Public likewise requests that the Commission issue a declaratory order determining that its future wholesale rates may properly reflect similar treatment of its unrecovered Seabrook investment to be afforded by the MPUC. While the final terms of Maine Public's stipulation are still under negotiation, they essentially allow Maine Public to recover 70 percent of its unrecovered total investment in Seabrook Unit 1 as of December 31, 1984. As to Seabrook Unit 2, the MPUC has ordered amortization of 62.4 percent of Maine Public's investment over 4.7 years, with rate base treatment of the unamortized balance.

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, 385.214). All such motions or protests should be filed on or before November 5, 1985. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26192 Filed 10-31-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-033]

**Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.; Petition to Amend**

October 29, 1985.

Take notice that on September 18, 1985, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, and Columbia Gulf Transmission Company (Columbia Gulf) (jointly referred to as Petitioners), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP83-452-033 a joint petition pursuant to section 7(c) of the Natural Gas Act to extend temporarily Petitioner's authority to transport gas under the blanket certificate program for low-priority end-users and to operate Columbia's Special Marketing Program

(SMP) from November 1, 1985, until such time as a final rule concerning interstate pipeline transportation on behalf of third parties is issued and in effect in Docket No. RM85-1-000 or should any final rule in Docket No. RM85-1-000 relating to transportation be stayed by the Commission or reviewing courts, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners state that in Order No. 234-B the Commission designated all end-users to be eligible for transportation service from interstate pipelines holding blanket certificates of public convenience and necessity, and that for low-priority end-users the authorization was scheduled to expire on June 30, 1985. It is further stated that in Order No. 234-C, the program was extended through and is currently scheduled to expire on October 31, 1985. Both Columbia and Columbia Gulf obtained blanket certificates pursuant to which gas has been transported for numerous low-priority end-users under the notice and protest procedure established by the Commission, it is stated.

Petitioners assert that on May 10, 1985, the United States Court of Appeals for the District of Columbia Circuit vacated the blanket certificate program insofar as it allows interstate pipeline transportation on behalf of low-priority end-users, but that in a subsequent order, the Court allowed this portion of the blanket certificate program to be extended until October 31, 1985.

Petitioners claim this program has resulted in substantial benefits to all participants. It is stated that through July 31, 1985, Columbia has released approximately 44.5 million dt equivalent of gas from take-or-pay contracts, which has yielded take-or-pay relief of approximately \$137 million, and that approximately 92,248,901 dt of gas have been transported on behalf of end-users generating great cost savings to them. Columbia's customers and their consumers, it is claimed, have received substantial benefits from the blanket certificate program in that most, if not all, of these end-users would have gone out of business or switched to alternative fuels or alternative gas suppliers in the absence of the availability of transportation gas. It is averred that producers have also received the benefit of market outlets for gas they would have otherwise been unable to sell and increased cash flow generated from these sales. Petitioners also assert that the blanket certificate program has enabled more gas to be sold directly to end-users at market

clearing prices, furthering the Commission's goal of enhancing direct communication of market signals between the wellhead and burnertip.

Petitioners also state that on August 1, 1983, Columbia filed with the Commission an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Exxon Corporation to eligible end-users on Columbia's system and that by order dated November 10, 1983, the Commission issued blanket certificates authorizing Columbia to implement SMP's to transport gas produced by any of its suppliers to direct and indirect customers. It is stated that on September 26, 1984, the Commission issued an omnibus SMP order which extended and amended existing SMP certificates and imposed uniform conditions on all SMP's.

It is asserted that on May 10, 1985, the United States Court of Appeals for the District of Columbia held that the Commission's decision to authorize Columbia's original SMP was not based upon consideration of all relevant factors and was therefore invalid. It is further asserted that in a companion case the same Court issued an order to show cause why the Court's decision vacating the original SMP should not be applied to the current SMP. As a result of this order, the court remanded the current SMP orders to the Commission for the same reasons it remanded the old SMP orders, but allowed the SMPs to operate until October 31, 1985, it is stated.

It is claimed that Columbia implemented its SMP's in two ways: first, it transports eligible gas sold by a producer directly to an end/user or wholesale customer similar to the transactions under the blanket certificate program, and second, Columbia transports gas under the pool concept, whereby Columbia acts as agent for the participating producers to sell gas to eligible end-users and wholesale customers.

It is claimed that the SMP has served the purposes envisioned by the Commission in authorizing the SMP experiment. It is asserted that as of July 31, 1985, approximately 73.3 million dt equivalent of gas have been released by Columbia from take-or-pay contracts, resulting in take-or-pay relief of approximately \$225.7 million, and that additional gas released by other companies has also been transported with resulting take-or-pay relief. It is claimed that as of July 31, 1985, approximately 292,304,000 dt of gas have been transported under the SMP (both pool and direct sales) to 426 different

end-users and 21 different wholesale customers.

In addition Petitioners claim two additional benefits have been realized by the SMP which are unique to this program: first, Columbia's SMP pool provides a marketplace for lower-priced gas for smaller producers, distributors and end-users who lack the knowledge and resources to negotiate direct sales and purchases of gas; and second, the SMP provides the requisite abandonment and certificate authority so that higher-priced Natural Gas Policy Act of 1978 (NGPA) categories of gas such as NGPA section 102(d) and pre-NGPA section 108 gas may be sold on the spot market.

Petitioners aver that given the industry-wide benefits, the public convenience and necessity require that these programs continue and that a short-term interruption would be harmful because take-or-pay liabilities would again be incurred. It is further claimed that end-users and local distribution companies would not have access to the lower cost supplies and that economically marginal operations and fuel-switchable markets would be lost, perhaps permanently. Revenues from transportation would be lost by both Petitioners and wholesale customers, it is stated. Petitioners further state that the public interest dictates that the programs be extended in order to prevent a gap in gas transportation from occurring on and after November 1, 1985.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Nov. 8, 1985, 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 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26194 Filed 10-31-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-17-000]

### The Kansas Power and Light Co.; Filing

October 29, 1985.

Take notice that on October 10, 1985, The Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated October 3, 1985, with the City of Chapman, Chapman, Kansas for wholesale service to that community. KPL states that this contract permits the City of Chapman to receive service under rate schedule WSM-12/83 designated Supplement NO. 9 to R. S. FERC No. 176. The proposed effective date is November 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies and the State Corporation Commission.

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 Rule 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 5, 1985. 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 the filings on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-26195 Filed 10-31-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-36-000]

### Mississippi Power & Light Co.; Filing

October 29, 1985.

Take notice that on October 18, 1985, Mississippi Power & Light Company (MP&L) tendered for filing service Schedule RE—Replacement Energy, and an Amendment No. 1 thereto, under the Interconnection Agreement between South Mississippi Electric Power Association and MP&L filed with the Commission in Docket ER-79-529.

Service Schedule RE and Amendment No. 1 add an additional service—Replacement Energy service—to the Mutual Support Services provided for in the Interconnection Agreement. The

other Mutual Support Services in the Interconnection Agreement are Emergency Service (Service Schedule ES), Maintenance Service (Service Schedule MS) and Economy Energy (Service Schedule EE).

MP&L requests an effective date of May 1, 1985, for Service Schedule RE and September 9, 1985, for Amendment No. 1. MP&L requests waiver of the Commission's notice requirements under Part 35 of the Commission's Regulations.

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, 385.214). All such motions or protests should be filed on or before November 5, 1985. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26196 Filed 10-31-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER85-596-002]

**New England Power Co.; Compliance Filing**

October 28, 1985.

Take notice that on October 16, 1985, New England Power Company tendered for filing revised rate sheets in compliance with Commission order dated September 17, 1985. The rate sheets reflect summary disposition of NEP's treatment of Investment Tax Credits and incorporates a fixed rate of return on equity of 15.24%.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 4, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26197 Filed 10-31-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER85-38-000]

**Pacific Power & Light Co., an Assumed Business Name of PacifiCorp.; Filing**

October 29, 1985.

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on October 18, 1985, tendered for filing, in accordance with § 35.13a (d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon, Bonneville Power Administration's (Bonneville) Docket No. 5-A1-8401. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective November 15, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

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, 385.214). All such motions or protests should be filed on or before November 5, 1985. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26198, Filed 10-31-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER85-608-002]

**Public Service Co. of New Mexico; Compliance Filing**

October 29, 1985.

Take notice that on October 16, 1985, Public Service Company of New Mexico tendered for filing an Agreement for Electric Service and Rate Schedule between the Company and Plains Electric Generation and Transmission Cooperatives Inc. The Agreement was filed in compliance with Commission Order dated September 6, 1985.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 5, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26199, Filed 10-31-85; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP85-141-003]

**Texas Gas Transmission Corp.; Motion To Make Tariff Sheets Effective**

October 28, 1985.

Take notice that on October 21, 1985, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following tariff sheets with no motion to make them effective November 1, 1985, subject to refund and to the final determination of the Commission in the instant proceeding:

*FERC Gas Tariff, Original Volume No. 1*  
Second Substitute Original Sheet Nos. 10, 11, and 12, and Substitute Original Sheet No. 108.

*Original Volume No. 2*

Second Substitute Seventh Revised Sheet No. 982  
Second Substitute Sixth Revised Sheet No. 1005  
Substitute Fifth Revised Sheet No. 82  
Second Substitute Twentieth Revised Sheet No. 333  
Substitute Sixth Revised Sheet No. 547  
Second Substitute Ninth Revised Sheet No. 643  
Second Substitute Fifth Revised Sheet No. 919

Texas Gas states that it has complied with the Commission's order of May 30, 1985 and has, in the instant filing, eliminated costs associated with facilities which will not be in service by November 1, 1985. Texas Gas further states that the revised tariff sheets reflect the following changes only: (a) The base demand and commodity costs of purchased gas determined from the PGA filing made on June 21, 1985, to be effective July 1, 1985, are reflected in Substitute Original Sheet No. 108; and (b) The level of the rates has been adjusted to reflect the inclusion of the recovery factors for unrecovered purchased gas which are set forth in the

June 28, 1985 filing and became effective on August 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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, 385.214). All such motions or protests should be filed on or before November 4, 1985. 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.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-26200 Filed 10-31-85; 8:45 am]

BILLING CODE 6717-91-M

## Office of Hearings and Appeals

### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to eligible claimants a total of \$325,000 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with South Hampton Refining Company. The funds are being held in escrow following settlement of all claims and disputes arising from an audit by the Economic Regulatory Administration.

**DATE AND ADDRESS:** Comments must be filed by December 2, 1985, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0222.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey D. Stein, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 252-6602.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the

issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants \$325,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with South Hampton Refining Company (SHRC) on June 4, 1980. The funds were provided to the DOE by the firm towards the settlement of all claims which the Economic Regulatory Administration could have pursued under the DOE price and allocation regulations relating to transactions by SHRC involving the production, refining, and marketing of petroleum products during the period August 19, 1973 through December 31, 1975 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by SHRC. The DOE has tentatively decided that Applications for Refund should be accepted from firms and individuals who purchased refined petroleum products from SHRC during the consent order period. The Proposed Decision and Order provides that in order to be entitled to receive any portion of the settlement funds, a purchaser must furnish the DOE with evidence which demonstrates that the claimant was injured by the alleged unlawful prices for covered products charged by SHRC. This evidence includes specific documentation concerning the date, place, price, and volume of product purchases, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered.

The Proposed Decision and Order also refers to the distribution in a second-stage proceeding of any funds remaining after all valid claims are paid. The DOE solicits comments on any proposals that claimants may suggest for this second-stage distribution.

Until final procedures are adopted, no claims for refunds will be accepted. Applications for Refund, therefore, should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments should be submitted by December 2, 1985, and should be sent to the address set forth at the beginning of this notice. All comments received in

this proceeding will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, DC, between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 23, 1985.

George B. Breznay,  
Director, Office of Hearings and Appeals.

### Proposed Decision and Order of the Department of Energy

#### Special Refund Procedures

*Name of Case:* South Hampton Refining Company.

*Date of Filing:* October 13, 1983.

*Case Number:* HEF-0222.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with South Hampton Refining Company (SHRC). Under the terms of the consent order, SHRC agreed to remit a total of \$500,000 to the DOE in settlement of all civil and administrative claims by the DOE relating to SHRC's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period from August 19, 1973 through December 31, 1975 (the consent order period).<sup>1</sup>

#### I. Background

SHRC was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, SHRC refined crude oil and marketed products covered by the federal petroleum price and allocation regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The ERA audited SHRC to determine the firm's compliance with these regulations. In the course of the audit process, SHRC entered into a consent order with the DOE whereby the firm agreed to remit \$500,000 to the DOE for distribution, to resolve all issues regarding SHRC's

<sup>1</sup> The consent order also required SHRC to reduce its bank of unrecovered increased costs attributable to motor gasoline by \$1,500,000.

application of the regulations during the consent order period. The consent order refers to the ERA's allegations of overcharges, but emphasizes that there was no finding of actual violations. In addition, the consent order states that SHRC does not admit that it violated the regulations. Notice of this proposed consent order was published for public comment at 45 FR 25114 (1980). Five interested parties responded. The proposed consent order was adopted without modification as a final order of the DOE on June 4, 1980. 45 FR 37722 (1980).

Although the consent order specified that SHRC deposit \$500,000 in a DOE escrow account, the firm has fallen into arrears with its payments and had only remitted \$325,000 as of September 30, 1985. Enforcement of the consent order may be referred to the Department of Justice; however, it is uncertain whether further payments will be made to fulfill SHRC's obligation. This decision concerns our tentative plans to distribute the funds currently in the consent order, which totalled \$543,146.01, including accrued interest, as of September 30, 1985.

## II. Jurisdiction to Fashion Refund Procedures

The Subpart V process may be used in situations where the DOE is unable to readily identify the persons who may be eligible to receive refunds as a result of enforcement proceedings or to readily ascertain the amounts that such persons should receive. 10 CFR 205.280. Subpart V authorizes the OHA, upon request by an appropriate DOE enforcement official, to fashion special procedures to distribute moneys obtained as part of a settlement agreement. 10 CFR 205.281-205.282. After reviewing the record in this proceeding, we have determined that the implementation of Subpart V procedures is appropriate. There is a significant degree of difficulty in identifying the purchasers who may have been injured by SHRC's pricing practices. In addition, the alleged overcharges were associated with the price methodology of a refiner, so that any impact likely was spread throughout a board range of customers. Furthermore, for a large portion of the consent order fund, it is difficult to ascertain the proper amount of refunds to identifiable injured parties. Therefore, the provisions of Subpart V provide a very useful mechanism for refunding money to parties likely to have been injured by the alleged violations. Accordingly, the OHA has decided to exercise jurisdiction over the funds received by the DOE pursuant to the SHRC consent order.

## III. Proposed Refund Procedures

### A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by SHRC's alleged overcharges in sales of covered products. The claims procedures we proposed to implement are set forth below. In addition, as in many prior special refund cases, we propose adoption of certain presumptions. First, we will tentatively adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by SHRC during the consent order period. We therefore propose to calculate refunds based on a per-gallon, volumetric refund amount. Second, we will propose a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons bought from SHRC during the consent order period, August 19, 1973 through December 31, 1975, multiplied by a volumetric, per-gallon amount. The volumetric factor is computed by dividing the total amount of funds in the SHRC consent order escrow account by the total number of gallons of covered products sold by SHRC during the consent order period. Information contained in the audit files compiled during the DOE audit of SHRC indicates that the firm sold 211,986,287 gallons of covered products during the consent order period. Dividing the current amount of principal in the consent order fund—\$325,000—by this sales volume figure results in a volumetric refund amount of \$.001533 per gallon. In addition, the interest which has accrued

to the consent order fund will be applied to each paid refund on a pro rata basis. Finally, we intend to set a minimum refund amount to potential claimants. In prior proceedings, we have not granted refunds for less than \$15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. See *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund amount in this case.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by SHRC were spread equally over all gallons of product marketed by the firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of SHRC's pricing practices during the consent order period. Any such purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. See, e.g., *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

We propose that reseller and retailer purchasers of SHRC products seeking refunds totalling \$5,000 or less based on the volumetric presumption will not be required to provide a detailed demonstration of injury resulting from the alleged overcharges. The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the consent order is based on a number of considerations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary

information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a reseller or retailer claimant seeking a volumetric refund will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the early years of the consent order period are long past, the cost of compiling sufficient data is probably quite high, and the potential refund amounts are low, we believe that \$5,000 is a reasonable threshold value. See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

We propose that a reseller or retailer which claims a total refund in excess of \$5,000 be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is required generally to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of SHRC petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. See, e.g., *Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). If actual, contemporaneously calculated cost banks are not available due to specific circumstances, we will accept other types of information which conclusively prove the existence of cost banks during the consent order period. For example, monthly profit margin data may in some cases demonstrate the existence of cost banks. See *Husky Oil*

*Company*, 13 DOE ¶ 85,045 (1985); *Bayou State Oil Corporation*, 12 DOE ¶ 85,197 (1985). See also *Tenneco Oil Company/Northern Petroleum, Inc.*, 13 DOE ¶ —, No. RF7-126 (September 27, 1985).<sup>2</sup>

We find that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. See *Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); See also *Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that downstream end-user purchasers of a consent order firm's petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms regulated by a governmental agency or by the terms of the cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, e.g., public utilities, any overcharges incurred as a result of the alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms too need only document their purchase volumes from SHRC to make an adequate showing of injury. See *Office of Special Counsel*, 9 DOE ¶ 82,538. However, along with their applications these firms should provide a full, detailed explanation of the manner in

<sup>2</sup> Resellers or retailers who claim a refund in excess of \$5,000 but who cannot establish that they did not pass through the alleged overcharges will be eligible for a refund up to the \$5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to \$5,000 in order to avoid having to submit detailed documentation of their injury. See *Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396 (1981).

which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we propose that there is a class of potential claimants who may be presumed to have suffered no injury from the alleged overcharges. Those parties are firms that made spot purchases of SHRC petroleum products.<sup>3</sup> See *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers*:

[T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,396-97. We believe that the same rationale applies in this case. Consequently, we propose to establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved in the consent orders. Thus, a spot purchaser claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to SHRC.

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refund pursuant to 10 CFR 205.283. Applications should provide all relevant information necessary to establish a claim in accordance with the presumptions outlined above, including, where necessary, specific documentation concerning the date, place, price, and volume of product purchased, the retention of increased costs, and the extent of any injury alleged. Detailed procedures for filing applications will be

<sup>3</sup> We will except from this principle cooperative organizations which made spot purchases of products from SHRC and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members, who, as ultimate consumers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) at 85,203. See, e.g., *Anadarko Production Co./Cities Service Co.*, 12 DOE ¶ 85,060 (1984). Cooperative purchasers therefore will be presumed to have been injured in spot purchases of SHRC products when these products were resold to members. Cooperatives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

provided in a final Decision and Order. See *Vickers*. Before disposing of any of the consent order funds, we intend to publicize widely the distribution process and to provide an opportunity for any affected party to file a claim. Purchasers of covered products that filed claims in response to the original consent order notice in the **Federal Register** will be informed of these refund procedures by mail, as will parties which have previously expressed their interest in this proceeding to the DOE. As a final matter, we note that refund applications filed on behalf of groups of claimants identifying themselves as adversely affected purchasers also will be considered. Such applications will be evaluated on a case-by-case basis.

#### *B. Distribution of the Remainder of the Consent Order Fund*

After all meritorious claimants have received an appropriate refund, it is possible that the consent order funds may not be exhausted. Any remaining funds should be distributed during a second stage of the refund process in furtherance of the goals set forth in the DOE's enabling legislation and implementing regulations. However, any consideration of the second-stage procedure at this point in time involves a number of uncertainties. As was noted in *Vickers*:

[Such] a step would be difficult to justify before the analysis and processing of Applications for Refund filed in the first stage of the distribution of the Consent Order funds to claimants, since the amount remaining after all meritorious claims have been paid directly affects the appropriateness of the second-stage distribution scheme.

8 DOE at 85,397. We will consider any comments received regarding second-stage alternatives and then issue a final Decision and Order establishing procedures for the first stage. In that decision, we will solicit another round of comments on the distribution of the funds that may remain after payment of claims in the first stage. In this way, we will have adequate opportunity to consider the outstanding issues before reaching a final decision on the second stage.

It is therefore ordered that:

The funds remitted to the Department of Energy by South Hampton Refining Company pursuant to the consent order finalized on June 4, 1980, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-26185 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

#### **Issuance of Proposed Decisions and Orders; Week of September 30 Through October 4, 1985**

During the week of September 30 through October 4, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: October 23, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

*Haiston Oil Co., Inc., Red River Oil Company, Scottsbluff, Nebraska. Moorhead, Minnesota; HEE-0161, HEE-0164*

Haiston Oil Company, Inc. (Haiston) and Red River Oil Company (Red River) filed Applications for Exception from the reporting requirements associated with Form EIA-782B and, in the case of Haiston, Form EIA-821. The exception requests, if granted, would permit Haiston and Red River to cease their submission of these forms to the Energy Information Administration of the DOE. On October 4, 1985, the DOE issued a Proposed Decision and Order which determined that the exception requests be denied.

*St. Joe Petroleum Company, St. Joseph, MO; HEE-0160*

St. Joe Petroleum Co. filed an Application for Exception from the provisions of Form EIA-782B. The exception request, if granted, would permit St. Joe to be relieved of the requirement that it file EIA-782B on a monthly basis. On October 1, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-25190 Filed 10-31-85; 8:45 am]

BILLING CODE 6450-01-M

#### **Western Area Power Administration**

#### **Parties Indicating Interest In Spring Canyon Pumped Storage Project Arizona; Non-Federal Participation in Proposed Planning Investigation**

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Final Notice of Parties Indicating Intent to Participate in Planning Investigation for Spring Canyon Pumped Storage Project, Arizona.

**SUMMARY:** In accordance with the March 29, 1985, **Federal Register** notice (50 FR 12622-12623), the Bureau of Reclamation (Reclamation) and the Western Area Power Administration (Western) held a public information forum to explain the public process for the development of the Spring Canyon Pumped Storage Project on April 23, 1985, at the Showboat Hotel, Las Vegas, Nevada. During the public information forum, Western explained that the purpose of the public process was to identify additional participants and to identify future needs for peaking power development in the Lower Colorado River Basin. Reclamation explained the planning investigation process and technical details of the proposed project, including the estimated costs. At the April 23, 1985 forum, interested parties were asked to submit their letters of intent to participate. On July 26, 1985, a **Federal Register** Notice (50 FR 30512-30513) was published, again announcing the Spring Canyon Pumped Storage Project planning investigation, and requesting any additional parties to submit an intent to participate. It also indicated this would be the final opportunity to participate in the proposed planning investigation of the project. Listed below are all entities which have expressed an intent to participate in this project. Non-Federal entities are expected to fund at least 50 percent of the project planning cost. Each entity will bear a share of such cost in proportion to the amount of

capacity specified in its letter of intent. The United States funding goal is 50 percent of the project planning costs, which includes the specified amount of capacity for the United States and United States consideration, not yet determined, for the use of Federal property.

Entity	Specified amount of capacity (MW)
Ak-Chin Indian Community	5
Arizona Electric Power Cooperative, Inc.	20
Arizona Public Service Company	100
Burbank, City of	20
Citizens Utilities Company	20
Colton, City of	5
Colorado River Commission of NV	15
Glendale, City of	20
Imperial Irrigation District	25
Los Angeles Department of Water and Power	150
Nevada Power Company	250
Pasadena, City of	30
Public Service Company of New Mexico	100
Riverside, City of	30
Salt River Project	200
San Diego Gas & Electric Company	200
Southern California Edison Company	250
Escavada Company <sup>1</sup>	200
Wellton-Mohawk Irrigation and Drainage District	5
United States	300
Total	1,945

<sup>1</sup> Formerly listed as Tucson Electric Power Company.

Letters of interest were also received from Electrical District Number One, Electrical District Number Three, and Pacific Gas and Electric Company with no specific levels of participation indicated; therefore, they have not been listed among those entities intending to participate.

This is notice of the final list of parties indicating an intent to participate in the planning investigation in this project.

Issued at Golden, Colorado, October 22, 1985.

William H. Claggett,  
Administrator.

[FR Doc. 85-26184 Filed 10-31-85; 8:45 am]  
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2917-8]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 15, 1985 through October 18, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 382-5075/76. An explanation of the ratings assigned to

draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

### Draft EISs

ERP No. D-AFS-G65044-NM, Rating LO, Lincoln Nat'l Forest, Land and Resource Mgmt. Plan, NM. Summary: EPA expressed no objections to the proposed action as described.

ERP No. D-AFS-G65045-TX, Rating LO, E. Texas Nat'l Forests and Caddo and LBJ Nat'l Grasslands, Land and Resource Mgmt. Plan, TX. Summary: EPA expressed no objection with the proposed action as described.

ERP No. D-AFS-J65110-00, Rating EO2, Kootenai Nat'l Forest, Land and Resource Mgmt. Plan, MT and ID. Summary: EPA is concerned that constructing approximately 5,000 miles of road and harvesting timber may unacceptably degrade Kootenai area streams and fisheries. EPA also believes that there is insufficient funding to complete a water quality and fishery impact monitoring program to evaluate the potential adverse impacts resulting from implementation of the preferred alternative.

ERP No. D-AFS-J65141-00, Rating EC2, Ashley Nat'l Forest, Land and Resource Mgmt. Plan, UT and WY. Summary: EPA's review identified major concerns with the alternative selection process. Other EPA concerns involved projected sedimentation and water quality impacts and the effectiveness of future monitoring programs.

ERP No. D-FHW-E40687-KY, Rating EC2, KY-44 Reconstruction, KY-55 in Taylorsville to a section of KY-44, KY. Summary: EPA expressed concern about the water quality and fisheries impacts caused by the preferred alternative. In addition, EPA requested that corrections be made to the air analysis and that more noise analysis and mitigation be included in the final document.

### Final EISs

ERP No. F-COE-B32006-00, Narrows of Lake Champlain Federal Channel Maintenance Dredging, Whitehall, NY to Benson Landing, VT. Summary: EPA believes that the EIS is a very general document that lacks clear and useful environmental data necessary to fully evaluate the proposed project or the potential environmental and public health effects. Close coordination among Federal and state agencies throughout the development of the specific environmental assessment could insure that the maintenance dredging occurs with no environmental unacceptable impacts.

ERP No. F-FHW-G40109-TX, US 183 Upgrading, TX-71 to Ranch to Market

Rd. 620, Construction and Right-of-Way Acquisition, TX. Summary: EPA has no objection to the proposed action as described.

ERP No. F-UMT-F54005-IL, Chicago SW Corridor Transit Improvements, IL. Summary: Review of the Final EIS indicated that the concerns which EPA expressed on the Draft document have been adequately dealt with. In addition, EPA suggested that the applicant look into the need for an NPDES permit and that the 404 permit would require an analysis of the quality of the river sediments.

Dated: October 29, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.  
[FR Doc. 85-26147 Filed 10-31-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2917-7]

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5076. Availability of Environmental Impact Statements filed October 21, 1985 through October 25, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850464, Draft, FHW, TN, I-40/75 and Interchanges Improvements, east of Pellissippi Parkway to east of Papermill Road, Knox County, Due: December 16, 1985, Contact: Thomas Ptak (615) 251-5394.

EIS No. 850465, FSuppl, GSA, RI, Hoskins Park, Old Wickford, Naval Gardens and Gould Island, Disposal of Surplus Government Property, Kent and Newport Counties, Due: December 2, 1985, Contact: Pasquale Vaccaro (617) 223-2651.

EIS No. 850466, Final, DCB, CA, Chinatown Redevelopment Project, Construction, Grants, Alameda County, Due: December 2, 1985, Contact: Anu Raud (415) 273-3941.

EIS No. 850467, DSUpl, AFS, VA, WV, George Washington National Forest, Land and Resource Management Plan, Uneven-aged Timber Management System, Additional Alternative, Due: January 30, 1985, Contact: Joseph Hudick (703) 433-2491.

EIS No. 850468, Final, FHW, CA, CA-82 Widening and Realignment, CA-880 (formerly CA-17) to Scott Boulevard, Santa Clara County, Due: December 2, 1985, Contact: David Eyres (916) 551-1314.

EIS No. 850469, Final, FHW/UMT, TX, US-59/Southwest Freeway Improvement and Widening, Beltway 8 to TX-288, Harris County, Due:

December 2, 1985, Contact: Sam Herrera (817) 334-3836.

EIS No. 850470, Final, UMT, CA, San Jose Multimodal Transportation Terminal Facility, Construction and Development, Santa Clara County, Due: December 2, 1985, Contact: Brigid Hynes-Cherin (415) 556-9368.

EIS No. 850471, Final, BOP, FL, Marianna Federal Correctional Institution and Federal Prison Camp, Construction/Operation, Jackson County, Due: December 2, 1985, Contact: Loy Hayes (202) 272-6535.

EIS No. 850473, Draft, AFS, MT, Jardine Joint Venture Gold Mine Project, Permit Gallatin National Forest, Park County, Due: December 16, 1985, Contact: Elena Green (202) 447-4710.

EIS No. 850474, Draft, FHW, MD, Calvert Road Closure, US-1 to MD-201, Construction of Metro Line, Prince Georges County, Due: January 6, 1985, Contact: Edward Terry (301) 962-4010.

EIS No. 850475, Draft, UAF, NV, Groom Mountain Range Addition, Nellis AFB, Bombing and Gunnery Range, Renewed Withdrawal from Public Lands, Lincoln County, Due: December 30, 1985, Contact: Capt. Donald Zona (804) 764-4430.

EIS No. 850476, Final, USA, TX, Camp Bullis Combat Assault Landing Strip Operations, Fort Sam Houston, Bexar County, Due: December 2, 1985, Contact: Richard Strimel (512) 221-4930.

EIS No. 850477, Final, AFS, AZ, Tonto National Forest, Land and Resource Management Plan, Due: December 2, 1985, Contact: Elena Green (202) 447-4710.

#### Amended Notices

EIS No. 850291, Draft, AFS, TX, East Texas National Forests and Caddo and LBJ National Grasslands, Land and Resource Management Plan, Due: November 1, 1985, Published FR 7-19-85—Review period extended.

EIS No. 850438, Final, NRC, PA, Beaver Valley Power Station, Unit 2, Operating License, Ohio River, Beaver County, Due: November 18, 1985, Published FR 10-11-85—Review period reestablished.

Dated: October 29, 1985.

David G. Davis,  
*Acting Director, Office of Federal Activities.*  
[FR Doc. 85-26148 Filed 10-31-85; 8:45 am]  
BILLING CODE 6560-50-M

[OW-IRL-2917-6]

#### National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Pub. L. 92-423, "The Federal Advisory Committee

Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held at 9:00 a.m. on November 20, 1985, and at 8:30 a.m. on November 21, 1985, at the EPA Headquarters, North Conference Center, 401 M Street SW., Washington, DC 20460. Council subcommittees will be meeting at EPA Headquarters on November 19, 1985.

The purpose of the meeting will be to review the Primary Drinking Water Regulations.

This meeting will be open to the public. The Council encourages the hearing of public statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to five minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-5533. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 15, 1985.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The telephone number is: Area Code 202/382-5533.

Dated: October 24, 1985.

William N. Hedeman, Jr.,  
*Acting Assistant Administrator for Water.*  
[FR Doc. 85-26114 Filed 10-31-85; 8:45 am]  
BILLING CODE 6560-50-M

#### FEDERAL MARITIME COMMISSION

##### Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and

Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Regency Maritime Corporation, Ridan Investment Trust Inc. and Regency Cruises Inc., c/o Regency Cruises Inc., 260 Madison Avenue, New York, NY 10016

Dated: October 29, 1985.

Bruce A. Dombrowski,  
*Acting Secretary.*

[FR Doc. 85-26136 Filed 10-31-85; 8:45 am]

BILLING CODE 6730-01-M

#### FEDERAL RESERVE SYSTEM

##### The Chase Manhattan 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 November 21, 1985.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York; to acquire Third Century, Inc., Sturgeon Company, Moberly, Missouri, indirectly acquiring Third Century, Ltd., Moberly, Missouri, and thereby engage in the leasing of personal property (including acting as agent, broker and adviser in leasing such property) pursuant to § 225.25(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1985.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 85-28088 Filed 10-31-85; 8:45 am]

BILLING CODE 6210-01-M

#### **Cloverdale Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 22, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cloverdale Bank Corporation*, Cloverdale, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First

National Bank of Cloverdale, Cloverdale, Indiana.

2. *Bancorp of Mississippi, Inc.*, Tupelo, Mississippi; to acquire 4.99 percent (and if certain debentures are converted into stock, up to 41.96 percent) of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi, thereby indirectly acquiring First Mississippi National Bank, Hattiesburg, Mississippi.

Board of Governors of the Federal Reserve System, October 28, 1985.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 85-28085 Filed 10-31-85; 8:45 am]

BILLING CODE 6210-01-M

#### **Corestates 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 C.F.R.) 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 November 21, 1985.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 8th Street, Philadelphia, Pennsylvania 19105:

1. *Corestates Financial Corp.*, Philadelphia, Pennsylvania; to acquire James Talcott, Inc., New York, New York, and thereby engage in factoring and commercial finance activities pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 28, 1985.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 85-28086 Filed 10-31-85; 8:45 am]

BILLING CODE 6210-01-M

#### **Southern National Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 21, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation*, Lumberton, North Carolina; to acquire 100 percent of the voting shares of Horry County National Bank, Loris, South Carolina.

**B. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis Minnesota 55480:

1. *Darman Financial of Minnesota, Incorporated*, Harmony, Minnesota; to become a bank holding company by acquiring 98 percent of the voting shares of Harmony State Bank, Harmony, Minnesota.

**C. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cattleman's Bancshares, Inc.*, Gordon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Gordon Financial Corporation, Gordon, Texas, thereby indirectly acquiring The First National Bank of Gordon, Gordon, Texas.

Board of Governors of the Federal Reserve System, October 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-26087 Filed 10-31-85; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 25, 1985.

#### Public Health Service

##### *Food and Drug Administration*

Subject: Follow-up on Growth Hormone Recipients—New

Respondents: Businesses or other for-profit institutions, non-profit institutions

Subject: Resource Data for State Food and Drug Program—Reinstatement (0910-0020)

Respondents: State/local governments  
OMB Desk Officer: Bruce Artim

##### *Health Resources and Services Administration*

Subject: HMO Qualification Applications; HMO Expansion Application; Competitive Medical

Plan Application—Revision (0915-0065)

Respondents: Health Maintenance Organizations, Competitive Medical Plans

OMB Desk Officer: Fay S. Iudicello

##### *Health Care Finance Administration*

Subject: Medicaid Management Information System: System Requirements (BPO-33)-HCFA-R-59—New

Respondents: State/local governments, businesses or other for-profit institutions, for-profit institutions, non-profit institutions

OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Office on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-26153 Filed 10-31-85; 8:45 am]

BILLING CODE 4150-04-M

#### Food and Drug Administration

[FDA-225-85-4000]

#### Memorandum of Understanding Among the Fish and Wildlife Service, Food and Drug Administration, National Marine Fisheries Service, National Ocean Service, and Environmental Protection Agency

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) among the Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS) and the National Ocean Service (NOS) of the National Oceanic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA) and FDA. This MOU acknowledges the mutual interests and responsibilities of these agencies in developing actions to protect and manage the Nation's estuarine and coastal water environment.

**DATE:** The agreement became effective June 14, 1985.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301-443-1583.

**SUPPLEMENTARY INFORMATION:** In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the *Federal Register*, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding

on  
Shellfish Growing Waters  
Among

Fish and Wildlife Service

U.S. Department of the Interior  
and

Food and Drug Administration  
Department of Health and Human  
Services  
and

National Marine Fisheries Service  
National Oceanic and Atmospheric  
Administration  
Department of Commerce  
and

National Ocean Service

National Oceanic and Atmospheric  
Administration  
Department of Commerce  
and

Office of Water

U.S. Environmental Protection Agency

#### I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to improve and increase the cooperation and coordination of monitoring efforts; avoid duplication of efforts, and make more efficient use of federal resources supporting monitoring programs for estuarine and coastal waters, especially shellfish waters that are of mutual interest to the Fish and Wildlife Service (FWS), the Food and Drug Administration (FDA), the National Marine Fisheries Service (NMFS) and the National Ocean Service (NOS) of the National Oceanic and Atmospheric Administration (NOAA), and the Environmental Protection Agency (EPA). It sets forth a working arrangement which commits each agency, in meeting its responsibilities in this area of interest, to provide information which would be shared by all parties to this MOU.

#### II. Definitions

**Estuarine**—Saline and brackish waters from the open ocean to the junction of fresh water; the area where the ocean and fresh water mix. For the purposes of the *National Shellfish Register of Classified Estuarine Waters* the term estuarine has been defined as having an internal boundary where

salinity values range from 2.0 to 5.0 parts per thousand.

Marine—Saline waters over the continental shelf which are not classified as estuarine.

Shellfish—Molluscan shellfish limited to oysters, clams and mussels.

Shellfish growing waters—waters classified for shellfish growing and harvesting.

The *National Shellfish Register of Classified Estuarine Waters*—the National Shellfish Register or the Register records the acreages of all classified shellfish waters. Its purpose is to record and update all classified shellfish waters as determined by State shellfish control agencies.

### III. Background

The coastal zone contiguous to the United States contains over 20 million acres of estuarine waters that contain shellfish, 14.6 million acres of which are classified as shellfish producing areas for marketing. Historically, clean waters suitable for shellfish harvesting have been the economic focus and pride of coastal communities because they provide an abundance of safe, wholesome seafood and a variety of recreational and aesthetic experiences. The quality of estuarine waters reflects both adjacent shoreline activities and those throughout the vast drainage basins which feed the estuaries.

Each shellfish producing State has developed a program to monitor the safety of shellfish growing waters and the sanitary harvesting, processing and distribution of shellfish. The State programs are reviewed by the FDA. FDA has gathered all state data on the condition of shellfish waters, registering estuarine acres as approved, prohibited, conditional, restricted or nonshellfish/nonproductive. The analyses of the data demonstrate improving or declining water quality and acreage available for commercial shellfish harvest. The results have been published at five year intervals in *The National Shellfish Register of Classified Estuarine Waters*. The parties to the MOU will continue to gather and analyze water quality data, publish the Register, and expand their understanding of water quality issues, particularly as they impact public health. Shellfish are also harvested in the marine waters contiguous to coastal States. These productive areas will be added to the Register as they are reviewed and classified.

The quality of shellfish waters affects National concerns for public health, environmental quality, resource management, and coastal zone planning. These concerns are addressed by numerous Federal agencies.

#### A. The Fish and Wildlife Service

The FWS is responsible for conserving, protecting, and enhancing the quality of the Nation's fish and wildlife and their habitats, and facilitating the balanced development of these natural resources. Its functions include responsibility for fish and wildlife resources and habitats of National interest through research, management, and provision of technical assistance to other federal or non-government agencies and States. The effects of environmental contaminants influence natural resources and lands under direct

FWS management. The Service provides information on contaminant impacts to fish and wildlife and recommendations needed to effectively manage natural resources.

#### B. The Food and Drug Administration

The FDA is responsible for ensuring that foods shipped in interstate commerce are safe and for protecting consumers against adulterated, decomposed, unsanitary and misbranded food products including fish and shellfish. FDA also administers the cooperative National Shellfish Sanitation Program. This cooperative State-oriented program establishes guidelines and procedures for the sanitary control of shellfish harvest waters and the sanitary harvesting, processing and distribution of shellfish.

#### C. The National Oceanic and Atmospheric Administration

The NOAA is responsible for mapping and charting the Exclusive Economic Zone and ocean waters, assisting the States in managing, using, and conserving resources in the coastal zone, managing and conserving the fishery resources of the Fisheries Conservation Zone, and describing, monitoring, and predicting conditions in the atmosphere and oceans.

Within NOAA the NMFS has the primary Federal responsibility for conserving, managing, developing and protecting living marine resources which depend upon healthy and productive marine and estuarine habitats.

The National Ocean Service is responsible for publishing nautical charts, predicting tidal heights and times, collecting and maintaining oceanographic data, and conducting assessments to help determine marine resources use strategies which will result in maximum benefit to the nation with minimum environmental damage or conflicts among uses.

#### D. The Environmental Protection Agency

The EPA has the overall responsibility for maintaining and restoring a level of water quality great enough to provide for the protection and propagation of fish, shellfish, and wildlife and allow for recreation in and on the water. In carrying out its responsibilities, EPA works with the States to monitor environmental quality and is responsible for reporting to the Congress on the overall quality of the Nation's waters. EPA and FDA are responsible for establishing safe levels of contaminants in foods.

### IV. Authority

This MOU is entered into under the authority of section 104 of the Clean Water Act of 1977 (Pub. L. 95-217); the Lacey Act Amendments of 1981 (16 U.S.C. 3371, *et seq.*); the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), as amended; the Fish and Wildlife Act of 1956 (16 U.S.C. 742e), as amended; and 15 U.S.C. 1525; sections 301, 308, 311, 361 of the Public Health Service Act (Pub. L. 410-58 Stat., 691, 693, 703, 74 Stat., 364 as amended (42 U.S.C. 241, 242f, 243, 264)); sections 402, 403, 406, 701(a) of the Federal Food, Drug and Cosmetic Act (Pub. L. 717-52 Stat., 1046-1048, [1]055, as amended

(21 U.S.C. 342, 343, 346, 371(a)); section 202 of the Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, Title II, 33 U.S.C. 1442); the Coast and Geodetic Survey Act of 1947 (33 U.S.C. 883 a-e); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 960, *et seq.*); and implementing regulations of the National Contingency Plan at 40 CFR 300.1-300.81.

### V. Scope of Work

This MOU acknowledges the mutual interests and responsibilities of FWS, FDA, NMFS and NOS of NOAA, and EPA in developing actions to protect and manage the Nation's estuarine and coastal water environment. Cooperatively, the parties to this agreement will conduct the following activities:

#### 1. Publish *The National Shellfish Register of Classified Estuarine Waters*.

This document has been published by the FDA or the EPA every five years since 1960. The parties to the MOU will develop jointly a plan for the future publication of the Register. This plan will identify the lead agency and determine frequency of publication and the scope of the document. This plan will be forwarded to appropriate agency officials for action. Final plans for developing future documents will then be prepared and implemented by the participating agencies.

#### 2. Collect and Share Water Resource and Contaminant Information for Estuarine and Coastal Water Areas.

Each party to this agreement maintains data files or operates monitoring programs to collect data on water resources and contaminant levels in estuarine and coastal water areas. The participating agencies agree to exchange that information and cooperate in joint data collection efforts.

#### 3. Conduct Analyses of Estuarine and Coastal Water Data, Produce Maps and Reports.

Each party to the MOU has, from time to time, developed or experimented with different analytical techniques, monitoring strategies, computer applications, and graphic displays to carry out their responsibilities relating to the Nation's estuaries and coastal waters. Parties to the MOU will periodically review their experiences and capabilities and will make appropriate arrangements to share them in order to improve individual agency reports or to jointly analyze data for multi-agency reports.

#### 4. Promote Public Awareness of the Value of Shellfish Growing Waters.

From time to time, the parties to the MOU have the opportunity through internal meetings, symposia, public meetings, or written reports to discuss the value of shellfish growing waters. Each party will share knowledge to support, in any appropriate manner, each other's efforts to produce high quality information for the public.

### VI. Funding

Any funding arrangements between and among parties to the MOU which result from the above activities will be addressed as an amendment to this MOU or through separate

agreements as referenced under section X.2 of this MOU.

#### VII. Publication of Data

All parties to the MOU will be given an opportunity to review preliminary reports or portions of reports concerning estuarine quality and shellfish growing areas prepared for publication pursuant to this MOU by any other party to this MOU.

#### VIII. Periodic Meetings

All parties agree to meet semi-annually and more often, if needed, to exchange information and coordinate activities, where appropriate.

#### IX. Period of the MOU

The terms of the MOU will become effective upon the last signature of the approving officials of the respective agencies entering this MOU. The terms of the MOU will remain in effect until terminated by (1) mutual agreement; or (2) one year advance written notice by any party.

#### X. Provisions

1. The MOU may be amended at any time by the consent of the parties. The MOU will be reviewed periodically, but not less than annually.

2. Nothing contained herein modifies other existing agreements or MOUs nor does it preclude the individual parties from entering into separate agreements setting forth procedures for special programs which can be handled more efficiently and expeditiously by such other arrangements.

3. Nothing herein is intended to conflict with current FSW, FDA, NMFS, NOS, or EPA regulations or directives. If the terms of the MOU are inconsistent with the existing regulations or directives of any of the agencies entering into this MOU, then those portions of this MOU which are determined to be inconsistent shall be invalid. However, the remaining terms and conditions of this MOU not affected by inconsistency shall remain in full force and effect. At the first opportunity for review of the MOU, such changes as are deemed necessary, will be accomplished by either an amendment to this MOU or by entering into a new MOU, whichever is deemed more expeditious by the parties.

If disagreement should arise as to the interpretation of the provisions of the MOU, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other parties for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

#### XI. Project Officers

A. The U.S. Fish and Wildlife Service project officer is: David M. Smith, Fish and Wildlife Service, Resource Contaminant Assessment, 18th and C Streets, NW., Washington, DC 20240 (telephone (202) 343-5452).

B. The U.S. Food and Drug Administration project officer is: J. David Clem, Food and

Drug Administration, Shellfish Sanitation Branch, (HFF-334), Department of Health and Human Services, 200 C Street SW., Washington, DC 20204 (telephone (202) 485-0149).

C. The National Marine Fisheries Service project officer is: David M. Dressel, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235 (telephone (202) 634-7458).

D. The National Ocean Service project officer is: John Paul Tolson, Ocean Assessments Division, Office of Oceanography and Marine Assessment, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, MD 20852 (telephone (301) 443-8843).

E. The U.S. Environmental Protection Agency project officer is: Thomas M. Murray, Environmental Protection Agency, Monitoring and Data Support Division (WH-553), 401 M Street SW., Washington, DC 20460 (telephone (FTS) (202) 382-7056).

#### XII. Signature of Each Party

Approved and Accepted for the U.S. Fish and Wildlife Service.

By: s/ Harold J. O'Connor,

Title: Associate Director—Habitat Resources.

Date: June 14, 1985.

Approved and Accepted for the National Marine Fisheries Service.

By: s/ William G. Gordon,

Title: Assistant Administrator for Fisheries.

Date: May 9, 1985.

Approved and Accepted for the U.S. Food and Drug Administration

By: s/ Joseph P. Hile,

Title: Associate Commissioner for Regulatory Affairs.

Date: May 13, 1985.

Approved and Accepted for the National Ocean Service.

By: s/ Paul M. Wolff,

Title: Assistant Administrator for National Ocean Service.

Date: May 28, 1985.

Approved and Accepted for the U.S. Environmental Protection Agency.

By: s/ Edwin L. Johnson,

Title: Acting Deputy Assistant Administrator, Office of Water.

Date: May 8, 1985.

Dated: October 25, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-26080 Filed 10-31-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0473]

#### Symposium and Workshop on Interspecies Extrapolation of Dose-Response Data on Carcinogenicity; Request for Data and Information

AGENCY: Food and Drug Administration.

#### ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Federation of American Societies for Experimental Biology's (FASEB) Life Science Research Office (LSRO) will conduct a symposium and a workshop to examine scientific aspects of dose-response extrapolation among animal species and between animal species and humans for the carcinogenic potential of industrial chemicals, natural toxins, pharmaceuticals, and pesticides and related substances. The symposium will be open to the public. Workshop attendance will be by invitation only. Interested persons are invited to submit scientific data, information, and related reference materials.

**DATES:** The symposium will be held Monday, January 6, 1986, while the workshop will be held, Tuesday, January 7, 1986. Both the symposium and the workshop will begin at 8 a.m. Written scientific data, information, and related reference materials may be submitted until December 30, 1985. Requests to make oral presentations at the symposium must be in writing, be postmarked before December 23, 1985, and be received by December 30, 1985.

**ADDRESSES:** Written scientific data, information, and related reference materials should be submitted as follows: two copies to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and two copies to Ralph C. Wands, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Written requests to make oral presentations should be directed in the same manner to both addresses above. The symposium will be held at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD. The workshop will be held at the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814.

#### FOR FURTHER INFORMATION CONTACT:

Ralph C. Wands or Thomas A. Hill, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030,

or

Robert J. Scheuplein, Center for Food Safety and Applied Nutrition (HFF-101), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-245-1372.

**SUPPLEMENTARY INFORMATION:** Under the terms of Contract No. 223-83-2020 between FASEB and FDA, FASEB will (1) provide expert, objective counsel to the agency on general or specific issues of scientific fact and (2) explore the effectiveness and efficiency of various scientific review mechanisms. FDA has specifically requested that FASEB address the following scientific questions: (1) What are the existing methods for performing interspecies extrapolation? (2) What are the strengths of the databases supporting these methods? (3) Are there cases (e.g., for a particular route of administration, compound, or other situation) in which one method would be suitable but not another? (4) Is there any reason to believe that a uniform extrapolation methodology for interspecies comparisons can be derived for all substances and species, based on existing data? and (5) If existing data would be sufficient to resolve this question, what are the nature and extent of the databases that must be analyzed?

In response to FDA's request, FASEB will hold an open symposium, and a workshop limited to those invited by FASEB, to address the foregoing questions.

Related matters that will be discussed during the symposium and the workshop include an evaluation of the pertinence, if any, of the following bases for interspecies extrapolation of dose-response data: (1) In proportion to the body masses of humans and test animals, (2) on the basis of concentration in the diet, and (3) in proportion to the surface areas of humans and test animals.

A brochure identifying the invited speakers and describing the symposium program, registration procedures, and registration fees is available from the contact persons listed above.

Proceedings of the symposium and workshop will be published and provided to all persons who attend.

Dated: October 25, 1985.

Mervin H. Shumate,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85-26081 Filed 10-31-85; 8:45 am]

BILLING CODE 4150-01-M

## Public Health Service

### Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the

Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 50 FR 9908, March 12, 1985) is amended to update functional statements.

The Food and Drug Administration is updating functional statements for the Office of Management, Center for Veterinary Medicine by adding a statement about information resources management. Adding the statement will clarify activities which are conducted in the office. Also other general management activities that have been conducted in the office are now included in the functional statement.

Section HF-B, *Organization and Functions* is amended as follows:

Delete paragraph (m-1-i), *Office of Management (HFV1A)* and insert new paragraph (m-1-i) *Office of Management (HFV1A)*.

(m-1-i) *Office of Management (HFV1A)*. Serves as the principal management advisor to the Center Director.

Participates in establishing the Center's management and administrative policy; and develops and publishes regulatory, scientific, and administrative policies.

Develops short range and strategic resource plans for accomplishing program objectives.

Formulates the Center's portion of the Agency's budget proposal for submission to the Department, Office of Management and Budget, and Congress.

Plans and directs Center operations for financial and personnel management, employee development and training, equal employment opportunity activities, and facilities and office services.

Manages policy, planning, and development of the Center's information resources.

Directs the Center's organization and management systems.

Directs public information and education programs; manages the Center's Freedom of Information program; and manages sensitive documents and official records pertaining to animal drugs.

Effective date: October 22, 1985.

Dated: October 22, 1985.

Peter J. Bersano,

*Acting Director, Office of Management, Office of the Assistant Secretary for Health.*

[FR Doc. 85-26107 Filed 10-31-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[I-19974]

#### Realty Action; Direct Sale of Public Land in Owyhee County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

**SUMMARY:** The following-described lands have been examined, and through the land use planning process, have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 at no less than fair market value:

Boise Meridian, Idaho

T. 2 S., R. 5 W.,

Sec. 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

Containing 40 acres.

The patent, when issued, will contain the following reservations to the United States:

1. Ditches and canals.
2. Oil and gas.

The patent will be subject to all valid, existing rights and reservations of record.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

The lands are being offered by direct sale to George Johnstone, the existing user.

The offer to purchase will include a \$50.00 nonreturnable filing fee for processing the conveyance of mineral interests of no known value.

If no offer to purchase is received within 30 days after this tract is offered, it will be offered for sale by competitive bid until March 25, 1986.

**DATE AND ADDRESSES:** The sale offering will be held in the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, no less than 60 days following the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning the sale terms and conditions and other details can be obtained by contracting Blackie Bruegman at the above address or by calling (208) 334-1562.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of this notice, interested parties may submit comments to the Boise District Manager at the above address.

Dated: October 16, 1985.

Martin J. Zimmer,

District Manager.

[FR Doc. 85-25816 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-GG-M

[Serial Number AA-51135]

**Sale of Public Land on Denali Highway, AK**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, FLPMA Section 203 Sale.

**SUMMARY:** The following described tract of land has been examined and through land use planning identified as suitable for disposal by non-competitive sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

U.S. Survey No. 8523, Alaska situated on the southerly right-of-way of the Denali Highway at approximate milepost 99.5. Containing 5 acres.

This notice of realty action proposes the sale of land under the jurisdiction of the Bureau of Land Management and located at Mile 100 on the Denali Highway, Alaska. The sale is intended to legalize valuable improvements, long term occupancy, and to facilitate land use planning in the area. Retention of these lands would not serve any Federal purpose.

This disposal action is a non-competitive offering at fair market value to the owner of the existing improvements.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this action, is available for review at the Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska, or the Glennallen Resource Area Office in Glennallen, Alaska. For further information call (907) 267-1200.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of Interior.

Wayne A. Boden,

Anchorage District Manager.

[FR Doc. 85-26145 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-JA-M

**Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands**

1. The Plats of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., December 16, 1985.

Mount Diablo Meridian, Nevada

T. 31 N., R. 33 E.

2. The land within the above township varies from mountainous in the east portion to nearly level in the southwest central portion with the remaining portion gently rolling. Elevation ranges from about 4,300 to 7,600 ft. above sea level. The soil varies from clay loam and rocky on the higher elevations to sandy clay loam on the more level portions. Vegetation consists of sagebrush, native grasses, rabbitbrush, Brigham tea and shadscale. Pinon pine and juniper are located in the mountainous portions with willows and cottonwood in the canyon bottoms. Many canyons are in the mountainous east portion with the biggest ones being Eldorado, Antelope, Black, Johnson, Florida and Humboldt. The major drainages are all in a westerly direction into the Humboldt River. Access is by rough trail roads into mining activity in the mountains. Interstate Highway No. 80 enters the township in section 33, proceeds in a northerly direction changing to northeasterly and leaves in section 3.

Many tunnels and prospects are located in the mountains indicating much mining activity in the past although there are no active operations at present. Patented mineral surveys are located in sections 1, 2, 12 and 13.

Mount Diablo Meridian, Nevada

T. 31 1/2 N., R. 33 E.

3. The terrain within the above township is mountainous and the elevation ranges from about 4,800 to 5,900 ft. above sea level. The soil is rocky clay. Vegetation consists of sagebrush, shadscale and native grass with juniper and pinon pine on the slopes and cottonwood, willows and rose bushes along the bottom of Humboldt Canyon. Drainage is supplied by Humboldt Canyon which runs in a northwesterly direction. Access is provided by a trail road paralleling Humboldt Canyon.

Many tunnels and prospects are in the surrounding area although none appear to be within the area of the township.

Mount Diablo Meridian, Nevada

T. 31 N., R. 33 1/2 E.

4. The terrain within the above township is mountainous and the elevation ranges from about 5,600 to

6,400 ft. above sea level. The soil consists of clay with rocky outcroppings. Vegetation consists of sagebrush, cacti and native grass with juniper and pinon pine on the slope and cottonwood, willows and rose bushes along the bottom of Humboldt Canyon. The area is drained by Humboldt Canyon which runs in a northwesterly direction. Access is provided by a trail road in Humboldt Canyon.

Some mining activity was noted during the survey of the township.

5. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m., on December 16, 1985, shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

Inquiries concerning these surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno Nevada 89520.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 85-26141 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-HC-M

**National Park Service**

**Golden Gate National Recreation Area Advisory Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, November 20, 1985, at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman  
Ms. Amy Meyer, Vice Chair  
Mr. Ernest Ayala  
Mr. Richard Bartke  
Mr. Fred Blumberg  
Ms. Margot Patterson Doss  
Mr. Jerry Friedman

Ms. Daphne Greene  
Mr. Peter Haas, Sr.  
Mr. Burr Heneman  
Mr. John Mitchell  
Ms. Jimmy Park Li  
Mr. Merritt Robinson  
Mr. John J. Spring  
Dr. Edgar Wayburn  
Mr. Joseph Williams

The main agenda item is the presentation of a preliminary plan for the Phillip Burton memorial.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Acting General Superintendent Brian O'Neill, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by December 20, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: October 22, 1985.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 85-26140 Filed 10-31-85; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[No. MC-F-16291]

### Finance Applications; Aluminum Company of America—Continuance in Control—REA Magnet

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 11343(e), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the continuance in control by Aluminum Company of America of Rea Magnet Wire Company, Inc., which recently obtained initial operating authority in MC-183733.

**DATE:** This exemption will be effective on October 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289-4357

(DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 11, 1985.

By the Commission Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Simmons concurred in the result. Chairman Taylor and Commissioner Lamboley concurred in the result with separate expressions.

James H. Bayne,

Secretary.

[FR Doc. 85-26100 Filed 10-31-85; 8:45 am]

BILLING CODE 7035-01-M

[No. 29886 (Sub-1)]

### Official—Southwestern Division; Divisions of Joint Rates Between Official and Southwestern Territories; Missouri Pacific Railroad Corp. et al.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Commission, on its own motion, is reopening this proceeding and requesting comments on whether to vacate all of the orders which prescribe joint rate divisions in *Official—Southwestern Division*, 287 I.C.C. 553 (1953). This action results from the Commission considering and granting a petition filed by Missouri Pacific Railroad Company and Consolidated Rail Corporation seeking authority to divide revenues from joint rates applicable to shipments of petroleum coke, calcined, from North Seadrift, TX to Niagara Falls, NY and St. Marys, PA, on a basis other than that prescribed in this proceeding in 1953.

**DATE:** Comments are due on December 2, 1985.

**ADDRESS:** Send comments referring to No. 29886 (Sub-No. 1) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2229, Washington, DC 20423, or call toll free (800) 424-5403, or (DC metro area) 289-4357.

Decided: October 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

\*This proceeding is given a sub-number to distinguish it from earlier proceedings.

Commissioner Sterrett was absent and did not participate in this decision.

James H. Bayne,

Secretary.

[FR Doc. 85-26098 Filed 10-31-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-178]

### Investigation Into Motor Carrier Insurance Rates

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of investigation and request for comments.

**SUMMARY:** By a petition filed on August 21, 1985, the American Trucking Associations, Inc. (ATA), requests that the Commission initiate a proceeding to determine (1) the extent of the insurance crisis facing the motor carrier industry, (2) the causes of this crisis, and (3) what action, if any, is appropriate to alleviate the problem. Under 49 U.S.C. 10927, motor carriers of property and passengers must acquire insurance before the Commission can issue operating authority. The minimum levels required are set forth at 49 CFR Part 1043. A carrier's certificate or permit remains in effect only if the carrier maintains appropriate insurance. The Commission is aware that carriers are experiencing increasing difficulty in obtaining the requisite insurance and that large increases in premiums are being charged to renew existing policies. Accordingly, we will initiate the investigation requested by ATA. We solicit comments addressing the three issues noted above. We also specifically solicit comments on how these matters may be affecting owner-operators and minority and female owned motor carriers. Numerous carriers, the National Small Shipments Traffic Conference, Inc., the Drug and Toilet Preparation Traffic Conference, Inc., and the American Insurance Association have prematurely filed comments in response to ATA's petition. We will consider those comments and urge these parties to file supplemental comments detailing their concerns.

**DATE:** Comments are due December 2, 1985.

**ADDRESSES:** The original and, if possible, 15 copies of comments should be sent to: Ex Parte No. MC-178, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

A copy of the comments also should be sent to petitioner's representative: William S. Busker, Vice President Legal

Affairs, American Trucking Associations, Inc., 2200 Mill Road, Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:**

Mark S. Shaffer, (202) 275-7292

or

Howell I. Sporn, (202) 275-7691.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

**Energy and Environmental Considerations**

This action does not appear to significantly affect either the quality of the human environment or conservation of energy resources. Comments are welcome on these issues.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 11701, and 10927.

Decided: October 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Vice Chairman Gradison dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-26099 Filed 10-31-85; 8:45 am]

BILLING CODE 7035-01-M

**Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intent to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cooper Industries, Inc., 1001 Fannin, Suite 4000, Houston, Texas 77002.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation; McGraw-Edison Company, a Delaware Corporation, (including all divisions and subsidiaries of McGraw-Edison Company, particularly Campbell Chain, Wagner and Power Systems Divisions).

1. Parent corporation and address of principal office: Razorback Farms, Inc., West Shady Grove Road, Springdale, AR 72764.

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

(i) Razorback Farms Company—

Arkansas

(ii) Southern Minerals & Fibers, Inc.—

Arkansas

(iii) Southern Minerals, Inc.—Arkansas

(iv) Juniper Products, Inc.—Arkansas

James H. Bayne,

Secretary.

[FR Doc. 85-26201 Filed 10-31-85; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[Training and Employment Guidance Letter No. 1-85]

**Wagner-Peyser Act; State Employment Security Agencies' Responsibilities in Incident Report Procedures**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Publication of guidance letter.

**SUMMARY:** The Employment and Training Administration (ETA) of the Department of Labor (DOL) has issued a guidance letter containing procedures and instructions for reporting known or suspected incidents of fraud, program abuse, or criminal conduct against programs under the Wagner-Peyser Act. The guidance letter is being published in the Federal Register for information.

**DATE:** Training and Employment Guidance Letter No. 1-85 was issued on October 23, 1985.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna C. Hall. Telephone: 202-376-6295.

**SUPPLEMENTARY INFORMATION:** The Secretary of Labor has stated that efforts to strengthen the Department's capabilities in the prevention and detection of fraud and abuse are of the highest priority. A systematic procedure for reporting instances of suspected or actual fraud or criminal conduct is a vital link in this overall effort. DOL has published regulations at 20 CFR 652.8(i) for the immediate and direct reporting of all information and complaints involving fraud, abuse, or other criminal activity to the Secretary of Labor. Training and Employment Guidance Letter No. 1-85 sets forth the procedures for reporting such incidents by the States.

Training and Employment Guidance Letter No. 1-85 is reprinted below for the information of the general public.

Signed at Washington, D.C., this 23rd day of October 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

**Training and Employment Guidance Letter No. 1-85**

From: Roberts T. Jones, Acting Deputy Assistant Secretary of Labor

Subject: State Employment Security Agencies' (SESAs), Responsibilities in Department of Labor (DOL), Incident Report Procedures

Dated: October 23, 1985.

Expiration Date: July 31, 1988.

1. *Purpose.* To transmit procedures for reporting known or suspected incidents of fraud, abuse, or criminal conduct.

2. *Background.* Sections 9 and 10 of the Wagner-Peyser Act, as amended by the Job Training Partnership Act, address certain Federal and State oversight responsibilities. In addition, 20 CFR 652.8(i) states in part that, "Any persons having knowledge of fraud, criminal activity or other abuse shall report such information directly and immediately to the Secretary. Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately."

3. *Policy.* The Employment and Training Administration's (ETA) policy recognizes the significant responsibilities of SESAs in conducting oversight of the Wagner-Peyser Act. In order to carry out responsibilities of 20 CFR 652.8(i), the ETA is issuing procedures to be used by SESAs for reporting to ETA Regional Administrators (RAs) known or suspected incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other criminal activities in ETA-funded programs. The reports submitted by SESAs serve a dual purpose. They provide information on fraudulent activities which may be prosecutable, and they provide information on other types of incidents which allow ETA to identify trends and patterns occurring throughout its various programs. The procedures described in the following section are intended to supplement, but not supplant, other systems of oversight carried out by Federal, State, and local entities.

4. *Notification to the Regional Office of Alleged Problems.* In order to facilitate the reporting process, DOL has developed procedures and standardized forms for reporting incidents. Any act which raises questions concerning possible illegal expenditures or other unlawful activities should be reported immediately. It is not the intent of the Incident Report (IR) to elicit reports only

after determination that an act or allegation is legally prosecutable. All such incidents shall be reported to ETA immediately even though the case may be subsequently handled by another Federal agency, or State or local law enforcement agencies.

DOL Incident Report Form DL 1-156 should be used to notify the RAs of all known or suspected cases of fraud, abuse, or other criminal activities in ETA-funded programs (See Attachment I, Facsimile of Form DL 1-156; Attachment II, Use and Preparation of Form DL 1-156; and Attachment III, Definition of Terms). The original and one copy of this form should be forwarded to the appropriate RA within one work day of the discovery of the occurrence. The RA will immediately distribute the IR in accordance with established DOL procedures.

These responsibilities and procedures do not apply to incidents concerning the following:

a. Unemployment Insurance fraudulent activities—Separate reporting instructions have been issued

in UIPL Nos. 16-85 and 17-85 and in the ET Handbooks Nos. 384, Change No. 5 and 391, Change No. 1.

b. State JTPA activities—Separate instructions have been issued in Training and Employment Guidance Letter No. 6-84.

c. Labor Certification Applications—These incidents are to be reported pursuant to 20 CFR 656.31.

5. *Office of the Inspector General/DOL Hotline.* It is anticipated that the incident reporting procedures outlined above will be utilized to report matters to the RA. However, all SESAs are requested to notify their employees of the availability of the OIG/DOL Hotline for providing information confidentially.

The Hotline—800-424-5409 (357-0227 FTS and Washington, D.C., local area)—was established for employees and the public to notify the OIG of suspected fraud, abuse, or waste in DOL-funded programs. The Hotline permits reporting of matters anonymously, if desired, to avoid fears of reprisal. Information supplies via the Hotline should be as specific as possible to enable the OIG to

identify and solve the problem. The Hotline should not be used for resolving employee grievances, EEO complaints, labor disputes, or other personnel concerns.

6. *Necessary Action.* a. Establish procedures for use by SESA personnel to ensure that their responsibilities are fulfilled to forward IRs to the appropriate RA within one work day of the discovery of the occurrence.

b. Ensure that SESA staff, subrecipients, contractors, etc. are familiar with the procedures that are established and the content of the attachments to this document.

7. *Inquiries.* Questions concerning this notice should be directed to Anna C. Hall, Chief, Division of Special Review and Internal Control, Office of Program and Fiscal Integrity, on 202-376-6295.

#### Attachments

- I. Facsimile of Form DL 1-156
- II. Use and Preparation of Form DL 1-156
- III. Definition of Terms

BILLING CODE 4510-30-M

Attachment I—DOL Form DL 1-156, Incident Report

Incident Report

U.S. Department of Labor

Office of Inspector General



**For Official Use Only** (When filled in)      1. Date of report      2. Agency designation code (Yr.) (Agency) (Report No.)      3. File Number (For IG use)

4. Type of report  
 Initial     Supplemental     Final     Other (Specify) \_\_\_\_\_

5. Type of incident     Conduct violation     Criminal violation     Program violation

6. Allegation against  
 DOL Employee     Contractor     Grantee     Program participant or claimant     Other (Specify) \_\_\_\_\_

Give name and position of employee(s), contractor(s), grantee, etc. List telephone number, OWCP or other Claim File Number, if applicable, and other identifying data.

7. Location of incident (Give complete name(s) and addresses of organization(s) involved)

8. Date and time of incident/discovery

9. Source of complaint     Public     Contractor     Grantee     Program Participant     Audit

Investigative Law Enforcement Agency (Specify) \_\_\_\_\_

Other (Specify) \_\_\_\_\_

Give name and telephone number so additional information can be obtained.

10. Contacts with law enforcement agencies (Specify name(s) and agency contacted and results)

11. Expected concern to DOL  
 Local     Regional     National     Media interest     Executive interest     GAO/Congressional interest

Other (Specify) \_\_\_\_\_

12. DOL Agency involved  
 SECY     ESA     ETA     ILAB     LMSA     MSHA     OASAM     OIG  
 OSHA     SOL     ASP     BLS     NCEP     WB     OIPA

Other (Specify) \_\_\_\_\_

Amount of grant or contract (If known) \$ \_\_\_\_\_      Amount of subgrant of subcontract (If known) \$ \_\_\_\_\_

13. Persons who can provide additional information (include custodian of records)

Name	Grade	Position or job title	Employment*	Local Address (Street, City, & State) or organization, if employed and telephone number

Enter one of these codes:  
 U - Unemployed    G - Grantee    C - Contractor    D - DOL    F - Other Federal Employee    P - Program Participant or claimant

(Complete page 2 of this form)



## Attachment II—Use and Preparation of Form DL 1-156, Incident Report

### A. Purpose

Form DL 1-156 should be used for reporting to Regional Administrators (RAs) incidents of program abuse, fraud, or other criminal violations involving ETA-funded programs and operations.

### B. Responsibilities of State Employment Security Agencies (SESAs) and Subrecipients

SESAs and subrecipients are responsible for reporting all actual or suspected violations to the RAs using the Incident Report Form DL 1-156. While such information may be phoned directly to the RAs, telephone reports should be supplemented by submission of the Incident Report form within 72 hours.

### C. Use of Incident Report Form, DL 1-156

1. *As an Initial Report.* The DL 1-156 is designed primarily as an initial report of actual or suspected violations to inform the RAs that a violation or apparent violation has occurred. It should also be used to initially inform the RAs of cases involving employees, programs, and operations being investigated by, or reported to, other investigative agencies.

2. *As a Supplemental Report.* The DL 1-156 should also be used to submit supplemental information not available at the time the original report was submitted. Form DL 1-156 should be used as indicated below.

(a) If it is determined that the matter cannot be resolved at the agency level and the case is administratively closed.

(b) Supplemental reports should be submitted without awaiting the results of adjudication.

3. *As a Final Report.* Form DL 1-156 should be used as indicated below.

(a) An incident is resolved or otherwise settled.

(b) Final adjudication or imposition of administrative/disciplinary action against the person or organization involved is initiated. When adjudication results become known, the final report should be sent to the RAs indicating the results.

### D. Completion of the Incident Report Form, DL 1-156

*Item 1:* Enter the date the form is actually prepared.

*Item 2:* Leave blank. For use by RAs only.

*Item 3:* Leave blank. For use by OIG only.

*Item 4:* Indicate the type of report being submitted by checking the

appropriate block. If the report is both an "Initial" and a "Final" report, place a check in both blocks.

*Item 5:* Check appropriate block.

*Item 6:* Check appropriate block.

*Item 7:* Enter the name of the person, recipient, or subrecipient, if applicable, and the location where the incident occurred. A general geographic location (city, town) or mail address should be used.

*Item 8:* Complete as necessary.

*Item 9:* Check appropriate block(s). Public includes the press.

*Item 10:* Any information requested by any law enforcement agency should be reported here. Identify the officer and/or agency who made the request. In Item 14 describe what information was requested from, and offered to, the outside agency.

*Item 11:* Indicate the type of interest/publicity that the incident may generate, or actually has generated, by checking the appropriate block(s). If necessary, a brief statement of explanation may be included in Item 14.

*Item 12:* Check appropriate block.

*Item 13:* Complete as necessary.

*Item 14:* Provide a clear, concise description of the incident. Describe in as much detail as is available and necessary to give a complete picture of what happened. Report the manner/method in which an incident actually or probably was committed and discovered. "How" an incident was discovered or committed should be reported in sufficient detail to assist proper authorities in the development of preventive measures. Estimate any possible monetary loss. Indicate whether ETA assistance is needed.

*Item 15:* Provide the name, title, address, and telephone number of the official completing the report.

*Item 16:* All copies should be signed by the official named in Item 15.

*Item 17:* Self explanatory.

*Item 18:* Self explanatory.

All items requiring additional space may be continued at the end of the description of the incident in Item 14 or on a separate sheet(s) of bond paper. Each continuation sheet should be headed "Continuation".

### E. Supporting Documentation

All documentation (e.g., photographs, drawings, etc.) pertinent or relevant to the incident or necessary to clarify the attendant allegations should be forwarded along with the Incident Report, if not previously provided.

### F. Transmission of Incident Reports

Mail Incident Reports to the appropriate RA as shown on the following page.

Note.—Incident Reports sent to the RA should be in a sealed envelope within the mailing envelope. In no event should reports be electronically transmitted.

## U.S. Department of Labor—Regional Administrators for the Employment and Training Administration

### Region I—Boston

Robert J. Semler, Acting Regional Administrator, U.S. Department of Labor/ETA, Room 1703, J.F. Kennedy Fed. Bldg., Boston, MA 02203, 8-223-6440/617-223-6440\*

### Region II—New York

Thomas E. Hill, Acting Regional Administrator, U.S. Department of Labor/ETA, 1515 Broadway, Room 3713, New York, NY 10036, 8-265-3210/212-944-3210\*

### Region III—Philadelphia

William J. Haltigan, Regional Administrator, U.S. Department of Labor/ETA, P.O. Box 8796,\*\* Philadelphia, PA 19101, 8-596-6336/215-596-6336\*

### Region IV—Atlanta

Lawrence E. Weatherford, Jr., Regional Administrator, U.S. Department of Labor/ETA, 1371 Peachtree Street NE., Room 405, Atlanta, GA 30309, 8-257-4411/404-881-4411\*

### Region V—Chicago

Steven M. Singer, Regional Administrator, U.S. Department of Labor/ETA, 230 S. Dearborn Street, room 628, Chicago, IL 60604, 8-353-0313/312-353-0313\*

### Region VI—Dallas

Floyd E. Edwards, Regional Administrator, U.S. Department of Labor/ETA, Federal Building—Room 317, 525 Griffin Street, Dallas, TX 75202, 8-729-6877/214-767-6877\*

### Region VII—Kansas City

Richard G. Miskimins, Regional Administrator, U.S. Department of Labor/ETA, Federal Bldg., Room 800, 911 Walnut Street, Kansas City, MO 64106, 8-758-3796/816-374-3796\*

### Region VIII—Denver

Luis Sepulveda, Regional Administrator, U.S. Department of Labor/ETA, 1961 Stout Street, R. 1676, Denver, CO 80294, 8-564-4477/303-844-4477\*

\*Commercial Dialing.

\*\*Street Address—3535 Market Street, Room 13300.

*Region IX—San Francisco*

Don A. Balcer, Regional Administrator,  
U.S. Department of Labor/ETA, 450  
Golden Gate Avenue, Box 36084  
(Room 9108), San Francisco, CA 94102,  
8-556-7414/415-556-7414\*

*Region X—Seattle*

Harry B. Brown, Acting Regional  
Administrator, U.S. Department of  
Labor/ETA, Room 1145, Federal  
Office Bldg., 909 First Avenue, Seattle,  
WA 98174, 8-399-7700/206-442-7700.\*

**Attachment III—Definition of Terms**

For the purpose of completing the Incident Report, fraud, misfeasance, nonfeasance or malfeasance, misapplication of funds, gross mismanagement, and employee/participant misconduct are explained in the following paragraphs. These definitions are illustrative and are not intended to be either fully inclusive nor restrictive.<sup>1</sup>

*a. Fraud, Misfeasance, Nonfeasance or Malfeasance.*

Fraud, misfeasance, and nonfeasance or malfeasance should be considered broadly as any alleged deliberate action which is apparently in violation of Federal statutes and regulations. This category includes, but is not limited to, indications of bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants, intentional payments to a contractor without the expectation of receiving services, payments to ghost enrollees, misuse of appropriated funds, and misrepresenting information in official reports.

*b. Misapplication of Funds.*

Misapplication of funds should be considered as any alleged use of funds, assets, or property for purposes not authorized or provided for under the Job Training Partnership Act (JTPA) or regulations, grants, or contracts. This category includes, but is not limited to, nepotism, political patronage, use of participants for political activities, ineligible participants, conflict of interest, failure to report income derived from Federal funds, violation of contract/grant procedures, and the use of Federal funds for other than specified purposes.

Indian and Native American programs are excluded from the aforementioned category regarding nepotism as cited in 20 CFR 632.118 of the Implementing

<sup>1</sup> OIG will focus only on those incidents reported under Categories "a" and "b" above. ETA will use the information reported on the other types of incidents as a management tool in order to identify trends and patterns occurring in the area of fraud and abuse.

Regulations for Title IV-A, B, and E of JTPA.

An Incident Report should be filed when it appears that there exists an intent to misapply funds rather than merely a case of minor mismanagement.  
*c. Gross Mismanagement.*

Gross mismanagement should be considered as actions or situations arising out of management ineptitude or oversight, leading to major violations of JTPA processes, regulations, or contract/grant provisions which could severely hamper the accomplishment of program goals. These include situations which lead to waste of Government resources and could jeopardize future support for a particular project. This category includes, but is not limited to, unauditible records, unsupported costs, highly inaccurate fiscal and/or program reports, payroll discrepancies, payroll deductions not paid to Internal Revenue Service, and the lack of good internal control procedures.

*d. Employee/Participant Misconduct.*

Employee/participant misconduct should be considered as actions occurring during or after normal work hours that reflect negatively on the Department of Labor, the grantee agency, or the JTPA program. This may include, but is not limited to, conflict of interest or the appearance of conflict of interest involving outside employment, business, and professional activities, the receipt or giving of gifts, fees, entertainment, and favors, misuse of Federal property, misuse of official information, and such other activities as might adversely affect the confidence of the public, as well as serious violations of Federal and State laws.

[FR Doc. 85-25946 Filed 10-31-85; 8:45 am]  
BILLING CODE 4510-30-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 85-70]

**NASA Advisory Council; Meeting**

**AGENCY:** National Aeronautics and Space Administration.  
**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on the Role of Man in Geostationary Orbit (GEO).

**DATE AND TIME:** November 21-22, 1985, 8:30 a.m. to 5 p.m. each day.

**ADDRESS:** NASA Headquarters, Conference Room 7002, 400 Maryland Avenue SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl R. Praktish, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

**SUPPLEMENTARY INFORMATION:** The NASA Advisory Council Task Force on the Role of Man in Geostationary Orbit was established under the NASA Advisory Council to provide counsel to NASA on the respective roles of manned and unmanned operations in geostationary orbit. It will also aid NASA in its efforts to understand the requirements for further space infrastructure. The Task Force, chaired by Dale Myers, has a total of 11 members. The meeting will be closed to the public from 11 a.m. to 5 p.m. on November 22, 1985, for a discussion of qualifications of candidates to participate in the Task Force as additional members. Because this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

For the open session, visitors will be admitted to the meeting room up to its capacity, which is approximately 75 persons, including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

**Type of Meeting:** Open—except for the closed session as noted in the following agenda.

**Agenda**

November 21, 1985

8:30 a.m.—Welcome, Introduction and Reasons for the Study.

9 a.m.—GEO Missions, Functions and Needs.

3:30 p.m.—New Capabilities Being Planned to Support Operations in GEO.

5 p.m.—Adjourn.

November 22, 1985

8:30 a.m.—Analyzing the Relative Roles of Manned and Unmanned Operations.

11 a.m.—Membership Discussion (closed).

5 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information, Programs Division, Office of Management.

October 24, 1985.

[FR Doc. 85-26068 Filed 10-31-85; 8:45 am]

BILLING CODE 7510-01-M

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES****Music Advisory Panel; Meeting**

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 Music Advisory Panel (Opera-Musical Theater New American Works Section) to the National Council on the Arts will be held on November 19-22, 1985, from 9:00 a.m.-6:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on November 19, 1985, from 9:00-9:45 a.m. in room M-07. The topics for discussion will be Introductions and discussion of review process.

The remaining sessions of this meeting on November 19, 1985, from 9:45 a.m.-6:00 p.m. and on November 20-22, 1985, from 9:00 a.m.-6:00 p.m. are for the purpose of Application Review under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6), and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

*Director, Council and Panel Operations, National Endowment for the Arts.*

October 28, 1985.

[FR Doc. 85-26143 Filed 10-31-85; 8:45 am]

BILLING CODE 7537-01-M

**Music Advisory Panel; Meeting**

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 Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on November 19-20, 1985, from 9:00 am-6:00 pm and November 21, 1985, from 9:00 am-5:30 pm in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on November 21, 1985, from 11:00 am-1:00 pm in room M-14. The

topics for discussion will be Policy and Guidelines.

The remaining sessions of the meeting on November 19-20, 1985, from 8:00 am-6:00 pm and on November 21, 1985, from 9:00-11:00 am and from 1:00-5:30 pm are for the purpose of Application Review under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682-5433.

John H. Clark,

*Director, Council and Panel Operations, National Endowment for the Arts*

October 28, 1985.

[FR Doc. 85-26142 Filed 10-31-85; 8:45 am]

BILLING CODE 7573-01-M

**NATIONAL SCIENCE FOUNDATION****Advisory Council; Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Council.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dates:

Thursday, November 21, 1985, 4:00-6:00 p.m., Room 523

Friday, November 22, 1985, 8:30 a.m.-2:30 p.m., Room 1242 B.

Type of Meeting: Open.

Contact Person: Mrs. Susan Kemnitzer, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 527, 1800 G Street NW., Washington, DC 20550, Telephone: 202/357-9730.

Purpose of Advisory Council: The purpose of the NSF Advisory Council is to provide advice and counsel to the NSF Director and principal members of his staff on matters of Foundation-wide concern. It represents a cross section on the scientific disciplines and program areas that are supported by the Foundation.

Summary Minutes: May be obtained from the contact person at above stated address.

Agenda: To assess the public's perception of science and technology generally and NSF specifically.

M. Rebecca Winkler,

*Committee Management Officer.*

October 29, 1985.

[FR Doc. 85-26181 Filed 10-31-85; 8:45 am]

BILLING CODE 7555-01-M

**Advisory Panel for Archaeological, Physical Anthropology; Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/Physical Anthropology.

Date and Time: November 18-21, 1985; 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, 1242-A.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, Washington, DC 20550, (202) 357-7804.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for physical anthropology and archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

*Committee Management Officer.*

October 29, 1985.

[FR Doc. 85-26182 Filed 10-31-84; 8:45 am]

BILLING CODE 7555-01-M

**Advisory Panel for Sociology; Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date and Time: November 18-19, 1985—Monday—9:00am to 5:30pm Tuesday—9:00am to 4:00pm.

Place: National Science Foundation, 1800 G Street NW., Washington, DC, Room 523.

Type of Meeting: Closed.

Contact Person: Mark Abrahamson, Program Director for Sociology or Stanley Presser, Associate Program Director for Sociology, Room 316, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357-7802.

Purpose of Advisory Panel: To provide advice and recommendation concerning support for research in the Sociology Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 29, 1985.

[FR Doc. 85-26164 Filed 10-31-85; 8:45 am]

BILLING CODE 7555-01-M

### Measurement Methods and Data Improvement; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel on Measurement Methods and Data Improvement.

Date/Time: November 18-19, 1985: 9:00 am to 6:00 pm.

Peace-Room 540, National Science Foundation, 1800 G. Street, NW., Washington, DC 20556.

Type of Meeting: Closed—November 18-19, 1985: 9:00 am. to 6:00 pm.

Contact Person: Dr. Murray Aborn, Program Director, Measurement Methods and Data Improvement, Room 312, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7913.

Summary of Minutes: May be obtained from the contact person Dr. Murray Aborn at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research and research-related projects in Measurement Methods and Data Improvement.

Agenda: Review and evaluation of research and research-related proposals as part of the award selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary

or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 29, 1985.

[FR Doc. 85-26163 Filed 10-31-85; 8:45 am]

BILLING CODE 7555-01-M

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information.

Agency Clearance Officer: Herman G. Fleming, (202) 375-9421.

OMB Desk Officer: Carlos Tellez, (202) 395-7340.

Title: National Science Foundation Proposal Evaluation Process.

Affected Public: Individuals.

Number of Responses: 130,900 responses; total of 654,500 burden hours.

Abstract: The Foundation's scientists, engineers and other officials evaluate all proposals submitted to the agency. To assist them in the evaluation process, the Foundation obtains the advice of scientists, engineers, and others who are specialists in the fields covered in the proposals. Assistance is obtained through mail review and assembled panels.

Dated: October 29, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85-26106 Filed 10-31-85; 8:45 am]

BILLING CODE 7555-01-M

### NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-455, STN 50-456, and STN 50-457]

#### Commonwealth Edison Co., Byron Station, Unit 2, Braidwood Station, Units 1 and 2; Exemption

##### I

Commonwealth Edison Company (the applicant) owns Byron Station, Unit 2, and Braidwood Station, Units 1 and 2, which were issued Construction Permit Nos. CPPR-131, CPPR-132 and CPPR-

133, respectively, on December 31, 1975. Byron Station, Unit 2, and the Braidwood Station, Units 1 and 2 (the facilities) are pressurized water reactors located in Ogle and Will Counties, Illinois, respectively and each unit is designed for a core power level of 3411 megawatts thermal.

##### II

The Construction Permit issued for the facilities provide, in pertinent part, that the facilities are subject to all rules, regulations and Orders of the Commission. This includes General Design Criterion (GDC) 4 of Appendix A to 10 CFR Part 50. GDC 4 requires that structures, systems and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with the normal operation, maintenance, testing and postulated accidents, including loss-of-coolant accidents. These structures, systems and components shall be appropriately protected against dynamic effects, including the effects of missiles, pipe whipping, discharging fluids that may result from equipment failures, and from events and conditions outside the nuclear power unit.

By a submittal dated September 17, 1984, the applicant enclosed Westinghouse Report WCAP-10554 (Westinghouse Non-Proprietary) and WCAP-10553 (Westinghouse Proprietary) (Reference 1) containing the technical basis for their request to eliminate the need for pipe whip restraints and jet impingement shields on primary loop piping for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

The applicant's exemption request does not affect the emergency core cooling system design bases, containment and subcompartment design bases, equipment qualification bases and engineered safety features systems response. The design of the reactor coolant system heavy component supports will continue to assume a double ended primary loop pipe break with a break area equal to that which would occur if pipe whip restraints were installed.

The applicant provided a value-impact analysis in its June 28, 1985 submittal which, together with the technical information contained in the Reference 1 report, provided a comprehensive justification for requesting a partial exemption from the requirements of GDC 4 for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2. The applicant also requested that the partial

exemption to GDC 4 be granted for the first two cycles of operation of each of the facilities. By letter dated August 14, 1985, the applicant withdrew, without prejudice, its request for the exemption for Byron Station, Unit 1.

By means of deterministic fracture mechanics analyses, the applicant contends that postulated double-ended guillotine breaks (DEGBs) of the primary loop reactor coolant piping will not occur in the Byron and Bradwood units and therefore need not be considered as a design basis for installing protective devices such as pipe whip restraints and jet impingement shields to guard against the dynamic effects associated with such postulated breaks. No other changes in design requirements are addressed within the scope of the referenced report; e.g., no changes to the definition of a LOCA nor its relationship to the regulations addressing design requirements for ECCS (10 CFR 50.46), containment (GDC 16, 50), other engineered safety features and the conditions for environmental qualification of equipment (10 CFR 50.49).

### III

The Commission's regulations require that applicants provide protective measures against the dynamic effects of postulated pipe breaks in high energy fluid system piping. Protective measures include physical isolation from postulated pipe rupture locations if feasible or the installation of pipe whip restraints, jet impingement shields or barriers. In 1975, concerns arose as to the asymmetric loads on pressurized water reactor (PWR) vessels and their internals which could result from these large postulated breaks at discrete locations in the main primary coolant loop piping. This led to the establishment of Unresolved Safety Issue (USI) A-2, "Asymmetric Blowdown Loads on PWR Primary Systems."

The NRC staff, after several review meetings with the Advisory Committee on Reactor Safeguards (ACRS) and a meeting with the NRC Committee to Review Generic Requirements (CRGR), concluded that an exemption from the regulations would be acceptable as an alternative for resolution of USI A-2 for 16 facilities owned by 11 licensees in the Westinghouse Owner's Group (one of these facilities, Fort Calhoun has a Combustion Engineering nuclear steam supply system). This NRC staff position was stated in Generic Letter 84-04, published on February 1, 1984 (Reference 2). The generic letter states that the affected licensees must justify an exemption to GDC 4 on a plant-

specific basis. Other PWR applicants or licensees may request similar exemptions from the requirements of GDC 4 provided that they submit an acceptable technical basis for eliminating the need to postulate pipe breaks.

The acceptance of an exemption was made possible by the development of advanced fracture mechanics technology. These advanced fracture mechanics techniques deal with relatively small flaws in piping components (either postulated or real) and examine their behavior under various pipe loads. The objective is to demonstrate by deterministic analyses that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before the flaws can grow to critical or unstable sizes which could lead to large break areas such as the DEGB or its equivalent. The concept underlying such analyses is referred to as "leak-before-break" (LBB). There is no implication that piping failures cannot occur, but rather that improved knowledge of the failure modes of piping systems and the application of appropriate remedial measures, if indicated, can reduce the probability of catastrophic failure to very small values.

Advanced fracture mechanics technology was applied in topical reports (References 3, 4, and 5) submitted to the staff by Westinghouse on behalf of the licensees belonging to the USI A-2 Owners Group. Although the topical reports were intended to resolve the issue of asymmetric blowdown loads that resulted from a limited number of discrete break locations, the technology advanced in these topical reports demonstrated that the probability of breaks occurring in the primary coolant system main loop piping is sufficiently low such that these breaks need not be considered as a design basis for requiring installation of pipe whip restraints or jet impingement shields. The staff's Topical Report Evaluation is attached as Enclosure 1 to Reference 2.

Probabilistic fracture mechanics studies conducted by the Lawrence Livermore National Laboratories (LLNL) on both Westinghouse and Combustion Engineering nuclear steam supply system main loop piping (Reference 6) confirm that both the probability of leakage (e.g., undetected flaw growth through the pipe wall by fatigue) and the probability of a DEGB are very low. The results given in Reference 6 are that the best-estimate leak probabilities for Westinghouse nuclear steam supply system main loop piping range from 1.2

$\times 10^{-8}$  to  $1.5 \times 10^{-7}$  per plant year and the best-estimate DEGB probabilities range from  $1 \times 10^{-12}$  to  $7 \times 10^{-12}$  per plant year. Similarly, the best-estimate leak probabilities for Combustion Engineering nuclear steam supply system main loop piping range from  $1 \times 10^{-8}$  per plant year to  $3 \times 10^{-8}$  per plant year, and the best estimate DEGB probabilities range from  $5 \times 10^{-14}$  to  $5 \times 10^{-13}$  per plant year. These results do not affect core melt probabilities in any significant way.

During the past few years it has also become apparent that the requirement for installation of large, massive pipe whip restraints and jet impingement shields is not necessarily the most cost effective way to achieve the desired level of safety, as indicated in Enclosure 2, Regulatory Analysis, to Reference 2. Even for new plants, these devices tend to restrict access for future inservice inspection of piping; or if they are removed and reinstalled for inspection, there is a potential risk of damaging the piping and other safety-related components in this process. If installed in operating plants, high occupational radiation exposure (ORE) would be incurred while public risk reduction would be very low. Removal and reinstallation for inservice inspection also entail significant ORE over the life of a plant.

### IV

The primary coolant system of Byron Station, Unit 2, and Bradwood Station, Units 1 and 2, described in Reference 1, have four (4) main loops each comprising a 33.9 inch diameter hot leg, a 36.2 inch diameter crossover leg and 32.14 inch diameter cold leg piping. The material in the primary loop piping is wrought cast stainless steel with cast stainless steel fittings and associated welds. In its review of Reference 1, the staff evaluated the Westinghouse analyses with regard to:

- The location of maximum stresses in the piping, associated with the combined loads from normal operation and the SSE;
- Potential cracking mechanisms;
- Size of through-wall cracks that would leak a detectable amount under normal loads and pressure;
- Stability of a "leakage-size crack" under normal plus SSE loads and the expected margin in terms of load;
- Margin based on crack size; and
- The fracture toughness properties of thermally-aged cast stainless steel piping and weld material.

The NRC staff's criteria for evaluation of the above parameters are delineated

in its Topical Report Evaluation, Enclosure 1 to Reference 2, Section 4.1, "NRC Evaluation Criteria," and are as follows:

(1) The loading conditions should include the static forces and moments (pressure, deadweight and thermal expansion) due to normal operation, and the forces and moments associated with the safe shutdown earthquake (SSE). These forces and moments should be located where the highest stresses, coincident with the poorest material properties, are induced for base materials, weldments and safe-ends.

(2) For the piping run/systems under evaluation, all pertinent information which demonstrates that degradation or failure of the piping resulting from stress corrosion cracking, fatigue or water hammer is not likely, should be provided. Relevant operating history should be cited, which includes system operational procedures; system or component modification; water chemistry parameters, limits and controls; resistance of material to various forms of stress corrosion, and performance under cyclic loadings.

(3) A through-wall crack should be postulated at the highest stressed locations determined from (1) above. The size of the crack should be large enough so that the leakage is assured of detection with adequate margin using the minimum installed leak detection capability when the pipe is subjected to normal operational loads.

(4) It should be demonstrated that the postulated leakage crack is stable under normal plus SSE loads for long periods of time; that is, crack growth, if any, is minimal during an earthquake. The margin, in terms of applied loads, should be determined by a crack stability analysis, i.e., that the leakage-size crack will not experience unstable crack growth even if larger loads (larger than design loads) are applied. This analysis should demonstrate that crack growth is stable and the final crack size is limited, such that a double-ended pipe break will not occur.

(5) The crack size margin should be determined by comparing leakage-size crack to critical-size cracks. Under normal plus SSE loads, it should be demonstrated that there is adequate margin between the leakage-size crack and the critical-size crack to account for the uncertainties inherent in the analyses, and leakage detection capability. A limit-load analysis may suffice for this purpose, however, an elastic-plastic fracture mechanics (tearing instability) analysis is preferable.

(6) The materials data provided should include types of materials and

materials specifications used for base metal, weldments and safe-ends, the materials properties including the J-R curve used in the analyses, and long-term effects such as thermal aging and other limitations to valid data (e.g., J maximum, maximum crack growth).

#### V

Based on its evaluation of the analysis contained in Westinghouse Report WCAP-10554 (Reference 1), the staff finds that the applicant has presented an acceptable technical justification, addressing the above criteria, for not needing the protective devices to deal with the dynamic effects of large pipe ruptures in the main loop primary coolant system piping of the facilities. This finding is predicated on the fact that each of the parameters evaluated for the facilities is *enveloped* by the generic analysis performed by Westinghouse in Reference 3, and accepted by the staff in Enclosure 1 to Reference 2. Specifically:

(1) The loads associated with the highest stressed location in the main loop primary system piping are 2254 kips (axial), 31,856 in-kips (bending moment) and result in maximum stresses of about 97% of the bounding stresses used by Westinghouse in Reference 3.

(2) For Westinghouse plants, there is no history of cracking failure in reactor primary coolant system loop piping. The Westinghouse reactor coolant system primary loop has an operating history which demonstrates its inherent stability. This includes a low susceptibility to cracking failure from the effects of corrosion (e.g., intergranular stress corrosion cracking), water hammer, or fatigue (low and high cycle). This operating history totals over 400 reactor-years, including five (5) plants each having 15 years of operation and 15 other plants with over 10 years of operation.

(3) The leak rate calculations performed for the facilities, using an initial through-wall crack of 7.5 inches are identical to those of Enclosure 1 to Reference 2. The facilities have RCS pressure boundary leak detection systems which are consistent with the guidelines of Regulatory Guide 1.45, and they can detect leakage of one (1) gpm in one hour. The calculated leak rate through the postulated flaw results in a factor of at least 10 relative to the sensitivity of the facilities' detection systems.

(4) The margin in terms of load of the facilities based on fracture mechanics analyses for the leakage-size crack under normal plus SSE loads is within the bounds calculated by the staff in section 4.2.3 of Enclosure 1 to Reference

2. Based on a limit-load analysis, the load margin is about 2.0 and based on the J limit, the margin is at least 1.1.

(5) The margin between the leakage-size crack and the critical-size crack was calculated by a limit load analysis. Again, the results demonstrated that a margin of at least 3 exists and is within the bounds of section 4.2.3 of Enclosure 1 to Reference 2.

(6) In addition to the wrought stainless steel pipes, the facilities have cast stainless steel fittings and associated welds in the primary coolant systems. As an integral part of its review, the staff's evaluation of the material properties data of Reference 7 is enclosed as Appendix I to this Safety Evaluation Report. The applied J for the facilities in Reference 1 for cast stainless steel fittings and associated welds was less than 3000 in-lb/in<sup>2</sup> and hence the staff's upper bound on the applied J (refer to Appendix I, page 6) was not exceeded.

In view of the analytical results presented in Reference 1 and the staff's evaluation findings related above, the staff concludes that the probability or likelihood of large pipe breaks occurring in the primary coolant system loops of the facilities is sufficiently low such that protective devices associated with postulated pipe breaks in the primary coolant systems of these facilities need not be installed. However, in order to provide the Commission with an opportunity to consider the long term aspects of the NRC staff's recent acceptance criteria of the "leak-before-break" approach, this exemption is limited to periods extending until completion of the second refueling outage of each of the facilities pending the outcome of Commission rulemaking on this issue.

Eliminating the need to consider these dynamic loads for this particular application has not affected the design bases for the emergency core cooling system, the containment and subcompartment, the response of engineered safety features systems, or the environmental qualification of equipment for the facilities. Also, it does not alter the design bases of reactor cavity and subcompartment pressurization from that originally approved, which were based on the governing piping ruptures.

The staff also reviewed the value-impact analysis provided by the applicant in its June 28, 1985 submittal for not providing protective structures against the dynamic loading effects of postulated reactor coolant system loop pipe breaks to assure as low as reasonably achievable (ALARA)

exposure to plant personnel. The acceptance criteria used in the evaluation were those stated in Section 12 of NUREG-800 (SRP) and Regulatory Guide 8.8, "Information Relevant to Ensuring That Occupational Radiation Exposure At Nuclear Power Stations Will Be As Low As Is Reasonably Achievable." The applicant, as part of the justification for the exemption to GDC 4, has estimated an occupational dose savings for plant personnel of approximately twelve person-rem per year, per reactor for Byron Station, Unit 2 and Braidwood Station, Units 1 and 2. This occupation dose estimate is based on breakdown categorization of occupational dose savings during inservice inspection procedures in and around the reactor coolant system. The staff believes the applicant's analysis to be a conservative estimate. Therefore, with respect to occupational exposure, the staff finds that there is a radiological benefit to be gained by eliminating the need for the protective structures.

#### IV.

In view of the staff's evaluation findings, conclusions, and recommendations above, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The Commission hereby approves the limited schedular exemption from GDC 4 of Appendix A to 10 CFR Part 50, to eliminate the requirement to install protective devices, as detailed in Part II of this exemption, associated with postulated pipe breaks primary coolant system of Byron Station, Unit 2, and Braidwood Station, Units 1 and 2. This exemption is effective for periods ending at the completion of the second refueling outage of each of the three facilities, pending the outcome of rulemaking on this subject.

Pursuant to 10 CFR 51.31, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (50 FR 43624).

The exemption will become effective upon date of issuance.

Dated at Bethesda, Maryland, this 28th day of October 1985.

For the Nuclear Regulatory Commission,  
Hugh L. Thompson, Jr.,  
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

(1) Westinghouse Report WCAP-10553, "Technical Bases for Eliminating Large Primary Loop Pipe Ruptures as the Structural Design Basis for Byron Units

1 and 2 and Braidwood Units 1 and 2, May 1984, Westinghouse Class 2 proprietary.

(2) NRC Generic Letter 84-04, "Safety Evaluation of Westinghouse Topical Reports Dealing with Elimination of Postulated Breaks in PWR Primary Main Loops," February 1, 1984.

(3) Mechanistic Fracture Evaluation of Reactor Coolant Pipe Containing a Postulated Circumferential Throughwall Crack, WCAP-9558, Rev. 2, May 1981, Westinghouse Class 2 proprietary.

(4) Tensile and Toughness Properties of Primary Piping Weld Metal for Use in Mechanistic Fracture Evaluation, WCAP-9787, May 1981, Westinghouse Class 2 proprietary.

(5) Westinghouse Response to Questions and Comments Raised by Members of ACRS Subcommittee on Metal Components During the Westinghouse Presentation on September 25, 1981, Letter Report NS-EPR-2519, E.P. Rahe to Darrell G. Eisenhut, November 10, 1981, Westinghouse Class 2 proprietary.

(6) Lawrence Livermore National Laboratory Report, UCRL-86249, "Failure Probability of PWR Reactor Coolant Loop Piping," by T. Lo, H.H. Woo, G.S. Holman and C.K. Chou, presented at the ASME PVP Conference and Exhibition, June 17-24, 1984, San Antonio, Texas.

(7) Westinghouse Report WCAP-10456, "The Effects of Thermal Aging on Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems," November 1983, Westinghouse Class 2 proprietary.

Note.—Non-proprietary versions of References 1, 3, 4, 5 and 7 are available in the NRC Public Document Room as follows:

(1) WACP-10554, non-proprietary.

(2) WCAP-9570.

(3) WCAP-9788.

(5) Non/proprietary version attached to the Letter Report.

(6) WCAP-10457.

**Appendix I.—Evaluation of Westinghouse Report WCAP 10456, "The Effects of Thermal Aging on the Structural Integrity of Cast Stainless Steel Piping for Westinghouse Nuclear Steam Supply Systems"**

#### Introduction

The primary coolant piping in some Westinghouse Nuclear Steam Supply Systems (NSSS) contain cast stainless steel base metal and weld metal. The base metal and weld metal are fabricated to produce a duplex structure of delta ( $\delta$ ) ferrite in an austenitic matrix. The duplex structure produces a material that has a higher yield strength, improved weldability and greater

resistance to intergranular stress corrosion cracking than a single phase austenitic material. However, as early as 1965 (Ref. 1), it was recognized that long time thermal aging at primary loop water temperatures (550 °F–650 °F) could significantly affect the Charpy impact toughness of the duplex structured alloys. Since the Charpy impact test is a measure of a material's resistance to fracture, a loss in Charpy impact toughness could result in reduced structural stability in the piping system.

The purpose of Report WCAP 10456 is to evaluate whether cast stainless steel base metal and weld metal containing postulated cracks will be sensitive to unstable fracture during the 40 year life of a nuclear power plant. In order to determine whether a piping system will behave in such a fashion, the pipe materials' mechanical properties, design criteria and method of predicting failure must be established. In this evaluation, we will assess the mechanical properties of thermally aged cast stainless steel pipe materials, which are reported in Report WCAP 10456.

#### Discussion

##### 1. Weld Metal

Report WCAP 10456 refers to test results reported in a paper by Slama, et. al. (Ref. 2) to conclude that the weld metal in primary loop piping would not be overly sensitive to aging and that the aged cast pipe base metal material would be structurally limiting. In the Slama report eight (8) welds were evaluated. The tensile properties were only slightly affected by aging. The Charpy U-notch impact energy in the most highly sensitive weld decreased from 7daJ/cm<sup>2</sup> (40 ft-lbs) to near 4daJ/cm<sup>2</sup> (24 ft-lbs) after aging for 10,000 hours at 400 °C (752 °F). This change was not considered significant. The relatively small effect of aging on the weld, as compared to cast pipe material was reported to be caused by a difference in microstructure and lower levels of ferrite in the weld in the cast pipe material.

##### 2. Cast Stainless Steel Pipe Base Metal

Report WCAP 10456 contains mechanical property test results from a number of heats of aged cast stainless steel material and a metallurgical study, which was performed by Westinghouse, to support a statistically based model for predicting the effect of thermal aging on the Charpy impact test properties of cast stainless steel. As a result of these tests and the proposed model, Westinghouse concludes that the fracture toughness test results from one heat of

material tested represents end-of-life conditions for the ten (10) plants surveyed. The ten (10) plants surveyed are identified as Plants A through J.

a. *Mechanical Property Test Results Reports in WCAP 10456.* Mechanical property test results on aged and unaged cast stainless steel materials which were reported in a paper by Landerman and Bamford (Ref. 3), Bamford, Landerman and Diaz (Ref. 4), Slama et al. (Ref. 2) were discussed in Report 10456. In addition, Westinghouse performed confirmatory Charpy V notch and J-integral tests on aged cast stainless steel material, which was tested and evaluated by Slama et al.

The results of these tests indicate that (1) The fatigue crack growth rate of aged or unaged material in air and pressurized water reactor environments were equivalent.

(2) Tensile properties were essentially unaffected except for a slight increase in tensile strength and a decrease in ductility.

(3) J-integral test results indicate that the  $J_{IC}$  and tearing modulus,  $T$ , are affected by aging.

b. *Mechanisms Study in WCAP 10456.* The tests and literature survey conducted by Westinghouse indicate that the proposed mechanism of aging occurs in the range or operating temperatures for pressurized water reactors and the data from accelerated aging studies can be used to predict the behavior at operating temperatures.

c. *Cast Stainless Steel Pipe Test.* The materials data discussed in the previous section of this evaluation were obtained from small specimens. As a consequence, the J-R results are limited to relatively short crack extensions. To investigate the behavior of cast stainless steel in actual piping geometry, Westinghouse performed two experiments, one of which was with thermally aged cast stainless steel and the other test was identical except that the steel was not thermally aged.

Each pipe tested contained a throughwall circumferential crack to the extent specified in WCAP 10456. The pipe sections were closed at the ends, pressurized to nominal PWR operating pressure and then bending loads were applied.

The results of the tests were very similar, in that both pipes displayed extensive ductility, and stable crack extension. There were no observed crack extension or fast fracture.

The results of the Westinghouse pipe experiments indicate that cast stainless steel, both aged and unaged, can withstand crack extensions well beyond the range of the J-R results with small specimens. However, if crack extension

is predicted in an actual application of thermally aged cast stainless steel in a piping system, we believe that it is prudent to limit the applied J to 3000 in-lbs/in<sup>2</sup> or less unless further studies and/or experiments demonstrate that higher values are tolerable. Loss of initial toughness due to thermal aging of cast stainless steels at normal nuclear facility operating temperatures occurs slowly over the course of many years; therefore, continuing study of the aging phenomenon may lead to a relaxation of this position. Conversely, in the unlikely event that the total loss of toughness and the rate of toughness loss are greater than those projected in this evaluation, the staff will take appropriate action to limit the values to that which can be justified by experimental data. Because the aging is a slow process, the staff believes there would be sufficient time for the staff to recognize the problem and to rectify the situation. However, the staff believes this situation is highly unlikely because the staff has accepted only the lower bounds of data that were gathered among ten plants encompassing the range of materials in use.

d. *Effects of Thermal Aging on Westinghouse Supplied Centrifugally Cast Reactor Coolant Piping Reported in WCAP 10456.* The reactor coolant cast stainless steel piping materials in the plants identified in WCAP 10456 as A through J, were produced to the specification SA-351, Class CF8A as outlined in ASME Code Section II, Part A and also to Westinghouse Equipment Specification G-678864, as revised. For these materials, Westinghouse has calculated the predicted end-of-life Charpy U-notch properties, based on their proposed model. The two (2) standard deviation end-of-life lower limit value for all the plants surveyed was greater than the Charpy U-notch properties of the aged reference materials, which Westinghouse indicates represents end-of-life properties for all the plants. As a result, Westinghouse concluded that the amount of embrittlement in the aged reference material exceed the amount projected at end-of-life for all cast stainless steel pipe materials in Plants A through J.

#### Conclusions

Based on our review of the information and data contained in Westinghouse Report WCAP 10456, we conclude that:

1. Weld metal that is used in cast stainless steel piping system is initially less fracture resistant than the cast stainless steel base metal. However, the weld metal is less susceptible to thermal

aging than the cast stainless steel base metal. Hence, at end-of-life the cast stainless steel base metal is anticipated to be the least fracture resistant material.

2. The Westinghouse proposed model may be used to predict the relative amount of embrittlement on a heat of cast stainless steel material. The two standard deviation lower confidence limit for this model will provide a useful engineering estimate of the predicted end-of-life Charpy impact properties for cast stainless steel base metal.

3. Since there is considerable scatter in J-integral test data for the heats of material tested, lower bound values for  $J_{IC}$  and  $T$  should be used as engineering estimates for the fracture resistance of the aged reference material. We believe these values should also provide a lower bound for the fracture resistance of aged and unaged weld metal. If crack extension is predicted in an actual application of cast stainless steel in a piping system, we conclude that the applied J should be limited to 3000 in-lbs/in<sup>2</sup> or less unless further studies and tests demonstrate that higher values are tolerable. The Westinghouse pipe tests demonstrate that this may be possible.

4. Since the predicted end-of-life Charpy impact values for the materials in Plants A through J are greater than the value measured for the aged reference material, the lower bound fracture properties for aged reference material may be used to determine the fracture resistance for the cast stainless steel material in Plants A through J.

#### References

- (1) F.H. Beck, E.A. Schoefer, J.W. Flowers, M.E. Fontana, "New Cast High Strength Alloy Grades by Structural Control," ASTM STP 369 (1965)
- (2) G. Slama, P. Petrequin, S.H. Masson, T.R. Mager, "Effect of Aging on Mechanical Properties of Austenitic Stainless Steel Casting and Welds," presented at SMIRT 7 Post Conference Seminar 6—Assuring Structural Integrity of Steel Reactor Pressure Boundary Components, August 29/30, 1983, Monterey, Ca.
- (3) E.I. Landerman and W.H. Bamford, "Fracture Toughness and Fatigue Characteristics of Centrifugally Cast Type 316 Stainless Steel After Simulated Thermal Service conditions. Presented at the Winter Annual Meeting of the ASME, San Francisco, Ca., December 1978 (MPC-8 ASME)
- (4) W.H. Bamford, E.I. Landerman and E. Diaz, "Thermal Aging of Cast Stainless Steel and Its Impact on Piping Integrity." Presented at ASME Pressure Vessel and Piping Conference, Portland, Oregon, June 1983.

[FR Doc. 85-26137 Filed 10-31-85; 8:45 am]

BILLING CODE 7590-01-M

**Institute for Medical Research of Bennington; Order Suspending License (Effective Immediately)**

Institute for Medical Research of Bennington, 110 Hospital Drive, Bennington, Vermont 05201, (the "licensee") is the holder of byproduct material License No. 44-18388-01, which authorizes the licensee to possess millicurie quantities of several isotopes for biochemical research, tissue culture and virological studies. The license, originally issued on March 7, 1979, was renewed on March 17, 1983 with an expiration date of March 31, 1988. The license permits use of material only at the licensee's facility in Bennington, Vermont, and only by, or under the supervision of, individuals authorized by the license.

**II**

On September 19, 1985, two NRC inspectors were sent to the licensee's facilities in Bennington, Vermont, to conduct a routine NRC inspection of licensed activities. The inspectors identified from a review of user logs and interviews with a licensee's technician two violations of NRC requirements. Specifically, (1) licensed material had been used by individuals not authorized by the license, and (2) quantities of byproduct material in excess of those permitted by the license had been possessed. At the time of the inspection, the licensee's director apparently had no knowledge of these matters. Further, the individuals named on the license were no longer employed by the licensee.

These same two violations were previously identified by the NRC during an inspection conducted on July 12, 1984. Since the individuals named on the license were no longer employed by the licensee at that time, NRC, Region I, issued a Confirmatory Action Letter (CAL) on July 18, 1984, which confirmed the licensee's commitments to:

- Cease all use of licensed material and place material in storage until the license was amended to add an authorized user who would be present at the facility to supervise the use of such materials.
- Promptly file a request for an amendment to the license to add at least one authorized user.
- Assure that possession limits are not exceeded.
- The results of the recent inspection in September 1985 indicate that the terms of the license and the commitments documented in the CAL have not been satisfied. Specifically, licensed material has again been used by unauthorized individuals, an amendment request was never filed to

add the name of an authorized user to the license, and possession limits have been exceeded.

**III**

The licensee's repeated failure to meet the terms of its license, and to adhere to its commitments in the CAL, demonstrates a significant lack of control over the conduct of licensed activities to assure compliance with NRC requirements. In light of these findings, I have determined pursuant to § 2.202(f) that the public health, safety, and interest require that this Order should be issued immediately effective.

**IV**

Accordingly, pursuant to sections 81, 161b, 161o, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Part 30, it is hereby ordered that:

A. Effective immediately, the licensee's authorization under License No. 44-18388-01 to receive or use byproduct material is suspended. The licensee shall place all licensed material in its possession in secure storage and, with respect to such storage, comply with the provisions of 10 CFR Part 20, "Standards for Protection Against Radiation."

B. The Licensee show cause as provided in Section V of this Order why the suspension of licensed activities under Item A above should not continue until:

1. A license amendment is submitted to the NRC and approved by the NRC which adds the name of a qualified individual to the license as an authorized user of licensed material;
2. An explanation is submitted to the Regional Administrator, Region I, as to why the violations (unauthorized use of radioactive material, use of material by unauthorized persons, and the possession of quantities of radioactive material in excess of authorized limits) continued after the July 1984 CAL and a description is submitted of actions taken or planned to improve management control of licensed activities to assure adherence to NRC requirements; and
3. The Regional Administrator, Region I, approves the resumption of licensed activities in writing on the basis of the licensee's completion of items 1 and 2 above.

C. The Regional Administrator, Region I, may relax or rescind in writing any of the above provisions upon demonstration of good cause by the licensee.

**V**

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 25 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. Alternatively, the licensee may answer as provided in 10 CFR 2.202(d) by consenting to this Order. Upon the failure of the licensee to answer within the specified time or to request a hearing, this Order shall be final without further proceedings.

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order within 25 days of its issuance. Any request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the request shall also be sent to the Executive Legal Director at the same address, and to the Regional Administrator, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 25th day of October 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-26139 Filed 10-31-85; 8:45 am]

BILLING CODE 7590-01-M

**Draft Regulatory Guide; Issuance, Availability**

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the

staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, SG 901-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 5.62, and is entitled "Reporting of Physical Security Events." The guide provides an approach acceptable to the NRC staff for determining when and how a safeguards event should be reported. These safeguards events are those that threaten nuclear activities or lessen the effectiveness of a security system.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by December 31, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of October 1985.

For the Nuclear Regulatory Commission.  
Francis P. Gillespie,  
Director, Division of Risk Analysis and Operations, Office of Nuclear Regulatory Research.

[FR Doc. 85-26138 Filed 10-31-85; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards; Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on November 25 and 26, 1985, Room 1046, 1717 H Street NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Monday, November 25, 1985—11:00 a.m. until the conclusion of business; Tuesday, November 26, 1985—8:30 a.m. until the conclusion of business.*

The Subcommittee will complete its review of current reactor operator requalification procedures and initiate review of proposed final rulemaking on 10 CFR Part 155 and three related Regulatory Guides.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr.

John Schiffgens (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 28, 1985.

Morton W. Libarkin,  
Assistant Executive Director for Project Review.

[FR Doc. 85-26156 Filed 10-31-85; 8:45 am]

BILLING CODE 7590-01-M

### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### Notice of USTR Public Hearing on Possible U.S. Actions in Response to the Quantitative Restrictions Maintained by the Government of Japan on Imports of Leather and Leather Footwear

**SUMMARY:** This publication gives notice that the Office of the United States Trade Representative (USTR) in conformity with section 304(b) of the Trade Act of 1974, as amended (19 U.S.C. 2414(b)), will conduct a hearing on possible U.S. actions in response to the quantitative restrictions maintained by the Government of Japan on imports of leather and leather footwear.

#### 1. Public Hearings

In conformity with section 304(b) of the Trade Act of 1974, as amended (19 U.S.C. 2414(b)(1)), the Office of the USTR has scheduled a hearing for November 18, 1985, to provide the opportunity for public comments on: (1) A proposed U.S. action in the form of increased duties or import restrictions on certain products from Japan (listed in Section 4 of this notice); and (2) a proposal offered by the Leather Industries of America, Inc. to restrict the exportation of U.S. hides to Japan. Such comments will be considered by USTR in advising the President with respect to his decision to use his authority under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411) to take counter measures against Japan if no satisfactory settlement has been reached in the Japan leather and leather footwear cases by December 1, 1985. Interested parties are invited to submit comments on these proposals. Interested parties are also requested to include in their comments on the list of possible retaliation items, an analysis of: (1) The degree to which import restrictions or increased duties will encourage the Japanese to remove their leather and

leather footwear quotas; and (2) the degree to which import restrictions or increased duties will have an adverse impact on U.S. consumers.

## 2. Requests to Participate in the Public Hearings

Hearings will be held on November 18, 1985, beginning at 10:00 a.m. in room 403, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC. In accordance with 15 CFR 2006.9, parties wishing to testify orally at the hearing must provide written notification of their intention by noon, November 11, 1985 to Christine Bliss at the address listed above giving:

- (1) Their names, addresses and telephone numbers; and
- (2) A brief summary of their presentation.

Those parties presenting oral testimony must submit a complete written statement in 20 copies by noon November 14, 1985 and must conform to the requirements of 15 CFR 2006.8. Remarks at the hearings should be limited to no more than a 15 minute summary of the written statement to allow for possible questions from the Chairman and the interagency panel.

Participants should provide 20 copies of their oral presentation at the time of the hearings.

Persons not wishing to participate at the hearings may submit a written statement in accordance with 15 CFR 2006.8, in 20 copies by November 18, 1985 to Christine Bliss at the address noted above. Rebuttal briefs may be submitted in accordance with 15 CFR 2006.8(c) no later than COB November 22, 1985.

## 3. Background

In 1977, the United States initiated a section 301 investigation after receiving a petition from the U.S. Tanners Council alleging that Japanese tariffs, quotas and administrative practices concerning leather imports effectively denied U.S. exporters access to the Japanese market. After bilateral discussions with the Japanese Government failed, the United States requested formation of a panel under Article XXIII of the General Agreement on Tariffs and Trade (GATT) and threatened preemptive retaliation. In early 1979, we reached an agreement with Japan in which Japan promised to: (1) Give U.S. exporters a specified number of quota licenses; (2) provide the names of the quota holders, and (3) expand the quota on wet blue, finished and upholstery leather. We believed at that time that these measures would improve our access to the Japanese market. In 1982, however, the United States refused to extend the agreement.

We noted that the U.S. industry was still unable to penetrate the Japanese market because of the lack of transparency of the Japanese administrative system, the deterrence imposed by the very low level of quotas to the significant marketing efforts by U.S. firms, and the high leather tariffs. Instead, we reinstated our GATT complaint.

In 1984, a GATT panel found that Japan had violated Article XI of the GATT. The panel further determined that the illegal quota had damaged U.S. exports. Subsequent to the adoption of the GATT panel report the Japanese Government: (1) Reduced the tariff on semi-finished leather to zero; (2) promised to liberalize the allocation of the quota on semi-finished leather, and (3) agreed to publish the level of the quota on a regular basis. The tariff reduction on semi-finished leather imports has been of modest value to the U.S. industry, because it affects only a minuscule portion of their exports to Japan. Additionally, the publication of the level of the quota, while useful information, has not aided U.S. leather exporters in increasing their sales. U.S. exporters remain substantially excluded from the Japanese market and there is no prospect that this situation will change in the foreseeable future.

In December 1982, we initiated a section 301 investigation based on a petition filed by the Footwear Industries of America, et al. which included allegations that the quota and administrative practices maintained by the Government of Japan with respect to leather footwear imports effectively denied U.S. footwear exporters access to the Japanese market. Although there has been no GATT panel finding with respect to the leather footwear quota, it is identical to the leather quota which has been found by a GATT panel to be inconsistent with Article XI of the GATT. The Japanese have taken no steps to liberalize or eliminate the footwear quota.

On September 7, 1985, the President announced that he will consider taking counter measures pursuant to his Section 301 authority to retaliate with respect to both leather and leather footwear quotas unless a satisfactory settlement of our complaint is reached by December 1, 1985.

On September 23, 1985, the Government of Japan notified the GATT Secretariat of its intention to enter into negotiations pursuant to Article XXVIII:5 of the GATT in order to modify or withdraw its tariff concessions on leather and leather footwear imports. The Government of Japan has notified the GATT of its intent to enter into Article XXVIII:5 negotiations so that it

can remove its global quotas on leather and leather footwear imports and replace the quotas with new tariff measures.

Under Section 301 the President is authorized to take all appropriate and feasible action within his power to enforce U.S. rights under a trade agreement or to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that denies U.S. benefits under a trade agreement or is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce.

Section 301(b) specifically authorizes the President, inter alia, to suspend or withdraw the benefits of trade agreement concessions and to impose duties or other import restrictions on the products of, and fees or restrictions on the services of, a foreign country for such time as he deems appropriate. Measures under Section 301 may be taken on a discriminatory or nondiscriminatory basis at the discretion of the President.

USTR therefore invites public comment on the possible actions the President could take pursuant to Section 301 if no satisfactory settlement is reached on these cases by December 1, 1985.

## 4. Product List

Japanese imports falling within the following tariff item categories may be considered as possible candidates for import restrictions or tariff increases:

TSUS Item No.	Description
706.41-706.47	Spectacles, frames, mountings and parts thereof.
533.20	Articles chiefly used for preparing, serving or storing food or beverages, or food and beverage ingredients, of fine-grained earthenware (except provided for in item 533.15) or of fine-grained stoneware.
737.95	Toys, and parts of toys, not specially provided for.
661.2025	Window or wall-type air-conditioners.
731.22-731.24	Fishing reels valued over \$2.70 each.
740.35	Watch bracelets, not of precious metal, of precious stones, of natural pearls, of precious metal set with semiprecious stones, cameos, intaglios, amber, or coral, or any combination of the foregoing, valued over \$5.00 per dozen.
740.38	Jewelry and other objects of personal adornment, not specially provided for, valued over 20 cents per dozen pieces or parts.
660.74-660.76	Water wheels, water turbines, and other water engines, and parts including governors.
662.6031-662.6048	Generator sets (integral unit mounted on a common base).
682.61	Generators, motor-generators, converters (rotary and static), rectifiers and rectifying apparatus, and inductors; all the foregoing if certified for use in civil aircraft.

TSUS Item No.	Description
707.90	Optical fibers, whether or not in bundles, cables or otherwise put up, with or without connectors and whether mounted or not mounted.
684.9015 and 684.9025	Color TV cameras.
676.05, 676.07	Typewriters not incorporating a calculating mechanism, non-automatic with hand-operated keyboard.
684.5940	Telephonic apparatus and instruments (except telephone switching apparatus, telephone sets and other terminal equipment, and intercom systems) and parts thereof.
676.22	Cash registers.
533.52-533.79	Articles chiefly used for preparing, serving, or storing food or beverage, or food or beverage ingredients, of chinaware or of subporcelain.
666.1010, 666.1030 and 666.1040	Lawn mowers (except riding lawn mowers), and parts thereof.
609.84	Angles, shapes and sections, of iron or steel, hot rolled, or cold formed and weighing over 0.29 lb. per linear foot, drilled, punched or otherwise advanced.
652.94	Columns, pillars, posts, beams, girders, and similar structural units, not in part of alloy iron or steel, not of cast-iron (except malleable cast-iron).
652.95 and 652.96	Columns, pillars, posts, beams, girders and similar structural units, in part of alloy iron or steel.
652.97	Offshore oil and natural gas drilling and production platforms and parts thereof, of iron or steel.
653.01	Hangars and other buildings, bridges, bridge sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, door and window frames, shutters, balustrades, columns, pillars, and posts, and other structures and parts of structures, all the foregoing of base metal (except iron or steel).
121.10-121.65	Leather, in the rough, partly finished, or finished.
123.0050	Whole skins of lamb or sheep (other than those specified in item 123.0040) if suitable for use as furs and imported to be so used.
700.05-700.45	Footwear, of leather (except footwear with uppers of fibers).
705.35	Gloves of horsehide or cowhide (except calfskin) leather.
705.40-705.78	Gloves of leather except gloves in item 705.35.
706.90	Handbags of leather (except reptile leather), valued over \$20 each.
706.13	Luggage of leather (except reptile leather).
791.10	Wearing apparel not specially provided for, of fur of the skin of dog, goat or kid.
791.20-7291.28	Leather cut or wholly or partly manufactured into forms or shapes suitable for conversion into footwear.
791.30	Belting leather cut or wholly or partly manufactured in forms or shapes suitable for conversion into belting.
791.35	Leather welting.
791.45	Book bindings, wholly or in part of leather.
791.48	Book covers, wholly or in part of leather.
791.50	Leather shoelaces.
791.54	Leather straps and strips.
791.57	Leatherboard comprised primarily of leather fibers bonded together with rubber or plastics materials.
791.60	Leather apparel belts, with or without buckles.
791.65	Bags, baskets, boxes, and cases, all the foregoing, not specially provided for, of leather.
791.70-791.75	Wearing apparel not specially provided for, of leather.
791.80 and 791.90	Articles not specially provided for, of leather.

### 5. Leather Industries of America Proposal to Restrict U.S. Hide Exports

The Leather Industries of America (LIA) have proposed that in response to the Government of Japan's failure to eliminate the leather quota, that the United States restrict the export of U.S. cattlehides to Japan. In explaining its proposal, LIA has argued that the restriction of U.S. cattlehide exports to Japan could be: (1) Tied to the quantity of quota import licenses granted to U.S. leather exporters over a three year period, at the end of which time both the leather quota and U.S. restrictions on hide exports would be eliminated; or (2) subject to a basic limit equal to the level of U.S. cattlehide exports to Japan in 1983, the last year in which the leather quota was authorized under the GATT. Under the second approach LIA has suggested that the limit could be adjusted upward in response to Japanese actions to bring themselves into conformity with the 1984 GATT Panel decision.

Interested parties are requested to comment on the LIA proposal and in particular on any adverse effects that the proposal might have on U.S. consumers and industries.

J. Christine Bliss,

Associate General Counsel.

[FR Doc. 85-26303 Filed 10-31-85; 8:45 am]

BILLING CODE 3190-01-M

### PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

#### Mainstem Passage Advisory Committee; Meeting

**AGENCY:** The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of meeting.  
Status: Open.

**SUMMARY:** The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- FISHPASS Modeling results,
- Other,
- Public comment.

**DATE:** October 31, 1985, 2:00 p.m.

**ADDRESS:** The meeting will be held at the Water Budget Center Conference Room, 2705 E. Burnside St., Suite 213, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:**  
Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-26064 Filed 10-31-85; 8:45 am]

BILLING CODE 0000-00-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14774; (File No. 812-6103 and 3-6578)]

#### E.F. Hutton & Company Inc. and The E.F. Hutton Group Inc., Order of Temporary Exemption and Notice of and Order For Hearing on Application

October 29, 1985.

On May 2, 1985, the Commission issued a notice of an application filed by E.F. Hutton & Company Inc. ("Hutton") and the E.F. Hutton Group Inc. ("Group") (collectively, "Applicants") requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940 ("Investment Company Act") exempting them from section 9(a) of the Act. On that day, the Commission also granted Applicants a 180 day temporary exemption from section 9(a). Investment Company Act Release No. 14499 (May 2, 1985).

On September 16, October 28, and October 29, 1985, Applicants amended their application to request a further temporary order on behalf of themselves and their wholly-owned insurance subsidiaries dealing in insurance products registered under the Investment Company Act which, among other things, would have the effect of extending the initial temporary exemption, subject to certain conditions and limitations. The application, as amended ("Application"), on file with the Commission is summarized below. All interested persons are referred to the Application for a full statement of the representations made in it and to the text of the Investment Company Act and the rules under it.

According to the Application, Group is a publicly owned holding company. Hutton, a subsidiary of Group, is a registered broker-dealer and investment adviser with over 400 branches in the United States and Europe. Hutton provides distribution, investment advisory and administrative services to several registered investment companies ("Funds"). Hutton also acts as depositor and sponsor for numerous unit investment trusts ("UITs") and makes a secondary market for units of the more than 200 series of UITs it has sponsored.

On May 2, 1985, Hutton entered a plea of guilty to a criminal information ("criminal plea") filed in the United States District Court for the Middle District of Pennsylvania<sup>1</sup> and consented to an injunction in a related civil action filed by the United States Department of Justice in the same court.<sup>2</sup> The information charged Hutton with criminal violations of the federal mail and wire fraud statutes because it engaged in certain abusive practices to obtain interest-free use of bank funds through checking accounts it maintained at various commercial banks. No criminal charges were filed against Group or any individuals. The related civil action ("DOJ Injunction") enjoined Hutton and Group from using certain elements of Hutton's cash management system without the written consent of the banks involved and specifically enjoined Hutton and Group from engaging in the practices of drafting checks in arbitrary amounts unrelated to book balances and successively transferring branch and regional deposits for the purpose of arbitrarily increasing the amount drawn down so as to exceed the amounts originally deposited and, by that and other conduct, creating and exploiting opportunities for delayed clearing times of items deposited into branch accounts.

As part of the resolution of these actions, Hutton and Group agreed to pay a criminal fine of \$2 million and an additional \$750,000 to defray the costs of the government's investigation, to establish a program to reimburse any bank that was injured as a result of the illegal activity, and to implement certain procedures designed to prevent a recurrence of the illegal conduct.

Following entry of the criminal plea and DOJ Injunction, Group engaged Griffin Bell to investigate the practices which led to these court actions, and to determine who within Hutton was responsible for those practices. A report of that investigation was made public by Applicants in September 1985 ("Bell Report").

The Commission made its own investigation into Hutton's cash management practices, pursuant to section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act"), to determine, among other things, whether the practices which were the subject of the court actions described above or disclosures made or omitted in connection with the use of such practices involved violations of the federal securities laws. In addition, the

Commission's staff separately conducted an examination under section 31(b) of the Investment Company Act to review certain practices and procedures of Hutton in dealing with registered investment companies.

On October 29, 1985, based upon information obtained from the staff's examination under the Investment Company Act, the Commission instituted an administrative proceeding against Hutton pursuant to section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), section 9(b) of the Investment Company Act, and section 15(b) of the Exchange Act.<sup>3</sup> In that proceeding, without admitting or denying the allegations in the Commission's order for proceedings, Hutton consented to findings of violations of section 17(a)(2) of the Securities Act of 1933, section 206(2) of the Advisers Act, section 22(c) and Rule 22c-1 of the Investment Company Act, and aiding and abetting violations of section 12(b) and Rule 12b-1 of the Investment Company Act in respect to Hutton Investment Series Inc. ("HIS"). As part of the settlement of that proceeding Hutton agreed:

(1) Promptly to employ an independent consultant knowledgeable in investment adviser and investment company operations and acceptable to the Commission to examine the way in which Hutton administers its investment company operations, and prepare and submit a public report of his findings and recommendations for any necessary changes in Hutton's operations to Hutton and the Commission within 120 days of the date of the Commission's order in that proceeding;

<sup>3</sup> In the matter of E.F. Hutton & Co., Inc., Advisers Act Rel. No. 993. Previously, on December 11, 1984, the Commission issued an Order instituting public administrative proceedings against Hutton. Without admitting or denying the findings of the Commission's Order, Hutton consented to a censure and issuance of an Order based upon findings of violations of section 206(2) of the Advisers Act and section 17(a)(2) of the Securities Act. The Commission's Order alleged that Hutton, as investment adviser to Hutton Investment Series, Inc. (HIS) failed to disclose to HIS and its independent directors that it was receiving additional compensation (which Hutton determined to be \$191,000) as a result of its possession and use of funds paid to it for the purchase of HIS shares and that, at the time that the independent directors recommended shareholder approval of the advisory agreement between HIS and Hutton, the directors had not been informed by Hutton of the additional compensation it was receiving. The Order further alleged that Hutton violated section 17(a)(2) of the Securities Act in that prospectuses in effect between December 29, 1981 and February 28, 1983 for HIS misstated the date that purchase orders became effective and dividends began accruing for HIS Short-Term Series. (31 SEC Docket 1504, Securities Act Rel. No. 8562, Advisers Act Rel. No. 945).

(2) To adopt the recommendations of the investment adviser/investment company consultant, unless otherwise directed by the Commission, within 45 days of the submission of the consultant's report;

(3) To reimburse and/or contribute to the affected HIS series an amount aggregating \$1,025,484.87 by which various HIS series funds and/or their shareholders were adversely impacted by the violations as found in the Commission's Order<sup>4</sup> in that proceeding and immediately to cease the practices underlying such violations; and

(4) Immediately to take steps to ensure that all monies received by it for the payment of variable annuities are promptly transmitted to the issuers of the variable annuities.

On October 28, 1985, based on information obtained in the staff's investigation under the Exchange Act, the Commission filed a civil injunctive action in the United States District Court for the District of Columbia.<sup>5</sup> The Commission's complaint alleged that Group violated sections 13(a) and 13(b)(2) of the Exchange Act and Rules 13a-1 and 12b-20 by, among other things, failing to disclose Hutton's use of certain cash management practices to generate interest income, and Group's failure to maintain a system of internal controls adequate to prevent the misuse of such practices. Group agreed, without admitting or denying the allegations of the complaint, to the issuance of a final court order permanently enjoining Group from future violations of those provisions. The court's order was entered on October 29, 1985 ("SEC Injunction").

The Commission also instituted a related administrative proceeding on October 29, 1985, pursuant to section 15(b)(4) of the Exchange Act against Hutton,<sup>6</sup> based upon the criminal plea, the DOJ Injunction and the SEC Injunction, to determine what, if any, remedial sanctions would be appropriate in the public interest. Without admitting or denying the allegations in the Commission's order for proceedings, except admitting the fact of the cited court actions, Hutton settled that proceeding and agreed:

<sup>4</sup> In addition, although Hutton claims that it is due approximately \$900,000 from certain series of HIS because of the failure to compute correctly the fees it was entitled to receive under plans adopted pursuant to Rule 12b-1 of the Investment Company Act, it will forego pursuing this claim.

<sup>5</sup> *Securities and Exchange Commission v. The E.F. Hutton Group Inc.* (Civil Action No. 85-3419 D.D.C.).

<sup>6</sup> In the Matter of E.F. Hutton & Co., Inc., Exchange Act Rel. No. 22579.

<sup>1</sup> *United States v. E.F. Hutton & Co. Inc.* (Criminal No. 85-00083 M.D. Pa.).

<sup>2</sup> *United States v. The E.F. Hutton Group Inc.* (Civil Action No. 85-0601 M.D. Pa.).

(1) Promptly to employ an independent consultant, acceptable to the Commission and knowledgeable in broker-dealer operations (who may be the same consultant employed to examine Hutton's investment adviser and investment company operations), to examine Hutton's current and historical policies and practices regarding the handling of customers' securities and monies, including certain specified policies and practices, and to prepare and submit a public report of his findings and recommendations to Hutton and the Commission within 120 days of the date of the Commission's order in that proceeding;

(2) To adopt the recommendations of the broker-dealer consultant, unless otherwise directed by the Commission, within 45 days of the submission of the consultant's report; and

(3) Not to open any new branch offices until the later of 120 days from the date of the Commission's Order or the date when Hutton adopts the recommendations of the independent consultant.

On October 28, 1985, the Attorney General of the State of New York commenced a civil action against Hutton in New York State Supreme Court pursuant to section 353(2) of the New York General Business Law based upon Hutton's criminal plea entered in the United States District Court for the Middle District of Pennsylvania, and the conduct underlying the criminal plea.<sup>7</sup> On such date, Hutton consented to the entry of a permanent injunction (the "N.Y. State Injunction") requiring Hutton to modify its procedures for disbursing payments to its customers to ensure that payments to its customers will be remitted expeditiously and without undue delay, and requiring Hutton to monitor compliance with the procedures to be implemented. The N.Y. State Injunction also requires Hutton to comply with the prohibitions and undertakings of the DOJ Injunction and to reimburse the State of New York in the amount of \$100,000. The N.Y. State Injunction specifically states that it "is not based on any finding of fraud or deceit in the sale of securities or in any activity in connection with the purchase or sale of any security and is not and shall not be construed as an injunction, order, judgment or decree which would cause any statutory disqualification or bar of Hutton or any of its affiliates in" New York.

Section 9(a) of the Investment Company Act, as is relevant here, disqualifies any person or company

from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered open-end company or registered unit investment trust, if such person has been (a) convicted of any felony or misdemeanor arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or (b) permanently or temporarily enjoined from engaging or continuing any conduct or practice in connection with its activities as an underwriter, broker, dealer or investment adviser, or in connection with the purchase or sale of any security. Accordingly, absent an exemption from section 9(a), the criminal plea, DOJ Injunction, N.Y. State Injunction and SEC Injunction each would prevent Hutton and Group, directly and derivatively, from continuing to serve the Funds or UITs as investment adviser, principal underwriter or depositor.

Section 9(c) of the Investment Company Act provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a) of the Act, "either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to [Applicants], are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application."

Applicants submit that the prohibitions of section 9(a) of the Investment Company Act would be unduly and disproportionately severe as applied to them and that their conduct has not been such as to make it against the public interest or protection of investors to grant the requested exemption. In support of this contention, Applicants represent that they have complied or are in the process of complying with each and every term of the orders entered on the criminal plea, DOJ Injunction, SEC Injunction, the Commission administrative proceedings (collectively, "Actions") and the N.Y. State Injunction described above.

In further support of their Application, Applicants represent that:

(1) Group has approximately 28,000 shareholders; Hutton has approximately 17,000 employees; and there are more than 500,000 investors in the Funds and numerous investors in the UITs;

(2) Hutton has been a registered investment adviser since 1962 and neither it nor Group have ever (prior to May 2, 1985) filed an application under

section 9(c) of the Investment Company Act;

(3) Denial of the requested order would unfairly deprive Applicants of their ability to conduct business because Hutton would be prohibited from offering the same range of services to investors as those offered by its competitors;

(4) Denial of the requested order would result in significant detriment to investors in the Funds and UITs since those investors would no longer have the services of their chosen investment adviser;

(5) Denial of the requested order could result in further harm to investors in the Funds and UITs because of the uncertainty caused by Hutton being prohibited from serving the Funds and UITs, which might bring about multiple redemptions of interests in those entities;

(6) Applicants have taken action to comply fully with the recommendations of the Bell Report, including the establishment of a separate audit committee from Hutton and the imposition of sanctions on Hutton personnel found by Bell to be responsible for improper conduct;

(7) Applicants have established a broad range of corrective and preventive measures which include reorganizing its corporate structure to centralize responsibility for accounting and financial controls, providing instructional seminars in cash Management procedures, installing a computerized system which will allow headquarters to monitor drawdown activity, and developing a corporate code of ethics;

(8) The N.Y. State Injunction is based upon the same facts as the criminal plea and the DOJ Injunction and therefore does not present any additional underlying facts which would warrant denial of the requested order.

Applicants state that they understand that the grant of their request for further temporary relief would not preclude the Commission from commenting a proceeding under section 9(b) of the Investment Company Act on the basis of conduct other than that considered in granting this temporary order, nor would it preclude the Commission, in this proceeding or any other proceeding by the Commission, from taking such conduct into consideration.

Based upon the foregoing, including Applicants' representations, the settlement of the Actions described above and the remedial provisions resulting therefrom, the Commission has considered the matter and finds, under the standards of section 9(c) of the

<sup>7</sup> *State of New York v. E.F. Hutton & Company Inc.* (Index No. 43176-85 N.Y. Sup. Ct.).

Investment Company Act applicable to this case, that it is appropriate to grant further temporary relief pending final determination of whether the prohibitions of section 9(a) of the Investment Company Act resulting from the criminal plea, DOJ injunction, N.Y. State Injunction and SEC Injunction ("Court Actions"), are unduly or disproportionately severe as applied to Applicants, and whether the conduct of Applicants has been such as not to make it against the public interest or protection of investors to grant permanent relief from section 9(a). This would have the effect of giving Applicants a temporary exemption from the provisions of section 9(a) with respect to each of the Court Actions including the matters described in the order granting the initial temporary exemption.

Such further temporary relief is specifically conditioned on the following:

(1) That Applicants continue to comply with every provision of the orders issued in the Actions described above;

(2) that, for the duration of this temporary order, Applicants may not act as managing or co-managing underwriter, investment adviser or promoter for any new management investment company, including any new series of the Funds;<sup>8</sup> and

(3) that Applicants may not continue to act as promoter, managing or co-managing underwriter or investment adviser for any management investment company, unless, within 30 days from the date hereof:

(a) a majority of the board of directors or trustees of that management investment company consists of persons who are not "interested persons" as defined in section 2(a)(19) of the Investment Company Act ("disinterested directors or trustees");

(b) the disinterested directors or trustees of that management investment company have retained counsel experienced in matters under the Investment Company Act and the Advisers Act who will only represent the disinterested directors or trustees, and not Applicants or the Funds; and

(c) the management investment company has established an audit committee comprised solely of disinterested directors or trustees.

Accordingly, it is ordered, pursuant to section 9(c) of the Investment Company Act that Applicants and their wholly-owned subsidiaries dealing in insurance products registered under the

Investment Company Act are hereby temporarily exempted from the provisions of section 9(a) of that act, subject to their compliance with the provisions of the Actions and the conditions described above, until the earlier of the date on which the Commission takes final action on their application for a permanent order exempting them from the prohibitions of section 9(a), or one year from the date of this Order.

Notice is further given that the Commission has determined that it is appropriate in the public interest and in the interest of investors that a hearing be held, consisting of written submissions, with respect to Applicants' request for a permanent order under section 9(c) of the Investment Company Act.<sup>9</sup> Matters which will be considered in the hearing will include the criminal plea, DOJ Injunction, N.Y. State Injunction, SEC Injunction, the three Commission administrative proceedings described above, remedial actions taken by Applicants, including those taken to implement recommendations of the consultant(s) and those of the Bell Report, and such other information as may be submitted as evidence by the parties or any other person granted leave to participate in this proceeding. In view of the facts that are publicly available, the facts recited in the pleadings filed in the Actions, and the reports of the consultant(s), which will become part of this proceeding, it appears at this time that the issues remaining to be resolved in this matter are only issues of law or policy. Therefore, an oral evidentiary hearing in this matter to consider such facts is not necessary or appropriate. Applicants, in accordance with Rules 8 and 16 of the Commission's Rules of Practice [17 CFR 201.8 and 201.16], have waived an initial decision by a hearing officer and consented to permitting interested staff members, including members of the staff of the Division of Investment Management, to advise the Commission on matters arising in this proceeding and to assist in the preparation of the Commission's decision.

Accordingly, it is further ordered, under section 40 of the Investment

<sup>8</sup> On May 15, 1985, the Commission received a hearing request pursuant to the Notice issued May 2, 1985, from a party who appears to qualify as an interested person. However, the Commission has been advised that the party making the request informed the staff, by letter dated September 27, 1985, that he had decided not to participate in, or introduce evidence at, any hearing ordered on the Application. For this reason the Commission, in deciding whether, and on what basis, to order a hearing on the Application determined that this hearing request did not raise any factual issues requiring consideration at an evidentiary hearing.

Company Act, that a hearing before the Commission, limited to written submission, be held under the applicable provisions of the Investment Company Act and rules, according to the schedule set forth below, on the following issues:

(1) Whether the prohibitions of section 9(a) of the Investment Company Act, as applied to Applicants, are unduly or disproportionately severe.

(2) Whether the conduct of Applicants has been such as to not make it against the public interest or protection of investors to grant them a permanent exemption from section 9(a) of the Investment Company Act.

(3) Whether this temporary exemption from section 9(a) of the Investment Company Act should be made permanent on the basis of the limitations and conditions listed above; whether any such conditions or limitations should be modified or deleted; or, whether any additional conditions or limitations should be imposed.

(4) Any other matters deemed appropriate by the Commission and noticed following receipt of the reports submitted by the consultant(s).

Any person, other than the parties, wishing to be heard or otherwise participate in this proceeding may seek leave to do so by filing an application with the Secretary of the Commission, as provided by Rule 9(c) of the Commission's Rules of Practice [17 CFR 201.9(c)], setting forth the nature and extent of his interest in the proceeding, within 30 days of publication of a notice in the Federal Register and the "SEC Docket" of filing of the reports of the independent consultant(s) described above. A copy of that request shall be served personally upon Applicants at One Battery Park Plaza, New York, NY 10004. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

Persons who are granted leave to participate in this hearing will receive notice of any actions of the Commission involving the subject matter of this proceeding. The parties and all interested persons granted leave to participate may, within 60 days of publication of the notice of filing of the required consultant(s) reports, file written statements of relevant facts (properly notarized under oath) and briefs setting forth their positions concerning the above issues.

It is further ordered that the Division of Investment Management shall be a party to the proceeding.

<sup>9</sup> Hutton may Sponsor new UITs or new series of its existing UITs.

It is further ordered that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this Notice and Order by certified mail to each Applicant, and that notice to all other persons shall be given by publication of this Notice and Order in the *Federal Register*, and that a copy of the Notice and Order shall be published in the "SEC Docket."

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-26170 Filed 10-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22557; Amdt. No. 1 to File No. SR-NYSE-85-17]

**Self-Regulatory Organizations; Amendment to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Adoption of New Rule 412 (Customer Securities Account Transfers) and Rescission of Current Rule 412 (Customer Account Transfer Contracts)**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission an amendment to a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of this amendment is to provide exemptive and explanatory interpretations under proposed new Rule 412, "Customer Securities Account Transfers," enumerate the provisions of a paragraph of the rule, and specify an intended implementation date for the rule.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the amendment to the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

sections (A), (B), and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of this amendment is to provide exemptive and explanatory interpretations under proposed new Rule 412, enumerate the provisions of a paragraph of the rule, and specify an intended implementation date for the rule.

**Interpretations**—This amendment sets forth several interpretations of the requirements of proposed new Rule 412. In particular, this amendment provides exemptions from some of the rule's requirements, in accordance with and pursuant to paragraph (f) of the rule, to recognize valid difficulties and delays encountered by member organizations in transferring certain accounts and assets within the prescribed time periods. These exemptive interpretations, however, do not completely exempt any type of account or asset from the rule's requirements; rather, they relax the rule's standards in certain limited circumstances when those standards are inappropriate or impossible to comply with. This amendment also provides interpretations of an explanatory, or definitional, nature that would facilitate understanding of the rule's application and operation. The terms of substance of these proposed interpretations are attached to this Notice.

**Enumeration**—This amendment proposes a technical restructuring of paragraph (b) of proposed new Rule 412 for purposes of ease of reference, enumerating that provision's three subparagraphs.

**Implementation Date**—Pursuant to the Exchange's original intention, this amendment proposes an effective date for new Rule 412 of 90 days subsequent to Commission approval of the rule to allow member organizations adequate time to educate customers and personnel and implement the operational and programming changes that the new requirements will necessitate. In addition, since the proposed rule contemplates and would mandate the use by member organizations of an automated customer securities account transfer system of a registered clearing agency (see proposed Rule 412(e)), a delayed implementation date for the rule is required to coordinate the imposition of the rule's requirements with the existence of a fully operational automated system. As indicated in the filing, the National

Securities Clearing Corporation (NSCC) is developing such an automated system. However, the Exchange also proposes to retain the right to further delay the effective date of the rule beyond this 90-day period should it determine that such a delay, in consideration of the status and effectiveness of member organization educational and operational efforts and the NSCC automated account transfer system, would be appropriate and in the best interests of the public and its membership.

The amendment does not alter the purpose of or statutory basis for the rule change as proposed in SR-NYSE-85-17.

**(B) Self-Regulatory Organization's Statement on Burden on Competition**

This amendment to the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

**(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

The Exchange has neither solicited nor received written comments on this amendment to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 25, 1985.

John Wheeler,  
Secretary.

**Proposed Interpretations to Proposed New Rule 412, "Customer Securities Account Transfers"**

*Rule 412 Customer Securities Account Transfers*

**(a) Responsibility to Expedite and Coordinate Transfer of Account upon Customer's Request**

*/01. Rule Inapplicable to Partial Transfers.* Rule 412 is applicable only when a customer intends to transfer his or her *entire* securities account from one member organization to another. If a customer desires to transfer a portion of his or her account, an authorized letter should be transmitted to the carrying organization indicating such intent and specifying the portion of the account to be transferred. Although such transfers are not subject to Rule 412, member organizations are expected to expedite authorized partial transfers of customer securities accounts and coordinate their activities with respect thereto.

**(b) Transfer Procedures**

*(1) Transfer Instructions*

*/01 Exceptions to Transfer Instructions.* A carrying organization may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying organization *must* transfer the securities positions and/or money balance reflected on its books for the account.

A carrying organization may take exception to a transfer instruction *only* if:

1. It has no record of the account on its books;

2. The transfer instruction is incomplete;

3. The transfer instruction contains an improper signature; or

4. The account is a cash management/financial service account and the Customer has not returned, or provided an affidavit attesting to the loss or destruction of, credit/debit cards and/or unused checks issued in connection with the account.

After validation of the transfer instruction by the carrying organization, a receiving organization may reject an account transfer if the account is not in compliance with the receiving organization's credit policies.

*/02 Conditions of Transfer.* Account transfers accomplished pursuant to Rule 412 are subject to the following conditions, which the customer must be informed of and authorize through their inclusion in the transfer instruction form he or she is required to complete to initiate the account transfer:

1. To the extent any assets or instruments in the account are not readily transferable, with or without penalties, such assets or instruments may not be transferred within the time frames required by Rule 412.

2. The customer authorizes the carrying organization to liquidate any nontransferable proprietary money market/mutual fund and transfer the resulting credit balance to the receiving organization, unless another manner of disposition of fund proceeds is indicated by the customers on the transfer instruction.

*/03 Validation of Transfer Instruction—Valuation of Assets.* Upon validation of a transfer instruction, the carrying organization must return the transfer instruction to the receiving organization with an attachment indicating all securities positions and any money balance in the account as shown on the books of the carrying organization. The attachment must include a then current market value for all assets in the account. If a then current market value for an asset can not be determined, e.g., a limited partnership interest, the asset must be valued at original cost.

*(3) Completion of Transfer*

*/01 Capital Charges.* The staff of the Securities and Exchange Commission, Division of Market Regulation has advised the exchange that it would not recommend enforcement action if member organization interpreted S.E.C. Rule 15c3-1(c)(2)(ix), which requires deductions from net capital for fail to deliver contracts outstanding 5 or more business days (or 21 or more business days in the case of municipal securities), as not applying to fail to deliver

contracts established pursuant to the requirements of Rule 412 including the interpretations thereunder.

**(c) Closing Out Fail Contracts**

*/01 Close Out Procedures.* All fail contracts required to be established pursuant to Rule 412, except for fail contracts on those assets specified in (f)/03 below, must be closed out within ten business days of their establishment. If a receiving organization has not received an asset on which a fail contract was established by the seventh business day after the contract was established, the receiving organization must at that time provide the carrying organization with written notice of its intent to buy-in the asset on the tenth business day after the contract was established, in accordance with the standard buy-in procedures of the receiving organization, unless the carrying organization delivers the asset to the receiving organization before 2 PM on such tenth business day, and the receiving organization must proceed in such manner.

**(e) Automated Customer Securities Account Transfer Systems**

*/01 "Participant in a Registered Clearing Agency".* For purposes of paragraph (e) of this rule, the term "participant in a registered clearing agency" shall mean a member of a registered clearing agency that would be eligible to make use of the agency's automated customer securities account transfer capabilities.

**(f) Exemptions**

*/01 Retirement Plan Accounts.* A carrying organization must either validate and return or take exception to a transfer instruction requesting the transfer of a customer's entire retirement plan securities account within ten business days, rather than five business days, following receipt of the transfer instruction. Except for this greater time period within which to validate or take exception to the transfer instruction, all time frames and procedures required by Rule 412, and the interpretations thereunder, are equally applicable to retirement plan securities accounts as to other securities accounts.

It is the responsibility of the receiving organization to obtain the approval of its custodian/trustee accepting a customer's retirement plan securities account *before* submitting a transfer instruction for such an account to the carrying organization or a registered clearing agency. Such approval should be transmitted to the carrying

organization or its custodian/trustee to facilitate transfer of the account.

Member organizations are expected to implement procedures to ensure that fees due a custodian/trustee in connection with the transfer of a customer's retirement plan securities account are paid so as not to delay the transfer of the account in violation of the time frames set forth by the rule.

**02 Delayed Delivery Assets—Fail Contracts.** The following assets are deemed subject to delayed delivery for purposes of Rule 412 and are thereby exempt from the requirement in subparagraph (b)(3) of the rule that fail to receive and fail to deliver contracts must be established for positions in a customer's securities account that have not been physically delivered:

1. Bankrupt issues.
2. Insurance policies (annuities).
3. Stripped coupons.
4. When-issued or when-distributed securities.

However, zero value fail to receive and fail to deliver instructions should be generated for such assets.

**03 Delayed Close Out Assets—Fail Contracts.** Fail contracts established on the following assets pursuant to Rule 412 must be closed out within thirty business days, rather than ten business days, after their establishment:

1. Bankers' acceptances.
2. Bond anticipation notes.
3. Certificates of deposit.
4. Commercial paper.
5. FIMAC certificates.
6. FNMA certificates.
7. Foreign securities.
8. GNMA certificates.
9. Limited partnership interests.
10. Municipal bonds.
11. Mutual fund shares (transferable).
12. Revenue anticipation notes.
13. SBA certificates.
14. Tax anticipation notes.

If a receiving organization has not received such an asset by the twenty-fifth business day after the fail contract on the asset was established, the receiving organization must at that time provide the carrying organization with written notice of its intent to buy-in the asset on the thirtieth business day after the contract was established, in accordance with the standard buy-in procedures of the receiving organization, unless the carrying organization delivers the asset to the receiving organization before 2 PM on such thirtieth business day, and the receiving organization must proceed in such manner.

A receiving organization may deem receipt of a limited partnership change of trustee form as adequate delivery for purposes of transferring limited

partnership interests pursuant to the rule.

### .30 Transfer Instructions and Reports

**01 Prescribed Forms.** Member organizations must use the transfer instructions and provide the reports prescribed by the Exchange when accomplishing account transfers pursuant to Rule 412. The Exchange deems the transfer instructions and reports required by the National Securities Clearing Corporation (NSCC) in connection with its automated customer account transfer system, and transfer instructions and reports that are substantially similar to those required by NSCC, as acceptable for the purpose of accomplishing transfers of accounts under the rule.

[FR Doc. 85-26173 Filed 10-31-85; 8:45 am]  
BILLING CODE 8010-01-M

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 28, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange 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 stock:

Fireman's Fund Corporation, Common Stock, \$1.00 Par Value (File No. 7-8643)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 18, 1985 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, Washington, D.C. 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.

John Wheeler,

Secretary.

[FR Doc. 85-26172 Filed 10-31-85; 8:45 am]

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[Release No. 34-22578; File No. SR-Amex-85-32]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") submitted on August 30, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to revise its Transportation Index ("XTI"), which is comprised of stocks engaged in the airline, railroad and trucking industries, to an index comprised exclusively of airline company stocks ("Airline Index").<sup>3</sup> Under the proposal, 15 of the 20 stocks comprising the XTI would be deleted to create the 5 stock Airline Index.<sup>4</sup>

In its filing, Amex states that because the stocks underlying the different sectors of the transportation industry do not move in relationship to one another, the XTI index option neither attracted trading interest nor served as an effective tool for portfolio hedging. As a result, Amex believes that revising the Transportation Index so that it is a narrowly-designed index comprised of a smaller number of component stocks based on one sector of the transportation industry will provide valuable hedging and trading opportunities for market participants.

Like the current Transportation Index, the new Airline Index will be a price-weighted index. All Amex rules currently applicable to the trading of options on the Transportation Index will govern options trading on the Airline Index. However, to accommodate the

<sup>1</sup> 15 U.S.C. 78s(b) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1985).

<sup>3</sup> Amendment No. 1, submitted on September 16, 1985, indicated that the Amex Board of Directors had approved the proposed rule change on September 12, 1985. Amex intends to introduce the revised XTI to correspond with the expiration and roll-over of November XTI contracts. Amex also plans to list a full range of expiration months for the new Airline Index that would include December 1985 and January, February and April, 1986 expirations.

<sup>4</sup> The component stocks of the new Airline Index would be: AMR Corporation [holding company for American Airlines ("AMR")], Delta Airlines, Inc. ("DAL"), Northwest Airlines, Inc. ("NWA"), UAL, Inc. [holding company for United Airlines ("UAL")], and U.S. Air Group, Inc. ("U").

trading of options on the five stock Airline Index, Amex Rule 901C, concerning designation of stock index options, will be amended by reducing the minimum number of stocks required to be included in an underlying index from eight to five stocks. In this regard, Amex states that all of the five stocks in the proposed Airline Index are highly liquid and that no one stock dominates the index.<sup>5</sup> Position and exercise limits for the Airline Index will be 6,000 contracts.<sup>6</sup>

The Commission has reviewed the proposed amendment to Rule 901C that would change the minimum number of stocks required to underlie an index from eight to five stocks and has concluded that the change is appropriate to accommodate options trading on the Airline Index. In this regard, we note that the five stocks comprising the Airline Index are highly liquid and are all currently the subject of stock options trading. In addition, as noted above, no one stock in the index comprises more than 25% of the index value. Based on these factors, the Commission believes that trading on the five stock Airline Index should not significantly increase regulatory concerns and that the change proposed to the minimum standards in Rule 901C should be approved to accommodate such trading. The Commission also has reviewed the revised XTI in light of the other criteria set forth in Rule 901C and has determined that the index is consistent with the standards in the rule.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 22391, September 9, 1985) and by publication in the Federal Register (50 FR 37457, September 13, 1985). No comments were received with respect to the proposed rule change.

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, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26177 Filed 10-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22577; File No. SR-MSE-85-3]

#### Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Inc. ("MSE") submitted on May 8, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Article XXX, Rule 1, Interpretations and Policies .01 ("Committee on Specialist Assignment and Evaluation—Section I—Events Leading to Assignment Proceedings").<sup>1</sup> The rule currently includes guidelines adopted by the Committee on Specialist Assignment and Evaluation ("Committee") for its use in the assignment or reassignment of stocks among specialists and co-specialists, setting forth the general policy of the Committee concerning the posting and allocation of stocks. The Exchange is adding a new guideline related to the assignment or reassignment of a security because of unsatisfactory specialist performance. The guideline provides that, on a semi-annual basis, the MSE's market share for the previous six-month period (calculated as a percentage of the number of trades reported to the consolidated tape) in each security for which there is a registered MSE specialist, will be compared with the market shares of the other market centers trading that security. If, during the previous six-month period, the MSE's market share in any of these securities ranks below three or more other exchanges and is less than the MSE's average market share for all issues in which there is a registered specialist, that security will be posted for new co-specialist applications. Under the new guideline, the only issues which will be posted are those which

<sup>1</sup> Section I provides that, pursuant to Article XXX, Rules 1 and 8, the Committee may, when circumstances require, assign or reassign a security. Seven circumstances may lead to the need for assignment or reassignment of a security: (1) A new listing or obtaining unlisted trading privileges; (2) specialist request; (3) corporation request; (4) split-up and or merger of specialist units; (5) fundamental change of specialist unit; (6) unsatisfactory performance; and (7) disciplinary action.

have been assigned to the current specialist unit for six months or more.

In addition, prior to the semi-annual evaluation, specialists will receive market share information on a monthly basis in order to provide them with the opportunity to request transfers of issues to stronger co-specialists within the unit. When an issue is posted, all qualified co-specialists, including the current co-specialist, may apply to have the security allocated to them. The guideline provides, however, that, if multiple co-specialists with similar performance rankings apply for a new allocation, the Committee generally will give preference to a co-specialist who has not had posted for reassignment that or any other issue in the current posting.<sup>2</sup>

The proposed rule change, together with its terms of substance, was noticed in a Commission release (Securities Exchange Act Release No. 22077, May 28, 1985) and published in the Federal Register (50 FR 23370, June 3, 1985). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The MSE received one comment letter objecting to the proposed rule change.<sup>3</sup> The commentator expressed concern that, under the new guideline, circumstances may exist which may make it difficult for a specialist to attract sufficient order flow to avoid the mandatory posting of a security and that, in order to attract sufficient order flow to avoid a mandatory posting, the specialist may find it necessary to resort

<sup>2</sup> The MSE utilizes a specialist performance evaluation questionnaire to measure specialist performance. Under its procedures, MSE floor members evaluate specialist performance semi-annually, and the Committee may suspend or terminate a specialist's registration in one or more securities based on the questionnaire results, among other factors. The MSE has stated that, if a co-specialist has an issue posted because of a number 4 market share ranking, but has a superior overall ranking based on other performance criteria vis a vis other co-specialists, such superior ranking will be taken into consideration in evaluating such co-specialist for allocating any issue for which he is applying. See letter from J. Craig Long, Vice President-Legal and Secretary, MSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated October 11, 1985.

<sup>3</sup> See letter from Thomas G. Wilson, Floor Governor, MSE, to John G. Wethers, Chairman, MSE, dated May 13, 1985.

<sup>5</sup> As of October 28, 1985, the percentage of the total underlying value represented by each stock comprising the index was as follows: AMR—19.24%; DAL—18.80%; UAL—23.43%; NWA—24.37%; U—14.16%.

<sup>6</sup> See Amendment No. 2, submitted October 3, 1985.

to paying retail order entry firms to attract additional order flow through the MSE's Automated Execution System ("MAX") for that particular security.<sup>4</sup> The commentator also argued that the guideline could result in wider spreads being quoted on the MSE.<sup>5</sup> In addition, the commentator argued that, if all exchanges adopted a rule similar to that proposed by the MSE, trading among the regional exchanges might diminish. According to this commentator, specialists would not be inclined to send an order over the Intermarket Trading System ("ITS") to another regional specialist because that might have an adverse effect on the MSE specialist's percentage ranking. Indeed, the commentator noted that he would send a trade to the New York Stock Exchange, Inc. ("NYSE") each time he had a choice of where to send such a trade.

In responding to the commentator's letter, the MSE disagreed that the proposal would have the harmful impact described by the commentator.<sup>6</sup> The MSE states that the guideline is designed to improve the MSE's markets by offering another specialist the opportunity to compete in particular issues in which the current specialist has not successfully attracted significant order flow. The MSE emphasized that the Exchange will continue to seek to attract flow for all MSE traded securities and that specialists paying to attract order flow need not be a concern.

With respect to the issue of specialists quoting smaller-sized markets, the MSE does not believe that this will occur, nor that it would ever succeed, if attempted. The Exchange noted that, if a specialist is quoting a competitive market, he will be able to maintain an issue's ranking above the fourth highest level. In addition, in response to the commentator's concern that MSE

<sup>4</sup> MAX provides for the automatic execution of market orders of up to 1,099 shares based on the consolidated quotation for a security. In addition, MAX provides for the execution of limit orders when a trade is executed in the primary market at a price inferior to the limit price.

<sup>5</sup> The commentator gave several examples of abuses he felt could potentially occur under the guideline. He noted that specialists may be more inclined to quote smaller sized markets in order to execute a greater number of trades. One scenario described by the commentator involved a specialist who desires to sell 2,000 shares of a given stock at 28. If he fears that his stock may be subjected to a mandatory posting, he would not show the true condition of his market. Rather, he would show 200 shares offered at 28 and would not change his quote until ten 200 share orders were received over the Intermarket Trading System.

<sup>6</sup> See letter from John G. Weithers, Chairman, MSE, to Thomas G. Wilson, Floor Governor, MSE, dated July 3, 1985.

specialists would quote smaller sized markets, the MSE noted that showing smaller sized markets probably would result in reduced order flow over ITS, and would place a specialist at a disadvantage in the event another market executes an order at a price inferior to the MSE's displayed quotation because the MSE specialist only would be entitled to "trade-through" protection<sup>7</sup> to the extent of its displayed quotation size. In short, the MSE stated the Exchange would be better served by specialists seeking to improve their displayed market, rather than devising methods to improve their market share rate while continuing to quote non-competitive markets.

Finally, the MSE noted that the rule permits any specialist who has an issue posted an opportunity to reapply for the issue and to explain to the Committee why his performance should enable him to continue trading the stock. Moreover, the specialist will be able to measure his status six through the monthly reports he will receive from the Exchange.

The Commission believes that it is consistent with the requirements of the Act for the MSE to attempt to improve the quality of markets made on the MSE and the competitive position of the Exchange in attracting order flow via the mandatory posting system. The MSE has incorporated into its procedures a number of provisions that are intended to provide procedural fairness to the specialist. For example, as noted above, the MSE will provide the specialist with monthly status reports, affording him sufficient opportunity to improve his position and avoid mandatory posting. Furthermore, the specialist is permitted to apply for any stock subject to mandatory posting and is provided an opportunity to demonstrate to the Committee the mitigating circumstances which should allow him to retain the issue. Finally, the Commission does not view the standard proposed by the MSE as an unusually difficult one to meet and maintain.

The Commission believes the question of the existence of incentives to pay for order flow exists as an economic matter irrespective of the instant filing. In that regard, the Commission notes that the MSE has committed itself to marketing the Exchange as a marketplace in an

<sup>7</sup> The ITS Plan, as a general matter, provides certain protections if a market center executes a transaction at a price inferior to the price being displayed by another market center. Those protections, however, only apply to the extent of the displayed size in the market center traded through. The ITS participants have adopted rules addressing trade-throughs in stocks subject to ITS trading. See Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

effort to attract order flow for all specialists on the floor.<sup>8</sup>

With respect to the commentator's concern that an MSE specialist may display smaller sized markets to attempt to artificially inflate his market share, the Commission agrees with the MSE that there are economic incentives that would encourage the specialist to display the full size of his bid or offer and that any attempt to display smaller markets probably would result in reduced order flow over ITS to that specialist. In addition, the Commission agrees with the MSE that a specialist routinely displaying smaller sized quotations risks that a block transaction will print through the specialist's market, thereby severely limiting the trade-through protection available to the specialist.<sup>9</sup> Accordingly, the Commission finds that the proposed rule change should provide incentives that should encourage tighter quotations, in greater size, to attract additional order flow to MSE specialists. The Commission thus believes that the proposal should foster improved markets on the MSE and increased competition between markets.<sup>10</sup>

<sup>8</sup> With respect to the commentator's concern about payment for order flow, the Commission notes that this question has been raised in other contexts. See National Association of Securities Dealers, Inc., Notice to Members 85-32 ("Payment for Order Flow"), April 30, 1985.

<sup>9</sup> Moreover, such devices, if done with the intent of increasing the specialist's trading volume, also may be prohibited under Article VIII, Rule 7 of the MSE rules as conduct inconsistent with just and equitable principles of trade. See letter from J. Craig Long, Vice President-Legal and Secretary, MSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated October 11, 1985. *CF*, section 9(a)(2) of the Act, 15 U.S.C. 78i(2) (1982).

In any event, the Commission expects that the MSE will review the effects of the rule and, in particular, the impact of the rule on the quality of MSE markets, following implementation of the mandatory posting procedures.

<sup>10</sup> With respect to the commentator's suggestion that the MSE specialist would avoid sending orders to another regional exchange specialist to avoid adverse effects on the MSE specialist's volume ranking, the Commission notes that most ITS share volume is currently received by the NYSE, with remaining volume dispersed among other ITS participants. See Directorate of Economic and Policy Analysis, Report on the Operation of the Intermarket Trading System: 1978-1981, June 1983, Table A-1. MSE is currently second among regional exchanges in its use of ITS. Accordingly, the Commission does not believe the mandatory posting requirement will, itself, create a significant new disincentive to routing multiply-traded issues to a regional specialist. Moreover, the Commission does not believe that a specialist would avoid routing orders to another regional exchange if that exchange were, in fact, offering a superior market. Of course, if all regional exchanges had similar policies, the Commission would reconsider whether such policies, in the aggregate, raised a different level of concern.

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 including the requirements of Section 6, and the rules and the regulations thereunder. In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act, which requires that rules of the exchange be designated to promote just and equitable principles of trade, and section 6(b)(8), which requires that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>11</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: October 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26178 Filed 10-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22575; File No. SR-PSE-85-25]

#### Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Notice of Filing and Partial Immediate Effectiveness of Proposed Rule Change

On September 26, 1985, the Pacific Stock Exchange, Inc. filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 under the Act<sup>2</sup> a proposed rule change to add an interpretation to PSE's Option Floor Procedure Advice ("OFPA") B-5, which requires that PSE options market makers execute 40% of their total transactions in person, on the trading floor, to prohibit single or small-lot trades executed

during limited appearances on the PSE floor only to meet the requirements of OFPA B-5. PSE also proposes to establish the following schedule of fines for violations of this new interpretation of OFPA B-5:

First offense—Letter of caution

Second offense—Minimum fine of \$250.00 plus \$10.00 per single or small-lot trade

Third offense—Minimum fine of \$500.00 plus \$20.00 per single or small-lot trade

Fourth offense—Minimum fine of \$1,000.00 plus \$40.00 per single or small-lot trade

Additional offenses—May result in minimum fines of \$2,000.00 and/or possible suspension

The PSE states that the addition of the proposed interpretation to OFPA B-5 is necessary because it recently has come to the attention of the Exchange that the intent of OFPA B-5 can be circumvented by means of breaking up larger options contract orders into one-lot or small-lot trades for the sole purpose of increasing the percentage of on-floor trades effected each quarter. This allows the market maker to remain within technical compliance with the 40% in person requirement without spending much time on the floor. The PSE states that the intent of the proposed fine schedule is to create a strong deterrent to violations of the proposed interpretation to OFPA B-5. The PSE also states that the statutory basis for the proposed rule change is section 6(b)(5) of the Act<sup>3</sup> in that it will prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.

The portion of the proposed rule change that establishes a new interpretation of OFPA B-5 has become effective pursuant to section 19(b)(3)(A) of the Act.<sup>4</sup> At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

By December 6, 1985, or within such longer period (i) as the Commission may designate up to January 30, 1986, if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PSE consents, the Commission will:

(A) By order approve the portion of

the proposed rule change relating to the proposed schedule of fines or;

(B) Institute proceedings to determine whether this portion of the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the entire proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the PSE. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26179 Filed 10-31-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22560; File No. SR-Phlx-85-27]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1985, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> The Commission notes that, since July 1, 1985, MSE has implemented procedures relating to calculation of specialists' trading volume and monthly notification to specialists of how their volume compares to other exchanges on which the specialists' stocks are trading. The MSE will not subject any stock to mandatory posting until the first six month period concludes on December 31, 1985. The Commission believes it is appropriate for the MSE to utilize data collected from July 1, 1985, through December 31, 1985, for purposes of implementing its mandatory posting procedures.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1985).

<sup>3</sup> 15 U.S.C. 78f(b)(5) (1982)

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A) (1982)

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

### Option Floor Procedure Advices—Amendments

#### B-3 Trading Requirements

A Registered Options Trader is required to trade as principal at least 1,000 [options] contracts [in each quarter in options in which he is registered] on the Exchange in each quarter. Also, at least 50% of a Registered Options Trader's trading [this] activity in each quarter must be in assigned options [classes]. No application by a Registered Options Trader to change [assigned] options [classes] assignments will be approved unless such Registered Options Trader is in compliance with the above two requirements at the time the application for change is made.

#### B-10 Responsibility for Mismatched or "Out" Trades

In order for a Registered Options Trader [shall] to be held [liable] responsible on mismatches or other "out" trades, [when such] the Registered Options Trader [is] must have been informed of the problem before 12:00 noon on the business day following the transaction in question. For purposes of this rule, expiration Saturday is considered a business day.

#### C-6 Responsibility for Missed Orders

In order for a Floor Broker [shall] to be held [liable] responsible for a missed execution [for] (i.e., orders entrusted to [him] the floor broker which should have been executed) [when he is] the Floor Broker must have been informed of the error before 12:00 noon on the business day following the error. For purposes of this rule, expiration Saturday is considered a business day.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify three of the options floor procedure advices which were approved by the Securities and Exchange Commission ("Commission") in February 1985.<sup>1</sup> These clarifications are made to address informal comments received from Exchange members. They are not meant to change the substance of these advices. These three advices, respectively, concern: the trading volume requirements for Exchange Registered Options Traders; when a registered option trader shall be responsible for mismatched or "out" trades; and when an Exchange Floor Broker shall be responsible for missed orders (i.e., orders entrusted to the floor broker which should have been executed).

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it interprets, and clarifies, the meaning of existing Phlx rules. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

## IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

<sup>1</sup> See File No. SR-Phlx-84-13, Securities Exchange Act Release No. 21760 (February 14, 1985), 50 FR 7248 (February 21, 1985).

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All submissions should refer to the file number in the caption above and should be submitted by November 22, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 25, 1985.

John Wheeler,  
Secretary.

[FR Doc. 85-26180 Filed 10-31-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14268]

## Application and Opportunity for Hearing; Citicorp

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and two Pooling and Servicing Agreements dated as of July 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under

which securities of an obligor upon the indentures securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the Indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the Indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the Indenture dated as of April 21, 1980 involved the issuance of various series of unsecured subordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the indentures or under any other existing indenture.

(3) On July 23, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of July 1, 1985 (the "1985-F Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on July 23, 1985 Mortgage Pass-Through Certificates, Series 1985-F 12.00% Pass-Through Rate (the "Series 1985-F Certificates"), which evidenced fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-F Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating \$104,283,325.95 at the close of business on July 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-F

Certificates. On July 23, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-F Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-F Certificates, to be liable for 7% of the initial aggregate principal balance of the 1985-F Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-F Guaranty. The 1985 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-F Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-F Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S-11 and S-3, File No. 2-98528) as part of a delayed or continuous offering of \$400,000,000 aggregated amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-F Certificates were offered by a Prospectus Supplement dated June 28, 1985, supplemental to a Prospectus dated June 20, 1985. The 1985-F Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) On July 30, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of July 1, 1985 (the "1985-G Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on July 30, 1985 Mortgage Pass-Through Certificates, Series 1985-G, 11.00% Pass-Through Rate (the "Series 1985-G Certificates"), which evidenced fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-G Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating \$95,238,522.93 at the close of business on July 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-G Certificates. On July 30, 1985, Applicant entered into a Guaranty of even date (the "1985-G Guaranty") pursuant to which applicant agreed, for the benefit of the holders of the Series 1985-G Certificates, to be liable for 6% of the initial aggregate principal balance of the 1985-G Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-G Guaranty. The 1985-G Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and subordinated indebtedness of Applicant, and accordingly, if enforced against

Applicant, the 1985-G Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-G Certificates were registered under the Securities Act of 1933 (Registration Statements on Form S-11 and S-3, File Nos. 2-96656 and 2-98528) as part of a delayed or continuous offering of \$750,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-G Certificates were offered by a Prospectus Supplement dated July 3, 1985, supplemental to a Prospectus dated June 29, 1985. The 1985-G Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1985-F Agreement and the 1985-G Agreement are hereinafter called the 1985 Agreements, the 1985-F Guaranty and the 1985-G Guaranty are hereinafter called the 1985 Guarantees, and the 1985-F Certificates and the 1985-G Certificates are hereinafter called the 1985 Certificates.

(5) The obligations of Applicant under the Indentures and the 1985 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985 Guarantees are unlikely to cause any conflict of interest among the trusteeship of the Trust Company under the Indentures and the 1985 Agreements.

(6) The Applicant Company has waived notice of hearing, and waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14268, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C.

Notice Is Further Given that any interested person may, not later than November 25, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the

public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26174 Filed 10-31-85; 8:45 am]  
BILLING CODE 8010-01-M

[File No. 22-14368]

#### Application and Opportunity for Hearing; Citicorp

October 29, 1985

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement dated as of August 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreements.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The Indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the Indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the Indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the Indenture dated as of April 21, 1980 involved the issuance of various series of unsecured subordinated Notes. Said Indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59398 and 2-64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four Indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On August 22, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of August 1, 1985 (the "1985-H Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on July 23, 1985 1985 Mortgage Pass-Through Certificates, Series 1985-H 10.00% Pass-Through Rate (the "Series 1985-H Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-H Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating \$100,107,742.39 at the close of business on August 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-H Certificates. On August 23, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-H Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-H Certificates, to be liable for 5% of the initial aggregate principal balance of the 1985-H Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-H Guaranty. The 1985 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and

accordingly, if enforced against Applicant, the 1985-H Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-H Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S-11 and S-3, File No. 2-98528) as part of a delayed or continuous offering of \$400,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-H Certificates were offered by a Prospectus Supplement dated August 15, 1985, supplemental to a Prospectus dated June 20, 1985. The 1985-H Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985-H Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-H Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-H Agreement.

(5) The Applicant Company has waived notice of hearing, and waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14368, which is a public document on file in the Office of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

Notice is further given that any interested person may, not later than November 25, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 85-26175 Filed 10-31-85; 8:45 am]  
BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2208; Amdt. # 1]

#### Pennsylvania; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 42242), issued in accordance with the President's declaration of October 8, 1985, is hereby amended to include Carbon and Wyoming as adjacent counties because of damage from severe storms and flooding beginning on September 27, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 9, 1985, and for economic injury until the close of business on July 8, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 24, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-26092 Filed 10-31-85; 8:45 am]  
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2211; Amdt. #1]

#### Puerto Rico; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 42242), issued in accordance with the President's declaration of October 10, 1985, is hereby amended to include the Municipalities of Aibonito, Arecibo, Barceloneta, Barranquitas, Bayamon, Ceiba, Dorado, Fajardo, Guanica, Hormigueros, Humacao, Jayuya, Juana Diaz, Manati, Maunabo, Naguabo, Penuelas, Salinas, San German, Utuado, Vega Baja, Villalba, Yabucoa and Yauco because of damage from severe storms, landslides, mudslides, and flooding beginning on October 6, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 9, 1985, and for economic injury until the close of business on July 10, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: October 23, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-26093 Filed 10-31-85; 8:45 am]  
BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2214; Amdt #1]

#### Virginia; Declaration of Disaster Loan Area

The above numbered Declaration (F.R. 5043307) is hereby amended to include the adjacent County of Northampton in the State of Virginia. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 16, 1985, and for economic injury until the close of business on July 17, 1986.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 24, 1985.

Robert A. Turnbull,

Associated Deputy Administrator for Management & Administration.

[FR Doc. 85-26094 Filed 10-31-85; 8:45 am]  
BILLING CODE 8025-01-M

[License No. 08/08-0146]

#### Issuance of a Small Business Investment Company License; UBD Capital, Inc.

On June 4, 1985, a notice was published in the Federal Register (50 FR23571) stating that an application has been filed by UBD Capital, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business July 4, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 08/08-0146 on October 23, 1985, to UBD Capital, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-26095 Filed 10-31-85; 8:45 am]  
BILLING CODE 8025-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

##### Summary

The Federal Aviation Administration (FAA) will hold a public hearing to receive comments, suggestions and information on alternatives available to provide incentives to air carriers to accelerate modernization of the commercial aircraft fleet. The hearing will convene at 9:30 a.m., December 10, 1985, in the auditorium at FAA Headquarters, 800 Independence Avenue SW., Washington, DC. The public is encouraged to attend and to present their views.

##### Background

The Appropriations Committee of the U.S. House of Representatives in its oversight of the FAA's discharge of its environmental responsibilities included the following statement in H.R. Report 99-256 accompanying HR. 3244:

The Committee understands that aircraft noise continues to be a matter of concern for airport neighbors in many major metropolitan areas. It appears to the Committee that a possible long term solution to this problem is the continued replacement of the existing commercial fleet with the next generation of quieter, fuel efficient aircraft.

The Committee is concerned, however, that additional steps could be taken to encourage aircraft fleet modernization. Since it is consistent with federal policy to reduce aircraft noise around the Nation's airports, the Committee directs the FAA, after consultation with interested parties, to report within six months on alternatives available to provide incentives to air carriers to accelerate modernization of the commercial aircraft fleet.

In response to this direction, the FAA has decided to hold the public hearing described above to afford all interested parties an equitable opportunity to present their views.

##### Issues

The FAA seeks information on workable and practical alternatives (and combinations thereof) to best achieve the ends described by the Committee. Where corroborative data on the efficacy of these alternatives are

available, the FAA also invites its submission.

Among the alternatives that might be considered are those in the following list. However, it must be emphasized that this list is only included to stir consideration of wide range of possible alternative actions and, as such, does not itself represent a proposal from the FAA. Of course, the public is invited to submit additional alternatives.

#### Proposed Alternatives For Discussion

##### 1—Technology

Feasibility of a Retrofit/Reengining program for Stage 2 airplanes.  
Development of Stage 4 standards.

##### 2—Regulatory Action

Forbid the production of Stage 2 airplanes by a specified date in the future.

Forbid introduction to the U.S. fleet of Stage 2 aircraft from non-U.S. registries.

Forbid the operation of Stage 2 aircraft.

Legislate the useful life of a Stage 2 airplane based on specified years in service.

Exempt all Stage 3 aircraft from noise lawsuits.

Forbid the introduction of Stage 2 airplanes at capacity controlled airports.

##### 3—Fiscal Action

Accelerated depreciation plans for quiet Stage 3 aircraft.

Investment tax credit.

Noise emissions tax.

##### 4—Airport Improvement Plan

Use of the Aviation Trust Fund.

##### 5—Establishment of a Noise Trust Fund

Imposition of a federal noise landing fee.

Fuel tax.

Guaranteed loans.

Subsidized loans.

**Further Information:** For further information, contact Mr. Richard N. Tedrick, Noise Policy and Regulations Branch (AEE-110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone (202) 755-9027.

Issued in Washington, DC, on October 28, 1985.

John E. Wesler,

Director of Environment and Energy.

[FR Doc. 85-28063 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-13-M

#### Federal Highway Administration

##### Environmental Impact Statement, City of Santa Ana, Orange County

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed widening of Bristol Street between First Street and Warner Avenue in the City of Santa Ana, Orange County, California.

**FOR FURTHER INFORMATION CONTACT:** C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915 Sacramento, California 95809, Telephone (916) 551-1310.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation and the City of Santa Ana, will prepare an Environmental Impact Statement (EIS) on the proposed widening of Bristol Street. The project is necessary to reduce congested traffic conditions.

Alternatives under consideration include: (1) Take no action. (2) Widen Bristol Street between First St. and Warner Ave. on the east. (3) Widen Bristol St. between First St. and Warner Ave. on the west. (4) Widen Bristol St. on both the east and west sides. (5) Intersection widening and upgrades only on Bristol St. and cross streets.

A formal scoping meeting is scheduled for Wednesday, November 13, 1985 at 7:00 P.M. P.S.T. at Carr Auditorium, located at Carr Intermediate School, 2120 West Edinger, Santa Ana, California.

To insure that a full range of issues related to this proposed action are addressed and all significant issue identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 85-28144 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-22-M

#### National Highway Traffic Safety Administration

##### Denial of Defect Petitions; Moore, Kerlinsky, Floyd, Trotter, de Jong, Burnham, Dittow

This notice sets forth the reasons for denial of 10 petitions submitted to NHTSA under section 124 of the

National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*).

William E. Moore of Manassas, Va., asked the agency on February 28, 1985, to investigate an alleged ignition failure existing on 1979 Chrysler passenger cars. Specifically, the electronic control module on Mr. Moore's car had failed on the Capital Beltway, and an under-vehicle fire occurred when he reached the shoulder of the road.

NHTSA reviewed its files and discovered 33 other complaints of control module failure existing in a population of 414,393 rear-drive vehicles. These numbers do not appear to suggest a trend indicating the existence of a widespread defect relating to motor vehicle safety, and the petition was denied on June 18, 1985. NHTSA believes that in Mr. Moor's case the ignition module failure at high-speed operation on the Beltway led to large quantities of raw fuel reaching an overheated catalytic converter, causing the fire.

NHTSA received four petitions from Louis Kerlinsky, an attorney in Springfield, Mass. The first, dated July 10, 1985, asked the agency to conduct a defect investigation into engine compartment fires on 1981 Chevrolet Citation passenger cars, alleging that a client had been asphyxiated as a result of one. NHTSA investigation disclosed reports of only 6 underhood fires among a population of over 300,000 1981 Citations, a number which does not suggest a trend indicating a defect. Further, the fire marshal's report in this case indicated that the vehicle had a broken fuel line. In consideration of all the available information, the agency concluded that there was no reasonable possibility that the manufacturer would be ordered to recall the vehicles at the end of an investigation, and the petition was denied on August 13, 1985.

Mr. Kerlinsky's second petition, also dated July 10, 1985, requested an investigation of door latches and door lock retention on 1975 Buick LeSabre automobiles, alleging that a locked door on such a car had flown open when the car hit a tree, resulting in injury to a client. Over 500,000 1975 Buicks were produced and NHTSA found no other reports of similar occurrences among that population, and the petition was denied on August 13, 1985.

The third and fourth petitions from Mr. Kerlinsky, dated August 13, 1985, alleged that safety defects existed in 1971 Volkswagen Karmann Ghia cars, based upon the fact that one client had been injured when the driver's door and side collapsed upon impact with a larger car, and that in the same accident

another client had been injured by the glove compartment door which had flown open. The agency's files indicated no similar complaints about the make and model year in question. In denying these petitions on September 17, 1985, the agency noted that even were a defect determined to exist the vehicle owner would not be entitled to a remedy without charge under the National Traffic and Motor Vehicle Safety Act because of the age of the car.

On August 18, 1985, Donald Floyd of Lenexa, Kansas, asked the agency to conduct a hearing regarding premature transmission failures in 1982 Oldsmobile Delta Royale passenger cars. He alleged that overheating caused by a transmission failure in his vehicle had resulted in the plastic housing over the flywheel assembly bursting into flames. Investigation revealed no complaints of a similar nature, and the agency concluded that the incident was an isolated one. Accordingly, it did not appear a reasonable possibility that an order would be issued at the end of an investigation directing the manufacturer to recall the vehicles in question, and the petition was denied on September 19, 1985.

Mr. and Mrs. Howard Trotter of La Plata, Md., asked the agency at the end of February 1985 to investigate hazards involved with warped rotors or out of round brake drums. In denying the petition on May 16, 1985, the agency replied that it had never viewed these conditions as potential hazards to motor vehicle safety in the absence of evidence that a significant number of failures in a model line might pose a risk to vehicle control.

The vehicle problem which concerned Mr. and Mrs. Marc de Jong of Kansas City, Kansas, in their petition of March 10, 1985, was a rear bearing failure in their 1982 Toyota Tercel. The agency found only two similar complaints among a population of over 135,000 vehicles, with no accidents or injuries reported. Bearings in the process of failure because of contaminated lubricants or other causes become progressively louder alerting the driver to the need for service attention long before the point of complete failure. The agency viewed the incident reported by the de Jongs as an isolated one, and denied the petition on May 14, 1985.

A series of brake repairs on her 1980 Chevrolet Chevette caused Lynne Burnham of Bensalem, Pa., to file a petition with NHTSA on January 6, 1985. As the petition appeared based upon the cost of the repairs rather than any alleged safety problem, Ms. Burnham was informed on March 18, 1985, that there was insufficient information in the

letter to indicate a safety problem, but that if she believed that the condition had created a risk to safety the agency would be willing to consider the matter further.

Clarence Ditlow, on behalf of the Center for Auto Safety and others, petitioned the agency on March 6, 1985, to conduct an expedited investigation into the alleged failure of automatic transmissions installed in 1966-1980 Ford Motor Company vehicles to hold or engage in the "Park" position. At the conclusion of an earlier agency investigation into this matter Ford had supplied owners of the potentially defective vehicles with labels providing permanent reminders to operators to take all reasonable steps to secure their vehicles from unintended movement when parked. This campaign took place in 1981. The present petition, coming 4 years later, offered the perspective of a longer term of experience with the vehicles concerned but in the agency's view did not provide evidence contradicting the agency's earlier assessments of suggesting that the issues raised in the earlier investigation were any less difficult to resolve.

In addition to the material submitted by the petitioner, NHTSA requested Ford to present updated accident and repair information, and, for perspective, requests regarding "Park" experience were also directed to General Motors, Chrysler Corporation, and American Motors. Review of this data indicated that "park to reverse" incidents exist among all manufacturers, though the rate of such is higher for Ford than for the others. The evidence continued to support the inference that driver carelessness and lack of precautions have substantially contributed to many if not most incidents. However, the overall trend of incidents has continued downward, and the degree of difference between Ford and other manufacturers is smaller than it was in 1980.

The petition emphasized the effect of Ford's 1980 design changes as a ground for further investigation. While such were intended, apparently, to improve the function of the park-apply system, the changes do not establish the existence of a safety-related defect in the previous design. After data comparisons, NHTSA concluded that a recall campaign to mechanically alter a vehicle's transmission would not reduce park to reverse incidents to any greater degree than that already accomplished by the notification warning label campaign. Because of the absence of new information and the uncertain prospects for the effectiveness of the proposed mechanical remedy, the

petition to reopen the investigation was denied on July 12, 1985.

Authority: Sec. 124, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 28, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-26059 Filed 10-29-85; 10:16 am]

BILLING CODE 4910-59-M

## Saint Lawrence Seaway Development Corporation

### Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 9:30 a.m., December 5, 1985, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 27, 1985, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/426-3574.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 1, 1985.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 85-26076 Filed 10-31-85; 8:45 am]

BILLING CODE 4912-61-M

## VETERANS ADMINISTRATION

Settlement Agreement; Chris L. Gott et al. v. Harry N. Walters et al.

AGENCY: Veterans Administration.

ACTION: Notice of Settlement Agreement.

SUMMARY: This notice contains the text of a settlement agreement entered by the parties to the case *Chris L. Gott, et al. v. Harry N. Walters, et al.*, Nos. 82-

1159, 82-1148, 82-1454 (D.C. Cir.) As part of the settlement agreement, the Veterans Administration (VA) agreed to publish the terms of the agreement in the Federal Register. This notice fulfills that obligation.

**SUPPLEMENTARY INFORMATION:** As part of a settlement agreement entered by the parties to the above-referenced litigation, the VA agreed to publish the text of the settlement agreement in the Federal Register within 30 days of entry of an order by the U.S. District Court for the District of Columbia dismissing the action. At the time the settlement agreement was entered, the case was on appeal before the U.S. Court of Appeals for the District of Columbia Circuit. On September 20, 1985, that court remanded the case to the district court for entry of a dismissal order. The district court issued its orders dismissing the action on October 3, 1985. This notice fulfills the VA's obligation under the settlement agreement to publish the terms of the agreement in the Federal Register.

The text of the settlement agreement follows:

**In the United States Court of Appeals for the District of Columbia Circuit**

*Chris L. Gott, et al., Plaintiffs—Appellees, v. Harry N. Walters, et al., Defendants—Appellants.*

[Nos. 82-1159, 82-1148, 82-1454]

**Settlement Agreement**

The parties to the captioned action, who are the named plaintiffs and defendants in the civil action previously styled *Gott, et al. v. Nimmo, et al.*, Civ. No. 80.0906 (U.S.D.C., D.C.), and their successors, hereby agree that this action shall be settled and dismissed upon the following terms and conditions:

1. Within 2 business days of the execution of this Agreement, the parties shall file a joint motion with the United States Court of Appeals for the District of Columbia Circuit, requesting that this action be remanded to the United States District Court for the District of Columbia with instructions to vacate all orders heretofore issued by the district court in this case and to enter an order dismissing this action with prejudice upon the terms of this Agreement.

2. Within 60 days of the entry of an order dismissing the district court action, the Veterans Administration (VA) shall send written notice, as described in this paragraph, to the last known address of all claimants or survivors, identified from computer records maintained by the VA Central Office Compensation and Pension Service, whose claims for veterans' disability compensation

or survivors' dependency and indemnity compensation based on exposure of ionizing radiation during participation in atmospheric nuclear weapons testing or the post-World War II occupation of Hiroshima and Nagasaki, Japan, were denied by the VA by rating decision dated on or after June 15, 1979, and on or before November 17, 1961. The VA shall also send such written notice to the last known address of any other claimant identified by plaintiffs within 120 days of the entry of an order dismissing the district court action who otherwise meets the foregoing criteria but record of whose claims does not appear in VA Central Office Compensation and Pension Service records. The written notice to be provided under this paragraph shall inform the claimant or survivor of the regulations governing compensation claims based on radiation; exposure issued pursuant to Pub. L. 98-542, of procedures for reopening benefit claims before the VA, and that such claimant or survivor may be eligible for retroactive benefits as provided in paragraph 3 of this Agreement if such claim is filed within the time period set forth in the last sentence of paragraph 3. Prior to sending such notice, the VA shall obtain the concurrence of counsel for plaintiffs as to the language and form thereof, and such concurrence shall not be unreasonably withheld.

3. Where entitlement to disability compensation or dependency and indemnity compensation benefits is established under regulations issued pursuant to Pub. L. 98-542 by a claimant or survivor of a claimant whose claim based on exposure to ionizing radiation during participation in atmospheric nuclear weapons testing or the post-World War II occupation of Hiroshima and Nagasaki, Japan, was denied by the VA by rating decision dated on or after June 15, 1979, and on or before November 17, 1961, and was not reopened and denied under the terms of this Settlement Agreement, the VA shall establish the effective date for award of benefits as if the allowed claim had been filed on the date of filing of the earliest claim denied within the said period. Notwithstanding the time limitations set forth in the foregoing sentence, the provisions thereof shall also apply in the case of any named plaintiff to the district court action whose claim for benefits was filed prior to the institution of the district court action on April 10, 1980, and subsequently denied by the VA. The foregoing contemplates that, for a claim to be adjudicated and allowed under these criteria, the disability or cause of death ultimately found to be service-connected will be the same as, or etiologically related to, the disability or cause of death previously claimed and denied, and that said claim will be filed within one year of the effective date of said regulations.

4. The VA will maintain, for at least 2 years following entry of an order dismissing the district court action, copies of decisions rendered with respect to claims for benefits under regulations issued pursuant to Pub. L. No. 98-542 that are filed by claimants or survivors who are sent notice pursuant to paragraph 2 of this Agreement. The VA will make such documents available, without personal identifiers, to counsel for plaintiffs upon reasonable request therefor.

5. Within 45 days of the entry of an order dismissing the district court action, the United States shall pay to plaintiffs' counsel in this action attorney fees in the sum of \$20,000.

6. This Agreement shall represent a full settlement and release of any and all claims and demands of plaintiffs, their heirs, executors, administrators, privies, or assigns for relief of any kind arising from the matters litigated in this action. Neither plaintiffs, their heirs, executors, administrators, privies, or assigns, nor plaintiffs' counsel, shall hereafter assert any claim for attorney fees or costs arising from this action, except as provided in paragraph 5 of this Agreement.

7. This Agreement is entered in furtherance of the parties' mutual desire to serve the interests of veterans and their survivors and will be implemented in accordance with the policies set forth in 38 CFR 3.102 and 3.303(a). This Agreement does not represent an admission by the VA that the documents at issue in this action were invalid, or that any claim for disability or death benefits has been improperly denied. Nor does the VA concede the validity of any of the arguments that plaintiffs have made in this case.

8. Within 30 days of the entry of an order dismissing the district court action, the VA shall publish this Settlement Agreement in the Federal Register.

9. In the event the joint motion described in paragraph 1 of this Agreement is not granted in full, this Agreement shall be void.

Dated: September 16, 1985.

Plaintiffs—Appellees, by their attorneys,  
Samuel M. Sipe, Jr., Esq.,  
*Stephoe & Johnson.*  
Barton F. Stichman, Esq.,  
*Litigation Director, Vietnam Veterans of America, Legal Services.*

Date: October 28, 1985.

By direction of the Administrator:  
Defendants—Appellants, by their attorney,  
Donald L. Ivers, Esq.,  
*General Counsel, Veterans Administration.*

Approved:  
Everett Alvarez, Jr.,  
*Deputy Administrator.*

[FR Doc. 85-26090 Filed 10-31-85; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 50, No. 212

Friday, November 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	<i>Item</i>
Federal Home Loan Bank Board .....	1
Securities and Exchange Commission ..	2-4

1

### FEDERAL HOME LOAN BANK BOARD

**TIME AND DATE:** 10:00 a.m., Friday, November 8, 1985.

**PLACE:** In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

**STATUS:** Open meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Ms. Gravlee (202-377-6679).

#### MATTERS TO BE CONSIDERED:

Industry Conflicts of Interest  
Criminal Referrals  
Acquisition of Control of Insured Institutions  
Delegated Merger Approvals  
Receiverships and Conservatorships

Jeff Sconyers,

Secretary.

No. 26, October 30, 1985.

[FR Doc. 85-26253 Filed 11-1-85; 2:17 pm]

BILLING CODE 6720-01-M

3

### SECURITIES AND EXCHANGE COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 50 FR 43323, October 24, 1985.

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Monday, October 21, 1985.

**CHANGE IN THE MEETING:** Additional item/deletion.

The following item will be considered at a closed meeting scheduled for Wednesday, October 30, 1985, at 3:30 p.m.

Formal order of investigation.

The following item will not be considered at an open meeting scheduled for Thursday, October 31, 1985, at 2:30 p.m.

The Commission will hear oral argument on an appeal by C.E. Carlson, Inc., a registered broker-dealer, and Charles E. Carlson, its president, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The following item will not be considered at a closed meeting scheduled for Thursday, October 31, 1985, following the 2:30 p.m. open meeting.

Post oral argument discussion.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

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: David Powers at (202) 272-2091.

Dated: October 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26250 Filed 10-30-85; 1:09 pm]

BILLING CODE 8010-01-M

3

### SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 4, 1985.

A closed meeting will be held on Tuesday, November 5, 1985, at 2:30 p.m. An open meeting will be held on Thursday, November 7, 1985, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to 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).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 5, 1985, at 2:30 p.m., will be:

Institution of injunctive actions.

Formal order of investigation.

Settlement of administrative proceedings of an enforcement nature.

Option.

The subject matter of the open meeting scheduled for Thursday, November 7, 1985, at 10:00 a.m., will be:

1. Consideration of whether to grant the application filed by IDS Mutual, Inc., et al., IDS/American Express Inc., IDS Life Insurance Company and Shearson Lehman/American Express Inc., et al. ("Applicants"), requesting an order pursuant to Section 10(f) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 10(f) of the Act and Rule 10f-3 thereunder to the extent necessary to permit, under certain conditions, the investment company Applicants to purchase through affiliated underwriting syndicates an aggregate amount of securities in excess of the percentage limitations in Rule 10f-3(d). For further information, please contact H.R. Hallock, Jr. at (202) 272-3030.

2. Consideration of whether to issue a release which would adopt amendments to Rule 15Bc-7-1 under the Exchange Act to permit the availability of composite compliance examination information to the Municipal Securities Rulemaking Board. For further information, please contact William W. Uchimoto at (202) 272-2409.

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: Joan Stempel at (202) 272-2149.

Dated: October 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-26169 Filed 10-29-85; 4:18 pm]

BILLING CODE 8010-01-M

4

### SECURITIES AND EXCHANGE COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 50 FR 43323, October 24, 1985.

**STATUS:** Close meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATES PREVIOUSLY ANNOUNCED:** Monday, October 21, 1985.

**CHANGE IN THE MEETING:** Additional meeting.

The following items were considered at a closed meeting held on Monday, October 28, 1985, at 11:00 a.m.

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive action.

Regulatory matter regarding financial institution bearing enforcement implications.

Commissioner Cox, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: David Power at (202) 272-2091.

Dated: October 28, 1985.

John Wheeler,

Secretary

[FR Doc. 85-26167 Filed 10-29-85; 4:12 pm]

BILLING CODE 8010-01-M

# **federal register**

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Friday  
November 1, 1985

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## **Part II**

### **Department of Defense General Services Administration National Aeronautics And Space Administration**

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48 CFR Part 31  
Federal Acquisition Regulation (FAR);  
Training and Education Costs; Proposed  
Rule

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 31

Federal Acquisition Regulation (FAR);  
Training and Education Costs

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.109, Advance agreements, and a revision to FAR 31.205-44, Training and educational costs.

**Comments:** Comments should be submitted to the FAR Secretariat at the address shown below on or before December 31, 1985 to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration FAR Secretariat (VRS); 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85-51 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

**SUPPLEMENTARY INFORMATION:****A. Background**

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a change to FAR 31.109(h) highlighting training and education costs as an example of costs for which advance agreements may be particularly important. There are indications that such advance agreements have only been used by a limited number of Government contractors. In addition, the Councils are considering several changes to FAR 31.205-44 to: (1) Specifically allow training materials and textbook costs, (2) to allow up to 2-years full-time postgraduate education without the requirement for an advance agreement, (3) to add managerial training and education programs to those for which an advance agreement may be used to extend the standard allowable duration for part-time college level training and full-time postgraduate studies, and (4) to require a refund of

training costs to the Government when the employee resigns within 12 months of completion of education for reasons within the employees's control.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because advance agreements are usually negotiated on contracts where there is a requirement for future negotiation in the settlement of the contract price, and as a general rule, these types of contracts apply to large businesses. Therefore, a regulatory flexibility analysis has not been prepared.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: October 29, 1985.

Lawrence J. Rizzi,  
Director, Office of Federal Acquisition and  
Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

**PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES**

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

2. Section 31.109 is amended by revising paragraphs (h)(14) and (h)(15), and by adding paragraph (h)(16) to read as follows:

**31.109 Advance agreements.**

(h) \* \* \*

(14) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see § 31.203(f));

(15) Costs of construction plant and equipment (see § 31.205-44(h));

(16) Training and education costs (see § 31.205-44(h)).

3. Section 31.205-44 is revised to read as follows:

**31.205-44 Training and educational costs.**

(a) *Allowable costs.* Training and educational costs are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a non-college level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees are allowable. These costs include: (1) Salaries or wages of trainees (excluding overtime compensation), (2) Salaries of the director of training and staff when the training program is conducted by the contractor, (3) tuition and fees when the training is in an institution not operated by the contractor, and/or (4) training materials and textbooks.

(c) *Part-time college level education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) below).

(d) *Full-time education.* Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work, and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained. In unusual cases, the period may be extended.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized

programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this section.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable to the extent prescribed in §§ 31.205-11, 31.205-24, and 31.205-36.

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance agreements.* Training and education costs (but not subsistence, salary, or any other emoluments for full-time education) in excess of (1) 156 hours per year per employee for part-time college level training, or (2) 2 academic years for full-time postgraduate studies may be allowed to the extent set forth in an advance agreement negotiated under § 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which employees are now working or may reasonably be expected to work. Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who

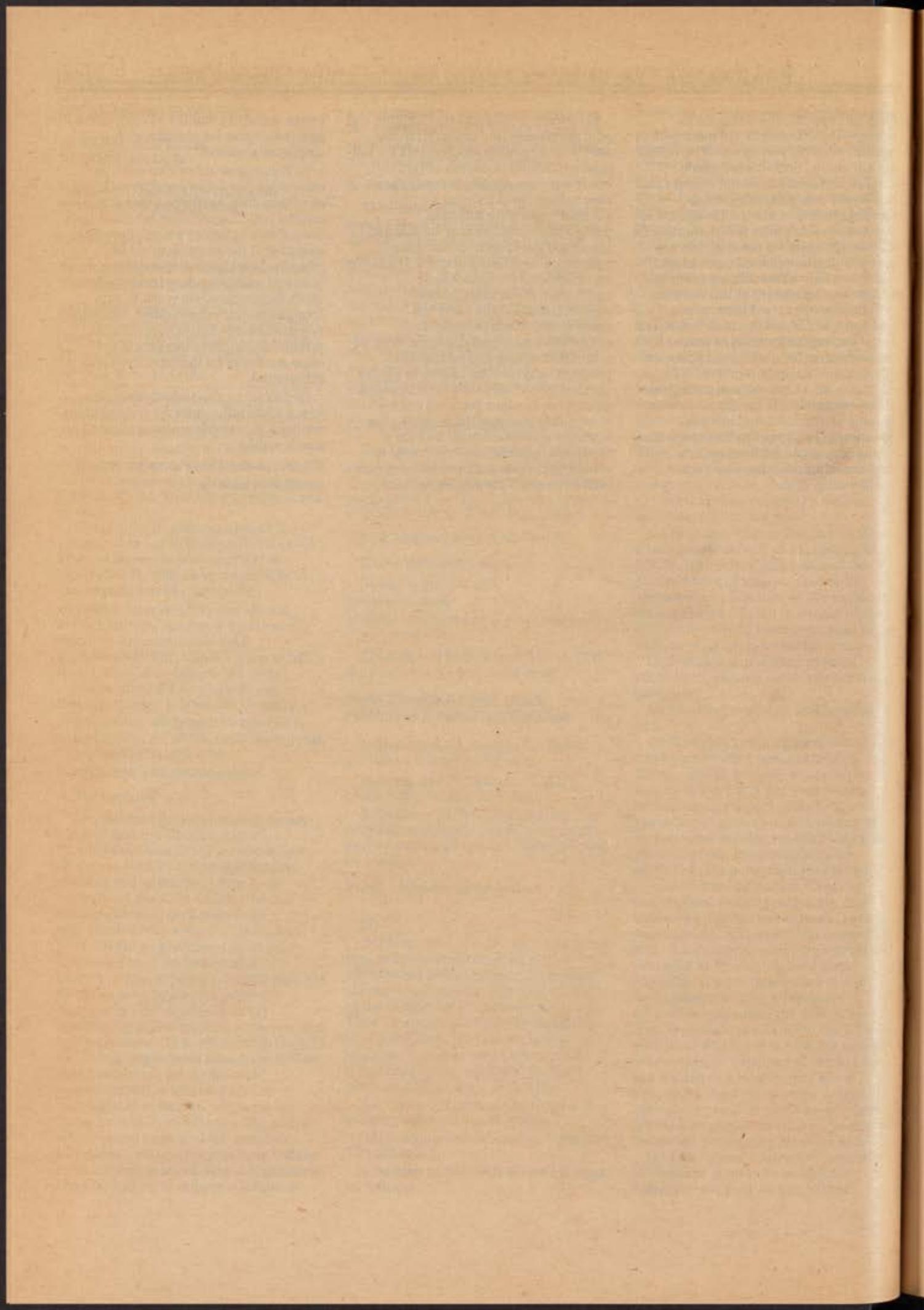
resign within 12 months of completion of such education for reasons within an employee's control.

(i) *Training or education costs for other than bona-fide employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona-fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee dependent education plans.* Generally, costs for college plans for bona-fide employee dependents are unallowable.

[FR Doc. 85-26105 Filed 10-31-85; 8:45 am]

BILLING CODE 6820-61-M



# **federal register**

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Friday  
November 1, 1985

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## **Part III**

## **Department of Labor**

**Employment Standards Administration,  
Wage and Hour Division**

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**Minimum Wages for Federal and  
Federally Assisted Construction; General  
Wage Determination Decisions; Notice**

## DEPARTMENT OF LABOR

Employment Standards  
Administration, Wage and Hour  
DivisionMinimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination  
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 8-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas  
Decisions to General Wage  
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination  
Decision

Iowa:

IA85-4046

Modifications to General Wage  
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama:

AL85-1005..... May 31, 1985.

AL83-1039..... May 6, 1983.

AL83-1036..... May 6, 1983.

AL83-1037..... May 6, 1983.

AL83-1038..... May 6, 1983.

Connecticut: CT85-3023..... June 7, 1985.

Florida: FL85-3024..... Apr. 26, 1985.

Georgia: GA85-3022..... Apr. 19, 1985.

Illinois: IL85-5007..... Feb. 8, 1985.

Iowa: IA84-4043..... June 15, 1984.

Kansas: KS85-4009..... May 10, 1985.

Louisiana:

LA85-4020..... Aug. 9, 1985.

LA84-4059..... Oct. 5, 1984.

Michigan: MI85-5024..... June 28, 1985.

Nebraska: NE85-4033..... Aug. 16, 1985.

Oregon: OR85-5030..... June 28, 1985.

Tennessee: TN85-1001..... Jan. 11, 1985.

Virginia: VA85-3025..... May 3, 1985.

Washington:

WA85-5038..... Oct. 4, 1985.

WA85-5039..... Oct. 11, 1985.

Supersedeas Decisions to General Wage  
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama: AL83-1010 Feb. 18, 1983.

(AL85-1011).

Signed at Washington, D.C., this 25th Day of October 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M







STATE: IOWA COUNTY: Cerro Gordo  
 DECISION NO.: IAS5-4046 DATE: Date of Publication  
 DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories).

DECISION NUMBER IAS5-1011

POWER EQUIPMENT OPERATORS - Classification Definitions:

Group A: Heavy duty mechanic, crane, shovel, derrick op. - 3 or more drums, dragline, pile-driver op., hoist op. - 2 or more drums, tugboat, cableways, excavator, front end loaders, backhoes, rubber tired backhoe, graders, loaders, welders, mounted rotary drill machine, cherry picker, side boom tractors, paving machines, motor patrol, pumpcrete machines, gradalls, Johnson mixers, hydro-lift trucks, all batch plants & header house op., panel board (feed-aix), hydro-hammer on demolition work, concrete plants, asphalt plants, helicopter pilots & concrete paving trains.

Group B: Dozer scraper, turntable, 1 drum hoist, self-propelled rollers, construction elevators, locomotive engineers, elevating grader, tractor with power-control attachments, winch truck, riding-trenching & ditching machines, mixers, asphalt spreaders, drilling machines, form graders, asphalt distributors, forklift, (well point & dewatering system), subgraders, finishing machines, motorized compactors, wheelbarrows, & push carts.

Group C: Light plant operators, welding machines, air compressors, pumps, conveyors, motor boats under 30 ft., tow tractors, pile-driver hammer, (diesel, gas, air, or electric), fireman, outboard motor boat operators & bifamans.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standard contract classes (29 CFR, 5.5 (a)(1)(ii)).

(5)

	BASIC HOURLY RATE	FRINGE BENEFITS
BOILERMAKERS	517.345	3.50
BRICKLAYERS	13.17	1.07
CARPENTERS	8.73	
CEMENT MASONS	8.48	
CONCRETE FINISHERS	7.00	
DRYWALL TAPERS	7.50	
ELECTRICIANS	9.96	1.48
GLAZIERS	6.63	2.37
HVAC MECHANICS	8.77	1.02
INSULATION INSTALLERS	6.65	
IRONWORKERS	13.52	3.01
LABORERS	6.33	
LATHERS	11.10	
PAINTERS	9.93	.80
PLASTERERS	10.48	
PLUMBERS/PIPEFITTERS (EXCLUDING HVAC)	12.00	1.65
ROOFERS	9.31	
SHEET METAL WORKERS (EXCLUDING HVAC)	10.20	
SOFT FLOOR LAYERS	12.25	
SPRINKLER FITTERS	17.00	3.40
TACK DRIVERS	8.09	
POWER EQUIPMENT OPERATORS:		
Bulldozer operators	11.72	2.25
Cable operators	10.00	2.30
Crane operators	13.00	2.35
Loader operators	9.12	2.15

(10)

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standard contract classes (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 85-25902 Filed 10-31-85; 8:45 am]

BILLING CODE 4510-37-0

# **federal register**

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Friday  
November 1, 1985

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## **Part IV**

### **Department of Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 71  
Establishment of Airport Radar Service  
Areas; Final Rule**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 85-AWA-1]

## Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This action designates Airport Radar Service Areas (ARSA) at the 11 airports listed below. This action does not establish ARSA's at the Capital City and Harrisburg International Airports at Harrisburg, PA, or the Theodore Francis Green State Airport, Providence, RI. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

**EFFECTIVE DATE:** 0901 G.M.T., December 19, 1985.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****History**

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a

national basis. The original expiration dates for SFAR 45, December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250).

On July 3, 1985, the FAA proposed to designate ARSA's at 14 airports as the initial phase of implementation of the NAR recommendation (50 FR 27528). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

**Related Rulemaking**

In addition to the airports addressed here, the FAA proposed ARSA designation for 22 airports on August 2, 1985 (50 FR 31472) and 30 airports on September 30, 1985 (50 FR 39822).

**Discussion of Comments**

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

**ARSA Program Comments**

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others requested individual notification of the informal airspace meetings held for some of the candidate airports, and that following that notice a second meeting be held. The schedule of the meetings was published in the Notice of Proposed Rulemaking (July 3, 1985, 50 FR 27528). Additionally, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in the airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation

organizations and the schedule of the meetings mailed to members. Furthermore, a 90-day comment period was provided in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

AOPA also commented that additional costs will be incurred for controller training. Although the ARSA program utilizes a new combination of ATC procedures, none of the procedures are new to air traffic controllers. Thus, the training of air traffic controllers will be accomplished during regularly scheduled briefing sessions and at no additional cost.

Some commenters, including AOPA, predicted that user costs incurred due to delays, as a result of pilots circumnavigating or overflying the ARSA, will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that some facilities the transition process was expected to go very smoothly, and that at other sites delay problems would dominate the initial adjustment period. These cost estimates are expected to be transitory in nature

in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case in the three locations where ARSA is in effect.

AOPA submitted comments questioning the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. In particular, AOPA identified an inconsistency between the estimated arrival time savings for Tulsa and the total Tulsa operations reported in the FAA Air Traffic Activity Report for FY 1984. FAA acknowledges the error, which resulted from a misinterpretation of data submitted by the local facility, and has revised its estimate. The corrected estimate of daily arrival savings for Tulsa is that 120 single engine and 80 multi-engine piston aircraft will save 1.5 minutes each, resulting in an annual savings of approximately \$226 thousand (based upon the unit costs presented in Table 1 of the NPRM).

FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay which some sites anticipate after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

AOPA and others commented that the costs which would be incurred by users to procure additional aircraft equipment in order to operate within an ARSA have been underestimated by the FAA. Some commenters claimed that transponders would be required but were not included in the evaluation.

Additionally, AOPA commented that the FAA estimate did not include the actual cost of the transceivers that the FAA estimated would be needed. Only an operable transceiver is required to operate within an ARSA, and there is no requirement that the transceiver be of any given type. The estimate provided by the FAA is based on the removal of virtually all affected secondary airports from the surface areas of ARSA's by liberal use of cutouts. Thus, in most cases, ingress and egress to these airports is possible without the need to procure a two-way radio. AOPA also commented that the FAA underestimated the radio installation costs by over 400 percent. However, the Regulatory Evaluation discussed radio

costs in terms of both total cost per no radio (NORDO) aircraft (\$2,800), and annual cost (\$751) when financed over a four-year period at 15 percent. The Regulatory Evaluation clearly indicated when annual figures were being used. Total annual radio installation costs of \$4,500 were estimated for the six possible NORDO aircraft identified by San Antonio to facilitate comparison with other cost and savings estimates which were expressed in annual terms.

Further, some commenters expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is significantly reduced in an ARSA compared to the current Terminal Radar Service Area (TRSA). This has been the experience of the FAA at the three current ARSA facilities.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Compression was not detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere.

Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated area. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved.

AOPA and others commented that several of the proposals will require pilots to violate Federal Aviation Regulations (FAR) Section 91.79 (14 CFR Section 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

AOPA and others commented that at those locations where more than one ARSA is proposed, and the 5- to 10-mile circles of two ARSA's join but the 5-mile circles do not, a flight corridor beneath the adjoining 5- to 10-mile circles is created, inviting compression. AOPA suggests that in cases in which surface areas of adjoining ARSA's would be separated by 5 nautical miles or more, a corridor of 5 nautical miles be established to the upper limit of the ARSA. This could be accomplished by delimiting the 5- to 10-mile circles of the adjoining ARSA's with parallel lines that were 5 nautical miles apart. While the FAA has not had actual experience with ARSA's in such proximity, the 5- to 10-mile segment of the BWI ARSA abuts the Washington National Terminal Control Area and thus creates the type of corridor that will exist at the locations to which AOPA refers. As indicated above, compression has not been observed in the BWI area and the FAA has no reason to believe that it will occur in other locations.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of TRSA designation fall between those of the TCA and ARSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1-2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making a recommendation to the FAA to adopt the ARSA concept. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, "... excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA.

After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters, including AOPA and EAA, indicated that the top of an ARSA should be limited to the height of the airport traffic area, which is generally up to but not including 3,000 feet above ground level. That limit was specifically considered by the NAR Task Group but rejected in favor of the current top of 4,000 feet above field elevation. The rationale of the task group was that the 4,000 foot cap would afford protection to aircraft executing an instrument approach during a critical phase of flight when pilots must devote considerable attention to their instruments prior to executing an approach. The FAA concurs in that rationale and has adopted the 4,000 foot recommendation.

Several commenters indicated that pilots of aircraft equipped with altitude encoding Mode C transponders should not be required to participate in the ARSA. Procedures require that before an air traffic controller may use the altitude information from a Mode C transponder the information must be verified. Thus, the requirement to establish two-way radio communication would remain. If pilots of Mode C equipped aircraft were not subject to the remaining provisions of ARSA, there could be inequitable handling of users, one of the major points of criticism the NAR Task Group leveled at the TRSA program. Therefore, the FAA does not agree with this recommendation.

AOPA, EAA, and other commenters claimed the FAA had failed to properly account for the number of pilots that would need to purchase two-way radios. These comments referred to the number of no radio aircraft that were located at airports in proximity to ARSA candidates and noted the discrepancy between the number of such aircraft and the number reflected in the Regulatory Evaluation. As indicated in the evaluation, the FAA liberally applied

the use of cutouts and local agreements whereby the airports where almost all of the no radio aircraft were based were excluded from proposed ARSA airspace. Thus, no cost would be incurred for such pilots.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters faulted the manner in which comments were summarized in the informal airspace meetings, and requested that additional meetings be held and a court recorder employed to make a verbatim transcript. The FAA does not agree with this recommendation. These proposals fall under informal rulemaking, and therefore, neither the Administrative Procedures Act nor agency regulations require formal hearings. The agency exceeded basic requirements in holding informal meetings, and the summarization of comments made at those meetings and placing them in the public docket is in full compliance with procedural requirements. The docket is open to the public, and anyone may review that summary to determine if their position has been adequately summarized. Provision is also made for written comments to the docket, and thus, parties may reiterate their comments in writing, correct any error they perceive in the agency's summary, or expand upon the summarization. Additionally, the FAA believes the informal nature of these meetings proved to be most beneficial to the agency in reaching its decisions.

AOPA, EAA, and other commenters requested that no 5- to 10-mile circles be segmented and that a single altitude be established at the highest level of any segment proposed. The FAA has established several ARSA's that have varying base altitudes. The FAA acknowledged that segmentation was a deviation from the NAR recommendation when the ARSA final rule was adopted (50 FR 9250, 9252, March 6, 1985). The recommendation

was for the base altitude in the subject area to be 1,200 feet above ground level (AGL) and would have resulted in base altitudes rising and falling in concert with the underlying terrain. The FAA believes that segmentation simplifies ARSA's for the several locations where it is employed, yet establishes regulatory airspace where needed.

Several comments claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the National Airspace Review itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the Federal Register Notice of proposed rulemaking (50 FR 27528, 27530, July 3, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information

on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve any additional costs strictly as a result of the ARSA program.

Some commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. The small entities which could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Therefore, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed

rule, clearly will not be impacted by this rulemaking.

Comments received from the Air Line Pilots Association (ALPA) were generally supportive of the proposed ARSA's. However, ALPA indicated some reservations and requested that all controlled airspace within 5 miles of the candidate airports extend to the surface. Additionally, ALPA requested that no base altitudes of 5- to 10-mile circles be higher than 1,200 feet MSL. Both of these requests are in line with the NAR recommendations, and ALPA claims adoption would promote standardization and simplification. The FAA acknowledges that the ALPA requests were recommended by the NAR, and the agency has adopted the recommended model and supports the goals of standardization and simplification. However, not all airports and their associated air traffic flows can accommodate a standardized model. The FAA is designating ARSA's that exceed their predecessor TRSA's from the standpoints of safety, service, standardization, and simplification. Cutouts have been provided when they would not derogate safety and service and not to do so would have created an undue economic burden without a commensurate improvement in safety.

The Air Transport Association endorsed the proposed designations as an improvement in safety.

The Regional Airline Association (RAA) commented that the proposed ARSA's received their general support. RAA, however, strongly objected to the FAA's liberal use of cutouts for secondary airports that would have otherwise been located on the ARSA "floor." The RAA rationale was that the exclusion of these airports deprives commuter airlines of the safety and services of the ARSA. As was indicated when the ARSA rule was adopted, pilots landing at satellite airports will be provided service until they are in contact with the airport traffic control tower at the satellite airport or until they are instructed to change the appropriate airport frequency. The FAA has established cutout boundaries as close as possible to these secondary airports. As a result, in most cases designated ARSA airspace exists beyond the point where that communications transfer and termination of ARSA services will be necessary whether a cutout exists or not.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding

some deviation from the standard model.

#### Comments on Particular Locations

##### *Albany County Airport, NY*

Several commenters requested the 2,400 feet MSL altitude of the segment to the east be expanded to encompass the entire eastern half of the ARSA. The primary rationale was to provide easier access by nonparticipating aircraft to Rensselaer Air Park. In response to these comments, the FAA has expanded the area of the 2,400 foot segment to include that airspace overlying Rensselaer Air Park.

##### *Anchorage International Airport, AK*

Several commenters requested the designation of the ARSA in areas where violations of Part 93 airspace are purportedly common. The rationale for this request is that violations of Part 93 regulations would be discouraged or detected. The FAA does not agree with this suggestion. Decisions on whether or not to establish ARSA airspace must be predicated upon factors pertinent to the ARSA program.

The Alaska Chapter of the Ninety-Nines faulted the proposal due to the restriction on ultralights and parachute jumping, and claimed that the ARSA rule did not provide for manned balloons. Manned balloons are aircraft and their operation is governed by 14 CFR 91.88. Balloons therefore do not require an extra provision as is required for ultralights and parachute jumping. The requirement for ultralight and parachute jumping is that approval from ATC must be obtained prior to conducting such operations. The FAA foresees little if any inconvenience imposed upon these activities unless conflicting aircraft operations would make them unsafe for participants as well as others.

The Ninety-Nines also claim that due to the mandatory provisions of ARSA's an increase in traffic would occur which would give rise to a reclassification of air traffic controllers with its commensurate increase in salary, and that the increase in controller salaries was not reflected in the evaluation. Reclassification of facilities occurs whenever the amount of air traffic handled by a facility increases to certain threshold levels and is maintained for a period of time. Due to the general increase in air traffic reclassifications will occur with or without the ARSA. However, since the amount of traffic handled by the Anchorage facility at this time is significantly below the threshold for the next reclassification,

no change in controller salaries is anticipated due to ARSA designation.

Comments were also received from the Ninety-Nines which faulted the Regulatory Evaluation's estimates in the delays that would be incurred. The rationale for their claim was that the evaluation was based upon experience in the "lower 48" and did not consider the higher percentage of aircraft without transponders in the Alaska area. The estimates upon which the evaluation was based were provided by FAA personnel in Alaska that are familiar with local characteristics. Also, operation in an ARSA does not require a transponder.

An ad-hoc committee was formed and made comment to the public docket. The committee comprised representatives from the Alaska Airmen's Association, the Alaska Seaplane Pilots Association, the Alaska Air Musers Hot Air Balloon Association, the Richardson Flying Club, the Alyeska Air Service, the Alaska Ninety-Nines, the U.S. Department of Interior, the Alaska Aviation Safety Foundation, the Elmendorf Aero Club, and Rust's Flying Service. Comments were received from the Alaska Air Carriers Association endorsing the recommendation of the ad-hoc committee, and the committee worked closely with representatives of the Department of Defense (DOD) from Elmendorf Air Force Base, although separate comments were submitted by the committee and DOD.

Both the committee and DOD referenced the special needs of Alaskan pilots. The FAA agrees with and has adopted most of the committee/DOD recommendations. The major recommendations submitted by both groups that have been adopted by the FAA are deletion of a major portion of the proposed ARSA toward the east of Anchorage; boundary lines that are in agreement with Part 93 airspace designations; the use of more visible landmarks to delineate the ARSA; accommodations for pilots operating to and from Merrill; and ARSA designation for Elmendorf traffic.

The FAA has not adopted all of the committee's recommendations, however. The committee recommended that the southerly line that delineates the ARSA to the southeast begin at a point closer to Anchorage International Airport than the 3.6-mile point that has been established. The FAA selected this point because of the visibility of the intersection of the two roads and to provide required airspace for aircraft using the west runways into Anchorage. The committee also recommended that the altitudes of the 5- to 10-mile circle

north of the power lines be established at 1,200 to 2,000 feet MSL. The establishment of 1,400 feet MSL as the lower limit is required due to terrain; the continuance of 4,100 feet as the upper limit in this area provides a degree of simplicity and standardization for an admittedly complex terminal. The committee also requested that the 350°T bearing be moved westerly at mid-channel to provide for Lake Hood departures not desiring ARSA services. The FAA has established that bearing from Anchorage International Airport to the 10-mile arc. This decision promotes standardization and simplicity and provides for pilots landing Runway 14 or departing Runway 32 at Anchorage.

In addition to some of the above, the DOD requested the area to the east of the 350°T bearing be established from 1,200 to 2,000 feet MSL. As indicated above a lower limit of 1,400 feet MSL is required due to terrain and an upper limit of 1,900 feet MSL provides designated airspace that is in accord with the Part 93 traffic pattern for Elmendorf.

##### *Bradley International Airport, Windsor Locks, CT*

AOPA and other commenters requested that if Bradley International Airport were to receive an ARSA designation, the floor of the 5- to 10-mile circle be established at 2,500 feet MSL, because the proposed floor of 2,100 feet MSL would force pilots downward over populated areas in making approaches to Brainard, Ellington, Robertson, Simsbury, and Skylark airports. Two of the five airports mentioned are beyond the 10-mile radius of the Bradley International Airport. The Highest field elevation involved is 253 feet MSL, and 2,100 feet MSL provides more than sufficient altitude for minimum altitude clearance for pilots operating into or out of these airports. Additionally, although the FAA proposed a constant altitude of 2,100 feet MSL for the shelf, an altitude of 1,700 feet MSL through the major portion of the circle would have been more consistent with the standard ARSA configuration. This lower floor will likely be made the subject of future rulemaking, but is not adopted at this time.

AOPA and other commenters requested that if Bradley was to be designated an ARSA that the Connecticut River be used as the eastern boundary of the ARSA since the river was a popular flyway. The Connecticut River passes within 4 miles of the airport and is within the airport traffic area. Thus, the two-way radio communications requirement for pilots

making such a transition below 3,000 feet MSL is not new. One cardinal purpose of the ARSA program is for air traffic controllers to be able to relay positive traffic information to pilots flying in such proximity to busy airports. The popularity of this flyway argues strongly for the need to provide ARSA services to pilots arriving and departing from Bradley.

The proprietor of Roberts Farm Airport, a private use airport located 5 statute miles southeast of Bradley International Airport, requested a cutout for Roberts Farm Airport. Traffic at Roberts Farm Airport is limited due to the restricted use of the airport. However, the local FAA radar approach control facility is willing to enter into an agreement with the airport proprietor to accommodate operations at that airport. For the above reasons, the FAA does not believe that a regulatory exception to the standard configuration of the ARSA is warranted for Roberts Farm Airport, and a cutout for that airport has not been adopted.

#### *Capital City and Harrisburg International Airports*

On the basis of comments received during the comment period and an internal evaluation of facility equipment, it has become evident to the FAA that some modification, or possible replacement, of the existing radar is required in order to provide optimum services at these two airports. Therefore, the FAA is not designating ARSA's at these airports at this time.

#### *Corpus Christi International Airport, TX*

The local AOPA representative and other commenters agreed with the proposed designation of Corpus Christi as an ARSA provided the floor of the 5- to 10-mile circle was raised in the vicinity of obstructions to the west of the airport. The FAA has provided segmentation to the west to accommodate this need.

Several commenters indicated their unqualified support of the proposed designation as an improvement in safety and service.

#### *Long Island MacArthur Airport, Islip, NY*

A large number of comments were received objecting to implementation of an ARSA at MacArthur Airport, based on general objections to the ARSA program or on concern about the effects of such an ARSA on some particular aspect of VFR flying in the Long Island area. General comments on the program and on FAA resources have been addressed above. After considering specific comments, the FAA has made

substantial modifications in the proposal in recognition of local needs. The specific comments and responses are summarized below.

AOPA and other commenters claimed that pilots will have to contend with high obstructions to the north of MacArthur beneath the floor of the ARSA. For this reason, the FAA has raised the base altitude of the 5- to 10-mile circle to 1,500 feet MSL. Pilots may also avoid the obstructions simply by transiting ARSA airspace. However, if pilots elect to navigate under the ARSA 5- to 10-mile shelf, the obstructions can be cleared laterally as well as vertically in compliance with FAR 91.79.

The Soaring Society of America, AOPA, EAA, and others requested that some provision be made for the soaring activity at Brookhaven Airport. The FAA has established a cutout for operations out of Brookhaven, and the ARSA is clear of Brookhaven by 2 nautical miles.

AOPA claimed the 700-foot ceiling for the Bayport Aerodrome cutout was insufficient and would force aircraft to fly too low over the water, and that the boundaries of the cutout should be modified to allow freer access. The 700-foot ceiling and boundaries are in keeping with local procedures as they existed prior to the proposal and have been deemed sufficient by local operators.

AOPA claimed the costs of equipping no radio aircraft based at Bayport was not reflected in the Regulatory Evaluation. Since a cutout has been provided at the Bayport airport, owners of no radio aircraft will not be required to purchase two-way radios.

AOPA, EAA, and other commenters requested some modification of the proposed ARSA due to the heavy use of the shorelines for VFR traffic and to eliminate the need for pilots not wishing to participate to fly over water. In response to these comments, the FAA has limited the ARSA to north of Fire Island and south of Long Island Sound.

AOPA and other commenters claimed that flight training in the MacArthur area would be negatively impacted. FAA air traffic control personnel are establishing local agreements with flight training schools to provide for their training needs.

#### *Navy Pensacola, Pensacola Regional, and Navy Whiting Airports*

AOPA, EAA, and other commenters claimed the military airports did not meet the NAR criteria, and thus, should not be designated ARSA airports. The applicable portion of the criteria is to propose designation of an ARSA at any airport with an operational airport

traffic control tower serviced by a Level III, IV, or V radar approach control facility and currently contained within a TRSA. The two military airports come within that provision and are qualified under the NAR criteria as viable ARSA candidates.

AOPA, EAA, and other commenters requested that if ARSA's were to be established at the three candidate airports that the floor altitudes of the 5- to 10-mile circles be established at constant altitude. Several commenters requested that that altitude be 1,500 feet MSL. Based upon the evaluation of this concept, the FAA has determined that an equivalent level of safety and service can be achieved by the establishment of all three floors at 1,400 feet MSL. This achieves the standardization and simplicity commenters requested with less deviation from the 1,200 foot AGL national standard.

Some commenters requested that if ARSA's were designated, all but the 5-mile circles should be eliminated. The FAA does not agree. This would be a sharp departure from the recommended standard without commensurate justification. The FAA agrees with the NAR Task Group recommendation that ARSA services should be mandatory within the 10-mile area.

AOPA, EAA, and other commenters requested that the cutouts for Ferguson and Milton T Airports be raised to the altitude of the 5- to 10-mile floors, 1,400 feet MSL. Both cutouts were proposed to 700 feet MSL. The altitude of 700 feet MSL is in keeping with past procedures and practices at these two airports, and to raise the altitudes would not be beneficial to operators at these airports. Accordingly, the FAA has adopted cutouts for the airports up to 700 feet MSL.

AOPA, EAA, and others claimed that ARSA designation at these locations would virtually eliminate flight training areas within the Pensacola area. Personnel at the Pensacola Approach Control Facility will establish a local agreement with those involved with flight training to ensure the integrity of the ARSA as well as meet local flight training needs.

AOPA, EAA, the Soaring Society of America, and other commenters requested a cutout to accommodate the soaring activity at Coastal Airport. The latter is located beyond ARSA limits and the FAA does not believe a cutout is warranted. The raising of the base altitude of the 5- to 10-mile circles at Navy Pensacola and Pensacola Regional provides additional airspace within which pattern work can be performed at Coastal and 180 degrees is available for

soaring activities at all altitudes. The recent near mid-air collision involving a glider emphasizes the need for the ARSA as designated.

Several commenters supported the proposed ARSA designations as safety improvements imposing little if any negative impact on local users. Some commenters were supportive of the designations contingent upon the establishment of a single base altitude for the contiguous areas. In response to these comments the FAA has established a single base altitude.

Several commenters requested that the Navy Whiting ARSA be effective only during the hours that the airport traffic control tower was in operation. This suggestion has been adopted.

#### *San Antonio International Airport, TX*

AOPA and other commenters requested a cutout for the Twin-Oaks Airport. These requests were based upon the need to provide ingress and egress for the no radio aircraft based at Twin-Oaks and the need to provide airport facilities for transiting no radio aircraft. A group of users submitted a single comment outlining projected economic costs that would be incurred if a cutout was not provided for Twin-Oaks. Runway 12R/30L, which is the primary instrument runway, is scheduled for total reconstruction. A temporary VOR is currently being installed to utilize Runway 3/21 to accommodate instrument traffic during the estimated fifteen-month reconstruction period. Due to the proximity of the Twin-Oaks Airport to the final approach course of the revised VOR approach it is imperative that San Antonio Approach Control Facility be aware of all traffic in the Twin-Oaks area. Therefore, a cutout is not provided for the airport itself. However, a local agreement will be established between San Antonio Approach Control Facility and the operators of the no radio aircraft based at Twin-Oaks. Due to the amount of traffic into the San Antonio Airport it is not possible to make standard provisions for transient no radio aircraft which would achieve an equivalent degree of safety. However, other pilots of no radio aircraft, though not signatory to the local agreement, may contact San Antonio Approach Control in advance for individual instructions. Approval will be granted in accordance with the procedures established in the agreement on a traffic permitting basis. Although this provision

creates some inconvenience, it is minor in view of the safety considerations involved.

AOPA and other commenters requested that the floor of the 5- to 10-mile circle not be segmented and that the entire floor be established at 2,200 feet MSL. These requests were largely based upon the claim that there were no available landmarks that delineated segment boundaries. It is the responsibility of pilots to be aware of their location at all times, and the lack of immediate landmarks alone is not sufficient reason to avoid the use of airspace boundaries. Furthermore, the question of the segment boundaries would arise very seldom since it would only be pertinent when a pilot was close to one of the boundaries and within an altitude stratum of 200 feet.

Some commenters indicated that it might not be possible to establish two-way radio communications on the ground at Twin-Oaks, and thus, delays would be incurred. The requirement for departures from a satellite airport is to establish two-way radio communications while on the ground or as soon as practicable after departure. Thus, no delays will be incurred due to the requirement for departures from Twin-Oaks to participate.

The Air Transport Association and other commenters favored the designation of the airport without a cutout or without alteration to the proposed floor of the 5- to 10-mile circle.

Several commenters suggested that the outer area of the ARSA be included as regulatory airspace and charted accordingly. This suggestion goes beyond the scope of the proposal, and was not considered in adoption of the final rule. In any event, the FAA continues to believe that the establishment of regulatory airspace beyond the 10-mile limit is not warranted at this time.

#### *Syracuse Hancock International Airport, NY*

Several commenters requested that 2,700 feet be established as the base altitude of the 5- to 10-mile circle. The FAA does not agree with this request. Due to terrain in the vicinity of the Hancock Airport it is necessary to establish altitude segments in order to provide the level of safety and service envisioned with the ARSA program. To improve ease of navigation, the bearings delimiting the segments have been altered.

#### *Theodore Francis Green State Airport, Providence, RI*

Due to a high proportion of personnel changes anticipated at the local FAA radar approach control facility at this airport in the near future, the FAA is not designating an ARSA at this airport at this time.

#### *Tulsa International Airport, OK*

AOPA and other commenters requested that some provision be made for the training areas. Local FAA personnel are establishing local agreements with concerned parties to provide for this need.

The local AOPA representative was not opposed to ARSA designation but recommended that the floor of the 5- to 10-mile circle be raised to 2,500 feet MSL coincidental with the base of the TRSA. Other commenters recommended the base altitude be raised to 2,300 feet MSL in certain segments. In response to these comments, the FAA has raised the floor of the ARSA to 2,300 feet MSL throughout the 5- to 10-mile circle. This can be done without derogation of safety or service.

#### **Other Comments**

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

#### **Regulatory Evaluation**

Those comments which addressed information presented in the Regulatory Evaluation of the NPRM have been discussed above. A detailed Regulatory Evaluation of the final rule has been placed in the regulatory docket.

This evaluation has been revised from the original evaluation of the NPRM to reflect the deletion of the Harrisburg and Providence airports from the final rule. The necessary corrections relating to the error in the estimate of time savings at Tulsa discussed previously have been made as well.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule

are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period. Nevertheless, to the extent that these costs and benefits have been quantified, the overall total annual time savings benefit of \$1.0 million is approximately six times greater than the estimated \$179 thousand in overall annual costs for the ARSA sites established by this rule.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to those operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than \$100 thousand, to as much as \$300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

#### Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that

this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

#### The Rule

This action designates Airport Radar Service Areas (ARSA) at the 11 airports listed below. This action does not establish ARSA's at the Capital City and Harrisburg International Airports at Harrisburg, PA, or the Theodore Francis Green State Airport, Providence, RI. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

#### List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

2. Section 71.501 is amended as follows:

##### Albany County Airport, NY [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Albany County Airport (lat. 42°44'53" N., long. 73°48'12" W.), and that airspace extending upward from 2,400 feet MSL to 4,300 feet MSL within a 10-mile radius of the Albany County Airport

from the 046° bearing from the airport clockwise to the 116° bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,300 feet MSL within a 10-mile radius of the airport from the 116° bearing from the airport clockwise to the 046° bearing from the airport.

##### Anchorage International Airport, AK [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Anchorage International Airport (lat. 61°10'39" N., long. 149°59'38" W.), excluding that airspace east of the 350° bearing from the airport and north of the 090° bearing from the airport and that airspace east of a 180° line from the INT of the New Seward Highway and International Airport Road, and that airspace extending upward from the surface to but not including 600 feet MSL south of a line beginning at the INT of Dimond Boulevard and the New Seward Highway extending westerly via Dimond Boulevard to the INT of Dimond Boulevard and Sand Lake Road and thence direct to the 243° bearing from the airport at 5 miles; and that airspace extending upward from 1,400 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport, excluding that airspace east of the 350° bearing from the airport and north of the 090° bearing from the airport and that airspace east of the 180° line from the INT of the New Seward Highway and International Airport Road; and that airspace extending upward from 1,400 feet MSL to and including 1,900 feet MSL within an area bounded by the 350° bearing from the airport at the 10-mile arc clockwise to the western shore of Knik Arm thence south and west along the west and north shoreline of Knik Arm to the 350° bearing from the airport and thence via to the 350° bearing from the airport to the point of beginning.

##### Bradley International Airport, Windsor Locks, CT [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bradley International Airport (lat. 41°56'20" N., long. 72°41'01" W.), excluding that airspace within 1-nautical mile of Skylark Airport (lat. 41°55'45" N., long. 72°34'30" W.) and that airspace within 1 mile of Simsbury Airport (lat. 41°55'00" N., long. 72°46'40" W.) and that airspace within 1 mile of Bancroft Airport (lat. 41°52'00" N., long. 72°37'00" W.); and that airspace extending upward from 2,100 feet MSL to 4,200 feet MSL within a 10-mile radius of Bradley International Airport.

##### Corpus Christi International Airport, TX [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Corpus Christi International Airport (lat. 27°46'12" N., long. 97°30'03" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 287° bearing from the airport clockwise to the 197° bearing from the airport, and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from the 197° bearing from the

airport clockwise to the 287° bearing from the airport. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Long Island MacArthur Airport, Islip, NY [New]**

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Long Island MacArthur Airport (lat. 40°47'44" N., long. 73°06'00" W.), excluding that airspace from the surface to and including 700 feet MSL within 1 mile west of Bayport Aerodrome (lat. 40°45'30" N., long. 73°03'15" W.) and parallel to Runway 18/36 from south of the Sunrise Highway southbound to the 5-mile radius of the Long Island MacArthur Airport, counterclockwise to south of Nichols Road thence northbound along Nichols Road to south of and parallel to the Sunrise Highway westbound to the beginning point; and that airspace extending upward from 1,500 feet MSL to 4,100 feet MSL within a 10-mile radius of the Long Island MacArthur Airport, excluding that airspace within a 2-mile radius of the Brookhaven Airport (lat. 40°49'00" N., long. 72°51'45" W.) and that airspace south of the north shore of Fire Island and that airspace overlying Long Island Sound. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**Pensacola NAS, FL [New]**

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Navy Pensacola Airport (lat. 30°21'12" N., long. 87°19'12" W.), excluding that airspace extending upward from the surface to and including 700 feet MSL bounded by the Navy Pensacola TACAN 291° radial on the west and the Saufley VOR 176° radial on the east and a 1-mile arc northwest of Navy Pensacola Airport on the south; and that airspace extending upward from 1,400 feet MSL to and including

4,200 feet MSL within a 10-mile radius of the Navy Pensacola Airport, excluding that airspace within the Pensacola Regional Airport, FL, Airport Radar Service Area.

**Pensacola Regional Airport, FL [New]**

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the Pensacola Regional Airport (lat. 30°28'23" N., long. 87°11'15" W.), and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the Pensacola Regional Airport, excluding that airspace within the 5-mile circle of the Pensacola NAS, FL, Airport Radar Service Area.

**San Antonio International Airport, TX [New]**

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the San Antonio International Airport (lat. 29°32'00" N., long. 98°28'10" W.), and that airspace extending upward from 2,200 feet MSL to 4,800 feet MSL within a 10-mile radius of the San Antonio International Airport from the 278° bearing from the airport clockwise to the 008° bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL within a 10-mile radius of the airport from 008° bearing from the airport clockwise to the 278° bearing from the airport.

**Syracuse Hancock International Airport, NY [New]**

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Syracuse Hancock International Airport (lat. 43°06'44" N., long. 76°06'32" W.), excluding that airspace within a 0.75-mile radius of Michael Field, Cicero, NY, (lat. 43°10'45" N., long. 76°07'30" W.); and that airspace extending upward from 1,600 feet MSL to and including 4,400 feet MSL within a 10-mile radius of the Syracuse Hancock International Airport from the 248° bearing from the airport clockwise to the 118° bearing from the airport and that airspace extending upward from 2,700 feet MSL to and including 4,400 feet MSL within a

10-mile radius from the 118° bearing from the airport clockwise to the 168° bearing from the airport and that airspace extending upward from 2,300 feet MSL within a 10-mile radius of the airport from the 188° bearing from the airport clockwise to the 248° bearing from the airport.

**Tulsa International Airport, OK [New]**

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Tulsa International Airport (lat. 36°11'54" N., long. 95°53'16" W.), excluding that airspace within a 1-mile radius of Harvey Young Airport (lat. 36°08'12" N., long. 95°49'08" W.); and that airspace extending upward from 2,300 feet MSL to and including 4,700 feet MSL within a 10-mile radius of the Tulsa International Airport.

**Whiting NAS, FL [New]**

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of the center of the Navy Whiting Complex (lat. 30°42'40" N., long. 87°01'30" W.), excluding that airspace extending upward from the surface to and including 700 feet MSL within a 1-mile radius of the Milton "T" Airport (lat. 30°38'15" N., long. 86°59'40" W.); and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 1-mile radius of the Navy Whiting Complex, excluding that airspace within Restricted Area R-2915 and that airspace within the Pensacola Regional Airport, FL, Airport Radar Service Area. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will therefore be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on October 29, 1985.

**Daniel J. Peterson,**  
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-26149 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-13-M

# **federal register**

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Friday  
November 1, 1985

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## **Part V**

### **Department of Transportation**

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Office of the Secretary  
Research and Special Programs  
Administration

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49 CFR Parts 1, and 106 et al.  
Organization and Delegation of Powers  
and Duties, and Personnel Designations;  
Final Rules

## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 49 CFR Part 1

## Organization and Delegation of Powers and Duties

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** Due to the recent reorganization in the Research and Special Programs Administration (RSPA) the Materials Transportation Bureau (MTB) has been abolished. In Appendix A to Part 1 of Title 49 the Administrator had redelegated the authority delegated to her, by the Secretary of Transportation in 49 CFR 1.53, to the MTB. Due to the abolishment of the MTB, the redelegation of authority to that element is a nullity and has been deleted. The reorganization in RSPA will result in the exercise of all of MTB's current functions and responsibilities by separate Offices of Hazardous Materials Transportation and Pipeline Safety, headed by Directors reporting to the Administrator, RSPA. Each of these Offices will have both rulemaking and enforcement functions.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the *Federal Register*.

**DATE:** The effective date of this amendment is November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Kathy M. Sachen, Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, SW., Room 8420, Washington, DC 20590 (202) 755-4972.

**SUPPLEMENTARY INFORMATION:****List of Subjects in 49 CFR Part 1**

Authority delegations (government agencies); Organization and functions (government agencies).

**PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**

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

Authority: Secs. 3 and 9, Department of Transportation Act (49 U.S.C. 1652 and 1657(e)).

2. Part 1, Appendix A, paragraph 5 is removed and reserved.

Issued in Washington, DC on October 29, 1985.

M. Cynthia Douglass,  
Administrator.

[FR Doc. 85-26109 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-30-M

**Research and Special Programs Administration**

**49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, 178, 190, 191, 192, 193, and 195**

**Hazardous Materials Regulations and Pipeline Safety Regulations; Office and Personnel Designations; Delegation of Authority**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The purpose of these amendments to the Hazardous Materials Regulations (HMR) and the Pipeline Safety Regulations (PSR) is to delete all references to the Materials Transportation Bureau (MTB), including the pertinent offices and personnel filling those offices, and to reflect the new offices established under the reorganization of RSPA. Of particular significance are the deletions of all references to the Office of Hazardous Materials Regulation (OHMR) and the Office of Operations and Enforcement (OOE) or (OE). These amendments will not impose any substantive regulatory requirements on persons subject to the HMR or the PSR.

**EFFECTIVE DATE:** November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Kathy M. Sachen, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 755-4972.

**SUPPLEMENTARY INFORMATION:** As the result of a recent reorganization in the Research and Special Programs Administration (RSPA) the Materials Transportation Bureau (MTB) was abolished. In place of the MTB, and in exercise of all of its current functions and responsibilities, will be separate Offices of Hazardous Materials Transportation and Pipeline Safety, headed by Directors reporting to the Administrator, RSPA. Each of those Offices will have both rulemaking and enforcement functions. In addition, these amendments reflect the delegation to the Office of the Chief Counsel, RSPA, authority to issue all documents (except appellate decisions by the Administrator) proposing or imposing sanctions under the Hazardous Materials Transportation Act of 1974.

The following is a part by part summary of the amendments to Title 49, Code of Federal Regulations.

The title of Chapter I, Subchapter B is changed from Materials Transportation Bureau to Hazardous Materials Transportation and Pipeline Safety.

In Parts 106, 107, 171, 172, 173, 175, 178, 190, 191, 192, 193, and 195 all references to Materials Transportation Bureau or MTB are amended to read Research and Special Programs Administration or RSPA or Office of Chief Counsel or Office of Hazardous Materials Transportation (OMHT) or deleted where necessary.

In Parts 106, 107, 171, 173, 190, and 193 all references to Director, Materials Transportation Bureau or Director, MTB are amended to read Administrator, Research and Special Programs Administration or Administrator, RSPA or Administrator, or Director, OHMT or deleted where necessary.

In Part 106 and the Appendix thereto, all references to Associate Director for Pipeline Safety Regulation are amended to read Director, Office of Pipeline Safety (OPS).

In Parts 107, 171, 174, 175, 177, and 178 all references to Associate Director, Office of Hazardous Materials Regulation (OHMR) or Associate Director for Hazardous Materials Regulation (HMR) are amended to read Director, Office of Hazardous Materials Transportation (OHMT) or Director, OHMT or deleted where necessary.

In Parts 107, 171, 172, 173, 174, 175, 177, and 178 all references to Office of Hazardous Material Regulation (OHMR) or Hazardous Materials Regulation (HMR) are amended to read Office of Hazardous Materials Transportation or OHMT or RSPA.

In Part 107 all references to Associate Director, Office of Operations and Enforcement (OOE) or (OE) are amended to read Office of Chief Counsel or Chief Counsel.

In Part 107 all references to Office of Operations and Enforcement (OOE) or (OE) are amended to read Office of Chief Counsel or OHMT or RSPA or deleted where necessary.

In Part 190 all references to Associate Director, Office of Operations and Enforcement (OOE) or (OE) are amended to read Director, Office of Pipeline Safety (OPS).

In Part 190 all references to Office of Operations and Enforcement (OOE) or (OE) are amended to read Office of Pipeline Safety (OPS).

**E.O. 12291 and DOT Regulatory Policies and Procedures**

The Research and Special Programs Administration considers this rule non-major under Executive Order 12291 and non-significant under DOT regulations, policies and procedures (44 FR 11043; February 26, 1979). This rule concerns an internal reorganization of the Research and Special Programs Administration and the agency finds that the economic impact of this final rule is so minimal that a full regulatory evaluation is unnecessary.

**Regulatory Flexibility Act**

This document is not subject to provisions of section 603 and 604 of Title 5, United States Code, as amended by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act" in that a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other statute.

**Paperwork Reduction Act**

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

**Inapplicability of Public Notice and Delayed Effective Date Provisions**

Inasmuch as these amendments concern a matter relating to agency management and organization, notice and comment are unnecessary under 5 U.S.C. 553 (a)(2) and (b)(3)(A) and under 5 U.S.C. 553(d)(3) they may be made effective in less than 30 days.

**List of Subjects in Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, 178, 190, 191, 192, 193, and 195**

Hazardous materials transportation. In consideration of the foregoing Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, 178, 190, 191, 192, 193, and 195 of Title 49, Code of Federal Regulations, are amended as follows:

1. The title of Subchapter B is revised to read "Hazardous Materials Transportation and Pipeline Safety".

**PART 106—RULEMAKING PROCEDURES**

2. The authority citation for Part 106 continues to read as follows:

Authority: R.S. 4472(7) (46 U.S.C. 170(7)); sec. 902(h)(1), Pub. L. 85-726, 72 Stat. 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 90-481, 82 Stat. 720 (49 U.S.C. 1672); sec. 105, Pub. L. 93-633, 88 Stat. 2157 (49 U.S.C. 1804); sec. 21(a), Pub. L. 93-627, 88 Stat. 2146 (33 U.S.C. 1520); (49 CFR 1.45 and 1.53 and App. A of Part I); Pub. L. 89-870 (49 U.S.C. 1653(d), 1653, 1657(e)); sec. 203, Pub. L. 96-126, 93 Stat. 1004 (49 U.S.C. 2002).

**§§ 106.1, 106.5 and 106.7 [Amended]**

3. Part 106 is amended by removing the words "Materials Transportation Bureau" wherever they may appear in the following sections and inserting in their place the words "Research and Special Programs Administration":

Sections 106.1, 106.5 (a) and (b), and 106.7.

**§§ 106.3, 106.5, 106.9, 106.11, 106.13, 106.17, 106.25, 106.27, 106.29, 106.31, 106.33, 106.35 and 106.37 [Amended]**

4. Part 106 is amended by removing the words "Director, Materials Transportation Bureau", "Director, MTB", and "Director" wherever they appear in the following sections and inserting in their place the words "Administrator, Research and Special Programs Administration", "Administrator, RSPA", or "Administrator", respectively:

Sections 106.3, 106.5 (a) and (b), 106.9, 106.11, 106.13, 106.17(b), 106.25, 106.27 (a) and (c), 106.29, 106.31(a), 106.33 (a), (b), (c) and (d), 106.35 (a), (b), (c) and (d), and 106.37 (a) and (b).

**§ 106.3 [Amended]**

5. Part 106 is amended by removing the words "Associate Director for Hazardous Materials Regulation" wherever they appear in § 106.3(a) and inserting in their place the words "Director, Office of Hazardous Materials Transportation".

6. Part 106 is amended by removing the words "Associate Director for Pipeline Safety Regulation" wherever they appear in § 106.3(b) and inserting in their place the words "Director, Office of Pipeline Safety".

**Appendix A—[Amended]**

7. The introductory text of Appendix A is amended by removing the words "Materials Transportation Bureau" and inserting in their place the words "Research and Special Programs Administration."

8. Appendix A to Part 106 is amended by removing paragraph (b)(4) and removing the following for paragraph (b)(3), "; and", substituting instead a period after the cite to 33 U.S.C. 1520(a).

9. Paragraph (a) of Appendix A is amended by removing the words "Associate Director for Hazardous Materials Regulation" and inserting in their place the words "Director, Office of Hazardous Materials Transportation".

10. Paragraph (b) of Appendix A is amended by removing the words "Associate Director for Pipeline Safety Regulation" and inserting in their place the words "Director, Office of Pipeline Safety".

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

11. The authority citation for Part 107 continues to read as follows:

Authority: 46 U.S.C. 170(11); 49 U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53 and App. A of Part 1, Pub. L. 89-870 (49 U.S.C. 1653(d), 1655, 1657(e)).

**§§ 107.1, 107.9, 107.13, 107.203, 107.215 and 107.402 [Amended]**

12. Part 107 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words "Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 107.1(a), 107.9 introductory text, (c), (e) and (f), 107.13 (e), (f), (g) and (i), 107.203(b)(1), 107.215(b)(1), and 107.402(b)(2).

**§§ 107.13, 107.121, 107.209, 107.211, 107.221, 107.225, 107.325, 107.327, 107.337, 107.339 and 107.403 [Amended]**

13. Part 107 is amended by removing the words "Director, Materials Transportation Bureau" and the word and letters "Director, MTB" wherever they appear in the following sections and inserting in their place the words "Administrator, Research and Special Programs Administration" or the word and letters "Administrator, RSPA", respectively:

Sections 107.13(a), 107.121, 107.209(d), 107.211, 107.221(c), 107.225, 107.325(b), 107.327(a)(1)(iii), 107.337, 107.339, and 107.403(c).

**§§ 107.1, 107.103, 107.105, 107.111, 107.123, 107.203, 107.205, 107.209, 107.215, 107.217, 107.219, 107.221 and 107.223 [Amended]**

14. Part 107 Subpart A is amended by removing the words "Office of Hazardous Materials Regulation" and the letters "OHMR" or "HMR" wherever they appear in the following sections and inserting in their place the words "Office of Hazardous Materials Transportation" or the letters "OHMT", respectively:

Sections 107.1(a), 107.103(b)(1), 107.105(a)(1), 107.111(b)(1), 107.123(a), 107.203 (a) and (b)(1), 107.205 (a), (b) and (c), 107.209(e), 107.215 (a) and (b)(1), 107.217 (a), (b)(2), (c) (d) and (e), 107.219(d), 107.221(d), and 107.223.

**§§ 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.117, 107.119, 107.121, 107.123, 107.201, 107.207, 107.209, 107.219, 107.221, 107.402, 107.403, 107.404 and 107.405 [Amended]**

15. Part 107 is amended by removing the words "Associate Director, Hazardous Materials Regulation" and

the words "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the words "Director, Office of Hazardous Materials Transportation" or the word and letters "Director, OHMT", respectively:

Section 107.103 (a) and (c), 107.107, 107.109 (a), (b), (c), (c)(2), (d) and (e), 107.111 (a), (c) and (d), 107.113(c), 107.115 (a), (b) and (c), 107.117(a) 107.119 (b), (c), (d) and (e), 107.121, 107.123(b), 107.201(d), 107.207 (a) and (b), 107.209 (a), (b) and (c), 107.219 (a), (b) and (c), 107.221 (a), (b) and (d), 107.402 (a), (b)(6) and (c), 107.403 (a), (b) and (c), 107.404 (a)(3) and (b), and 107.405 (a) and (b).

§§ 107.313, 107.315, 107.317, 107.327 and 107.331 [Amended]

16. Part 107 Subparts B and D are amended by removing the words and letters "Associate Director for OE" Wherever they appear in the following sections and inserting in their place the words "Chief Counsel":

Sections 107.313(b), 107.315(b), 107.317(d), 107.327 (a)(2), (a)(2)(iii) and (b), and 107.331.

§§ 107.307, 107.309, 107.311, 107.313, 107.323, 107.327 and 107.337 [Amended]

17. Part 107 Subpart D is amended by removing the letters "OOE" wherever they appear in the following sections and inserting in their place the words "Office of Chief Counsel":

Sections 107.307 (a) and (b), 107.309 (a) and (b)(1), 107.311 (a), (b)(1) and (c), 107.313(c), 107.323(a), 107.327 (a), (a)(1) (ii) and (iii), and (b), and 107.337.

§§ 107.303, 107.305, 107.307, 107.309, 107.335 and 107.339 [Amended]

18. Part 107 Subpart D is amended by removing the letters "OOE" wherever they appear in the following sections and inserting in their place the letters "OHMT":

Sections 107.303, 107.305 (a), (b), (c) and (d), 107.307 (a) and (b), 107.309, 107.335, and 107.339.

§ 107.1 [Amended]

19. Section 107.1(a) is amended by removing the words "Operations and Enforcement" and inserting in their place the words "Chief Counsel".

§ 107.3 [Amended]

20. Section 107.3, *Definitions*, is amended as follows:

In the definition of *Approval Agency* the letters "MTB" are removed and inserted in its place are the letters "RSPA".

In the definition of *Competent Authority* the references to "Associate Director for Hazardous Materials Regulation, Materials Transportation

Bureau" is removed and inserted in its place is "Director, Office of Hazardous Materials Transportation, Research and Special Programs Administration."

The definition of *OHMR (HMR)* is revised to read as follows: "OHMT" means the Office of Hazardous Materials Transportation."

The definition of *OOE* is removed.

In the definition of *Respondent* the letters "OOE" are removed and inserted in their place are the letters "RSPA".

§§ 107.5 and 107.7 [Amended]

21. Sections 107.5 (a) and (b), and 107.7(a) are amended by removing the letters "OHMR or OOE" and inserting in their place the letters "OHMT".

§ 107.7 [Amended]

22. Section 107.7(c) is amended by removing the letters "OHMR or OOE or MTB" and inserting in their place the letters "OHMT".

§ 107.9 [Amended]

23. Section 107.9(a) is amended by removing the letters "OHMR" and inserting in their place the letters "RSPA".

4. Section 107.9(d) is amended by removing the letters "OOE" and inserting in their place the letters "RSPA".

25. Section 107.9(f) is amended by removing the letters "MTB or OHMR or OOE" and inserting in their place the letters "RSPA".

§ 107.117 [Amended]

26. Section 107.117(b) is amended by removing the letters "OHMR or MTB" and inserting in their place the letters "RSPA".

§ 107.119 [Amended]

27. Section 107.119(e) is amended by removing the words and letters "Associate Director for OE" and inserting in their place the words "Office of Chief Counsel".

§ 107.301 [Amended]

28. Section 107.301 is amended by removing the letters and words "MTB exercises its" and inserting in their place the letters and words "OHMT and the Office of the Chief Counsel exercise their \* \* \*".

29. Section 107.301, and 107.305(b) are amended by removing the letters "MTB" and inserting in their place the letters "OHMT".

§ 107.305 [Amended]

30. Section 107.305(b) is amended by removing the word and letters "Director, MTB" and inserting in their place the word and letters "Director, OHMT".

31. In § 107.311, paragraph (b)(6)(ii) is revised to read as follows:

§ 107.311 Notice of probable violation.

\* \* \* \* \*  
(b) \* \* \*  
(6) \* \* \*

(ii) The amount of the preliminary civil penalty being sought by the Office of Chief Counsel constitutes the maximum amount the Chief Counsel may seek throughout the proceedings; and

§§ 107.317 and 107.321 [Amended]

32. Section 107.317(a), and 107.321(c) are amended by removing the letters "OOE".

§ 107.317 [Amended]

33. Section 107.317(c) is amended by removing the words and the letters "the OOE, in consultation with the Chief Counsel's Office" and inserting in their place the words and letters "the Chief Counsel's Office, in consultation with the OHMT."

§ 107.325 [Amended]

34. Section 107.325(d) is amended by removing the words and letters "or Director, MTB, as appropriate".

35. Section 107.325(e) is amended by removing the words and letters "or the Director, MTB, as appropriate".

36. Section 107.327, introductory text of paragraph (a)(1) is revised to read as follows:

§ 107.327 Compromise and settlement.

(a) \* \* \*

(1) In civil penalty cases, the respondent or Chief Counsel may offer to compromise the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise by the respondent shall be submitted to the Chief Counsel who may, after consultation with OHMT, accept or reject it.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

37. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§§ 171.8, 171.16, 171.18 and 171.20 [Amended]

38. Part 171 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words

"Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 171.8 (the definition is removed and its replacement is relocated to its appropriate alphabetical order), 171.16(b), 171.18, and 171.20 (a) and (b).

§§ 171.8, 171.19 and 171.20 [Amended]

39. Part 171 is amended by removing the words "Associate Director for Hazardous Materials Regulation" and the words and letters "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the words "Director, Office of Hazardous Materials Transportation" or the word and letters "Director, OHMT", respectively:

Sections 171.8, 171.19, and 171.20 (a), (b) and (c).

§ 171.20 [Amended]

40. Section 171.20(c) is amended by removing the word and letters "Director, MTB" and inserting in their place the words "Administrator, RSPA".

**PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS**

41. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 49 CFR Part 1, unless otherwise noted.

42. Part 172 is amended by removing the letters "MTB" in § 172.101 (b)(1) and (d)(2) and inserting in their place the letters "RSPA".

§ 172.101 [Amended]

43. Part 172 is amended by removing the words "Associate Director, Office of Hazardous Materials Regulation" in § 172.101 (b)(1) and (d)(2) and inserting in their place the words "Director, Office of Hazardous Materials Transportation".

**Appendix A—[Amended]**

44. Part 172 Appendix A is amended by removing the words "Office of Hazardous Materials Regulation" and inserting in their place the words "Office of Hazardous Materials Transportation."

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

45. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§§ 173.11, 173.21, 173.22, 173.34, 173.151a, 173.471 and 173.476 [Amended]

46. Part 173 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words "Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 173.11(a), 173.21 (b)(2) and (e), 173.22 (c)(2) and (d), 173.34(e)(1), 173.151a(a)(4), 173.471(e), and 173.476(a).

§ 173.32d [Amended]

47. Section 173.32d (f) is amended by removing the words "Director, Materials Transportation Bureau", and the word "Director" from the last sentence, and inserting in their place the words "Administrator, Research and Special Programs Administration" and "Administrator" respectively.

§§ 173.4, 173.11, 173.21, 173.22, 173.24, 173.32, 173.32a, 173.32c, 173.32d, 173.34, 173.53, 173.65, 173.86, 173.88, 173.94, 173.100, 173.114a, 173.119, 173.120, 173.124, 173.197a, 173.202, 173.238, 173.245, 173.252, 173.256, 173.260, 173.266, 173.272, 173.300, 173.300a, 173.300b, 173.300c, 173.305, 173.306, 173.315, 173.332, 173.336, 173.366, 173.370, 173.385, 173.417, and 173.457 [Amended]

48. Part 173 is amended by removing the words "Associate Director for Hazardous Materials Regulation" and the words "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the words "Director, Office of Hazardous Materials Transportation" or the word and letters "Director, OHMT", respectively:

Sections 173.4, 173.11, 173.21, 173.22, 173.24, 173.32, 173.32a, 173.32c, 173.32d, 173.34, 173.53, 173.65, 173.86, 173.88, 173.94, 173.100, 173.114a, 173.119, 173.120, 173.124, 173.197a, 173.202, 173.238, 173.245, 173.252, 173.256, 173.260, 173.266, 173.272, 173.300, 173.300a, 173.300b, 173.300c, 173.305, 173.306, 173.315, 173.332, 173.336, 173.366, 173.370, 173.385, 173.417, and 173.457.

§§ 173.22a, 173.28, 173.114a, 173.300a, 173.300b, 173.471 and 173.473 [Amended]

49. Part 173 is amended by removing the words "Office of Hazardous Materials Regulation" or the letters "HMR or OHMR" wherever they appear in the following sections and inserting in their place the words "Office of Hazardous Materials Transportation" or the letters "OHMT", respectively:

Sections 173.22a, 173.28, 173.114a, 173.300a, 173.300b, 173.471 and 173.473.

**PART 174—CARRIAGE BY RAIL**

50. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§§ 174.61 and 174.81 [Amended]

51. Part 174 is amended by removing the words and letters "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the word and letters "Director, OHMT":

Sections 174.61 and 174.81.

**PART 175—CARRIAGE BY AIRCRAFT**

52. The Authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§ 175.45 and 175.703 [Amended]

53. Part 175 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words "Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 175.45(c) and 175.703(e).

§ 175.701 [Amended]

54. Part 175 is amended by removing the words and letters "Associate Director for HMR" and the words "Associate Director for Operations and Enforcement" wherever they appear in § 175.701 and inserting in their place the word and letters "Director, OHMT".

**PART 176—CARRIAGE BY VESSEL**

55. The authority citation for Part 176 continues to read as follows:

Authority: 46 U.S.C. 170(7)(a-c); 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§ 176.704 [Amended]

56. Part 176 is amended by removing the words and letters "Office of Hazardous Materials Regulation (OHMR)" in § 176.704(f) and inserting in their place the words and letters "Office of Hazardous Materials Transportation (OHMT)".

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

57. The Authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

§§ 177.821, 177.826, 177.838 and 177.848  
[Amended]

58. Part 177 is amended by removing the words and letters "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the word and letters "Director, OHMT", respectively:

Sections 177.821(f), 177.826(a), 177.838(g), and 177.848(e).

**PART 178—SHIPPING CONTAINER SPECIFICATIONS [AMENDED]**

59. The Authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR Part 1 and App. A to Part 1, unless otherwise noted.

60. Part 178 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words "Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 178.16-19(c)(2), 178.17-6(b)(2), 178.45-17(e), and 178.65-14(d).

61. Part 178 is amended by removing the words and letters "Associate Director for HMR" wherever they appear in the following sections and inserting in their place the word and letters "Director, OHMT":

Sections 178.0-3, 178.1-4, 178.1-8, 178.1-9, 178.4-4, 178.4-7, 178.4-8, 178.5-7, 178.5-9, 178.6-8, 178.6-10, 178.13-2, 178.13-5, 178.14-3, 178.14-7, 178.14-8, 178.19-6, 178.21-2, 178.24-5, 178.27-2, 178.33-9, 178.33a-9, 178.35-3, 178.35a-2, 178.36-3, 178.36-20, 178.37-3, 178.37-20, 178.38-3, 178.38-20, 178.39-3, 178.39-19, 178.42-3, 178.42-14, 178.44-3, 178.44-23, 178.45-3, 178.46-3, 178.46-4, 178.46-15, 178.47-3, 178.47-21, 178.50-3, 178.50-19, 178.51-3, 178.51-19, 178.53-3, 178.53-18, 178.54-3, 178.54-20, 178.55-3, 178.55-20, 178.56-3, 178.56-19, 178.57-3, 178.57-20, 178.58-3, 178.58-21, 178.59-3, 178.59-18, 178.60-3, 178.60-22, 178.61-3, 178.61-20, 178.65-3, 178.68-3, 178.68-19, 178.80-11, 178.80-14, 178.81-11, 178.81-14, 178.82-11, 178.82-14, 178.83-11, 178.83-14, 178.89-10, 178.89-13, 178.89-5, 178.89-9, 178.89-12, 178.90-10, 178.90-13, 178.92-9, 178.98-9, 178.98-12, 178.99-9, 178.99-12, 178.100-9, 178.102-4, 178.103-6, 178.107-9, 178.107-12, 178.109-7, 178.109-9, 178.109-12, 178.115-10, 178.115-13, 178.116-10, 178.116-13, 178.117-11, 178.117-14, 178.118-10, 178.118-13, 178.130-8, 178.131-9, 178.132-7, 178.132-9, 178.133-9, 178.134-4, 178.135-8, 178.137-6, 178.140-6, 178.141-7, 178.146-15, 178.147-15, 178.148-5, 178.149-7, 178.150-7, 178.156-12, 178.165-13, 178.168-18, 178.169-18, 178.170-17, 178.171-17, 178.172-19, 178.178-6,

178.177-6, 178.181-11, 178.182-4, 178.185-19, 178.185-22, 178.186-19, 178.187-5, 178.190-9, 178.191-9, 178.193-6, 178.194-6, 178.196-15, 178.197-14, 178.198-4, 178.205-18, 178.206-18, 178.207-18, 178.208-12, 178.209-13, 178.210-12, 178.211-3, 178.211-6, 178.212-8, 178.214-8, 178.214-17, 178.218-10, 178.219-13, 178.224-4, 178.225-3, 178.226-4, 178.230-8, 178.233-9, 178.234-9, 178.236-7, 178.237-7, 178.238-7, 178.239-7, 178.240-10, 178.241-5, 178.255-15, and 178.270-2.

**PART 190—PIPELINE SAFETY PROGRAM PROCEDURES**

62. The Authority citation for Part 190 continues to read as follows:

Authority: 49 U.S.C. 1672, 1677, 1679, 1679b, 1680, 1681; 49 U.S.C. 2002, 2006, 2007, 2008, 2009, 2010; sections applicable to offshore gas gathering lines also issued under 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A to Part 1.

§§ 190.1, 190.7 and 190.231 [Amended]

63. Part 190 is amended by removing the words "Materials Transportation Bureau" and the letters "MTB" wherever they appear in the following sections and inserting in their place the words "Research and Special Programs Administration" or the letters "RSPA", respectively:

Sections 190.1, 190.7 (h) and (j), and 190.231.

§ 190.3 [Amended]

64. Part 190 is amended by deleting the definition of "MTB" in paragraph (d) of § 190.3.

§§ 190.7, 190.203 and 190.235 [Amended]

65. Part 190 is amended by removing the words "Director, Materials Transportation Bureau" and the word and letters "Director, MTB" wherever they appear in the following sections and inserting in their place the words "Administrator, Research and Special Programs Administration" or the word and letters "Administrator, RSPA", respectively:

Sections 190.7 (a) and (i), 190.203 (b)(6) and (d), and 190.235.

66. Part 190 is amended by removing the words "Office of Operations and Enforcement" and the letters "OOE or OE" wherever they appear in the following sections and inserting in their place the words "Office of Pipeline Safety" or the letters "OPS", respectively:

§§ 190.1, 190.3, 190.201, 190.203, 190.205, 190.207, 190.209, 190.211, 190.217, 190.221, 190.231, 190.233 and 190.235 [Amended]

Sections 190.1(a), 190.3(e), 190.201(a), 190.203 (c) and (e), 190.205, 190.207(c), 190.209(c), 190.211 (c) and (g), 190.217,

190.221, 190.231, 190.233 (c) (1) and (2), and (d)(2), and 190.235.

§§ 190.203, 190.209, 190.211, 190.213, 190.215, 190.219, 190.225, 190.227 and 190.233 [Amended]

67. Part 190 is amended by removing the words and letters "Associate Director, OOE or OE" wherever they appear in the following sections and inserting in their place the word and letters "Director, OPS":

Sections 190.203(a), 190.209 (c) and (d), 190.211(j), 190.213 (a), (c), and (e), 190.215, 190.219(a), 190.225, 190.227(c), and 190.233.

**PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINES; ANNUAL REPORTS AND INCIDENT REPORTS**

68. The Authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 1681(b); 49 U.S.C. 1808(b); 49 CFR 1.53 and Appendix A of Part 1.

§ 191.7 [Amended]

69. Section 191.7 is amended by removing the words "Information Systems Manager, Materials Transportation Bureau" and inserting in their place the words "Information Resources Manager, Office of Pipeline Safety".

**PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; MINIMUM FEDERAL SAFETY STANDARDS**

70. The Authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

§ 192.7 [Amended]

71. Part 192 is amended by removing the words "Materials Transportation Bureau" wherever they appear in § 192.7(b) and inserting in their place the words "Research and Special Programs Administration".

**PART 193—LIQUEFIED NATURAL GAS FACILITIES; FEDERAL SAFETY STANDARDS**

72. The Authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 1671 et. seq.; 49 CFR 1.53 and Appendix A to Part 1.

§ 193.2013 [Amended]

73. Part 193 is amended by removing the words "Materials Transportation Bureau" wherever they appear in § 193.2013(b) and inserting in their place

the words "Research and Special Programs Administration".

§§ 190.2007, 193.2015, 193.2017, 193.2057, 193.2059, 193.2067 and 193.2515  
[Amended]

74. Part 193 is amended by removing the words "Director, Materials Transportation Bureau" and the word "Director" wherever they appear in the following sections and inserting in their place the words "Administrator, Research and Special Programs Administration" or the word and letters "Administrator, RSPA", respectively:

Sections 193.2007 (the definition is deleted and its replacement is relocated to its appropriate alphabetical order),

193.2015, 193.2017, 193.2057, 193.2059, 193.2067, and 193.2515.

#### **PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE**

75. The authority citation for Part 195 continues to read as follows:

Authority: Sec. 203, Pub. L. 96-129, 93 Stat. 1004, 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A to Part 1.

#### **§ 195.3 [Amended]**

76. Part 195 is amended by removing the words "Material Transportation Bureau" wherever they appear in § 195.3(b) and inserting in their place the words "Research and Special Programs Administration".

#### **§§ 195.54, 195.58 and 195.62 [Amended]**

77. Part 195 is amended by removing the words "Information Systems Manager," or "Information Systems Manager, Materials Transportation Bureau" wherever they appear in the following sections and inserting in their place the words "Information Resources Manager," or "Information Resources Manager, Office of Pipeline Safety", respectively.

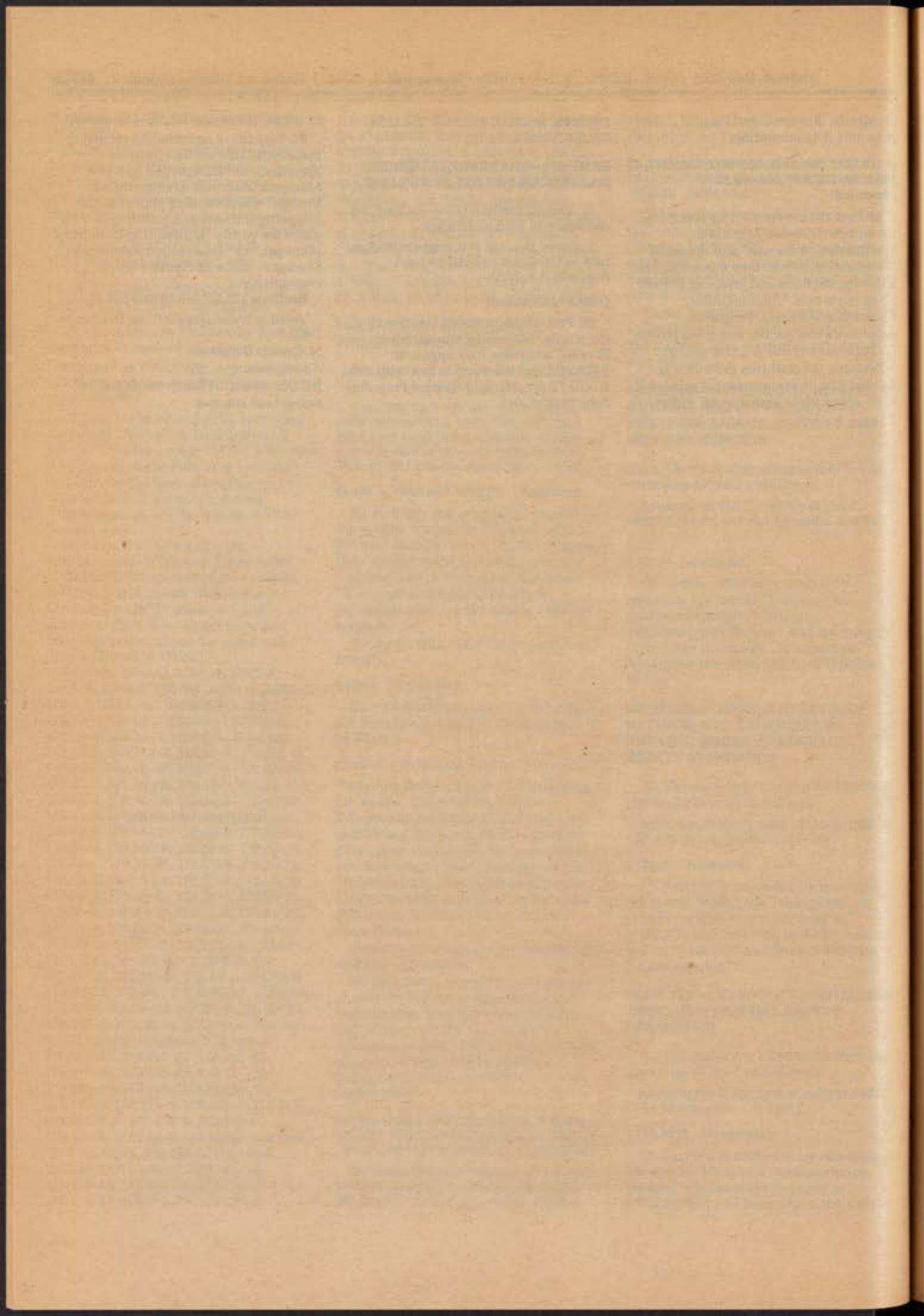
Sections 195.54, 195.58 and 195.62.

Issued in Washington, D.C., on October 29, 1985.

**M. Cynthia Douglass,**  
*Administrator.*

[FR Doc. 85-26110 Filed 10-31-85; 8:45 am]

BILLING CODE 4910-60-M



# federal register

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Friday  
November 1, 1985

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Part VI

Department of  
Energy

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10 CFR Part 962  
Byproduct Material; Proposed Rule

## DEPARTMENT OF ENERGY

## 10 CFR Part 962

## Byproduct Material

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy proposes to issue regulations under section 161.p. of the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*; hereinafter the "AEA") for the purpose of clarifying the Department of Energy's obligations under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*; hereinafter "RCRA"). This regulation will clarify the application of the term Byproduct Material, as defined in section 11e(1) of the AEA (42 U.S.C. 2014(e)(1)), to Department of Energy owned or produced radioactive waste substances for the purpose of determining which of these waste substances are Byproduct Material under the AEA and are therefore not "solid waste" as that term is defined in RCRA. This proposed rule does not affect materials that are Byproduct Material under section 11e(2) of the AEA.

The proposed regulations are necessary to clarify which of these radioactive wastes shall continue to be regulated by DOE exclusively under the AEA and which wastes shall be subject to regulation both under RCRA and the AEA.

**DATE:** Comments must be received on or before December 2, 1985.

**ADDRESSES:** Comments should be addressed to: Henry K. Garson, Esq., Assistant General Counsel for Environment, Department of Energy, 1000 Independence Ave., SW., GC-11, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Henry K. Garson, Esq., Assistant General Counsel for Environment, Department of Energy, 1000 Independence Ave., SW., Room 6A-113, Washington, DC 20585, Telephone: (202) 252-6947

Robert J. Stern, Director, Office of Environmental Guidance (EH-23), Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 252-4600.

**SUPPLEMENTARY INFORMATION:****Background**

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, establishes a comprehensive regulatory scheme to govern the generation, transportation, treatment, storage and disposal of hazardous waste. Federal

agencies are required by section 6001 of RCRA (42 U.S.C. 6961) to comply with that regulatory scheme in the same manner, and to the same extent, as any private person or entity. DOE had interpreted section 1006 of RCRA (42 U.S.C. 6905) as exempting from regulation under RCRA DOE's activities and substances subject to the AEA relating to our Nation's national security programs. In 1984, the United States District Court disagreed with this interpretation and held RCRA to be applicable to the activities of DOE under the Atomic Energy Act. *LEAF v. Hodel*, 586 F.Supp. 1163 (E.D. Tenn. 1984).

By its definitional provisions, however, RCRA excludes from its regulatory scheme "source, special nuclear and byproduct materials," as those terms are defined by the AEA (section 1004(27) of RCRA, 42 U.S.C. 6903(27)). Thus, any DOE waste substance which is Source, Special Nuclear or Byproduct Material, even those that otherwise could qualify as hazardous waste under RCRA, will continue to be regulated under DOE's exclusive AEA regulatory authority.

The AEA provides detailed definitions for Source Material and Special Nuclear Material, but only defines Byproduct Material, in pertinent part, as "any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material," section 11e(1). While in practice, little need has previously arisen to address this definition's applicability to radioactive wastes, the use in RCRA of Byproduct Material as a waste term now requires a clarification of what DOE radioactive waste substances meet the statutory definition of Byproduct Material.

**II. Discussion**

Unlike the AEA's definitions of the related terms Source Material (section 11z. of the AEA, 42 U.S.C. 2014(z)) and Special Nuclear Material, (section 11aa. of the AEA, 42 U.S.C. 2014(aa)) which mention particular substances by name, the definition of Byproduct Material, for purposes here pertinent, speaks only in terms of a technical process. The legislative history of this definition provides little guidance as to its intended application, and the definition has not been clearly elucidated by judicial interpretation.<sup>1</sup> Because the

plain words of the definition are keyed to the process for producing and utilizing Special Nuclear Material, that process itself would appear to be determinative of whether particular radioactive materials are properly within the definition. Thus, while the definition is clear on its face that Byproduct Material must be radioactive, it would appear that radioactivity alone does not suffice to characterize a waste substance as Byproduct Material. The radioactive waste must be either directly yielded in the process of producing or utilizing special nuclear material, or have been made radioactive as a direct and necessary consequence of that process.

Radioactive wastes that are accelerator produced or that are yielded in the process of producing or utilizing Source Material or Byproduct Material are not Byproduct Material, because those wastes do not result from the process of producing and utilizing Special Nuclear Material. If those wastes display any hazardous characteristics, they would, under the regulation proposed today, be subject to regulation under RCRA, despite their radioactivity.

In contrast, high-level radioactive waste emanating from the chemical processing of spent fuel for the production of plutonium, and radioactive waste cutting oil used for the machining of plutonium to a usable configuration, are Byproduct Material as defined in the AEA, and therefore are excluded from regulation under RCRA, because the contained radioactivity in these wastes is a direct, necessary and inherent consequence of the process of producing and utilizing Special Nuclear Material. These wastes, which today's proposed rule would define as Byproduct Material, are perhaps best thought of as production or utilization "direct process wastes."

Intermediate to the examples set forth in the two preceding paragraphs is the case of wastes whose contained radioactivity is an indirect result, rather than direct process waste, from the process of producing and utilizing Special Nuclear Material. For example, some DOE facilities prepare Byproduct radionuclides for use in commerce. While it is clear that the products as radionuclides are themselves Byproduct Material, it would appear less clear that the radioactive residues resulting from

<sup>1</sup> Two early decisions interpreting the Atomic Energy Commission's licensing authority over low level radioactive waste clearly conclude that these wastes are Byproduct Material. The specific issue of whether the wastes, in their entirety, were

Byproduct Material was not, however, specifically at issue because the wastes clearly contained Byproduct Material subjecting them to regulation by the AEC. *Harris County v. United States*, 292 F.2d 370 (5th Cir. 1961); *City of New Britain v. Atomic Energy Comm'n*, 308 F.2d 640 (D.C. Cir. 1962).

the preparation or use of the products are properly so characterized, because their contained radioactivity is at best an indirect consequence of the process for producing and utilizing Special Nuclear Material, by no means a direct process waste. Such wastes and wastes made radioactive in a similar manner, may be termed "indirect process wastes." While containing Byproduct Material, these wastes would not, under today's proposed rule, be considered Byproduct Material in their entirety. Rather, if otherwise found to contain hazardous waste, they would be considered "mixed waste", containing both Byproduct Material and or other radioactive material and hazardous waste.

While it would appear possible to construe the AEA to include indirect process wastes and other mixed wastes as Byproduct Material because, in the context of DOE's AEA activities, their contained radioactivity is, in the most literal sense, "incident to" the process for producing and utilizing Special Nuclear Material and these wastes clearly contain Byproduct Material, it would seem more accurate to say that these wastes are primarily incident to a different process, the process employed by DOE to produce commercial radionuclide products. Under this line of reasoning, while indirect process wastes would be said to contain Byproduct Material (trapped radionuclides, to use the example given in the preceding paragraph), they would not themselves be Byproduct Material, because their contamination with radioactivity is neither a direct nor, strictly speaking, a necessary consequence of the process for producing and utilizing Special Nuclear Material. Because of this distinction, DOE is proposing that these indirect process wastes exhibiting hazardous characteristics be treated as "mixed" waste, handled in accordance with the requirements of both RCRA and the AEA.

Thus, DOE's proposed interpretation of "Byproduct Material" for purposes of clarifying RCRA's applicability to radioactive waste substances at DOE's AEA facilities, would apply only to production or utilization "direct process wastes."

This proposed rule is supported by the fact that virtually all radioactive waste substances yielded in the process for producing or utilizing special nuclear material are contained, dissolved or suspended in a nonradioactive medium, from which their separation is impracticable. High-level radioactive waste and most transuranic waste, for

example, exist only in this form; the maximum practicable separation of their radioactive and nonradioactive components has already occurred before the substances are actually disposed of or classified as waste. It seems apparent, then, that unless the term "radioactive material" as used in section 11e(1) of the AEA is taken to include the entirety of a direct contact process waste substance in which radioactive elements are dispersed, the exclusion of Byproduct Material from RCRA's coverage would be reduced to a virtual nullity.

### III. Effect of Proposed Rule

DOE has prepared for each of its facilities a report indicating which existing individual waste streams would be considered Byproduct Material under this proposed rule, and which individual waste streams would be considered mixed wastes. (The reports identify some wastes as "candidate" mixed wastes because it is not yet known whether there are in fact hazardous constituents in these waste streams.) These reports are available for inspection at the following locations during normal business hours:

- U.S. Department of Energy, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585
- Albuquerque Operations Office, National Atomic Museum, Wyoming Blvd., Building 20358, Albuquerque, NM 87115
- Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
- Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401
- Nevada Operations Office, Public Reading Room, 2753 South Highland Street, Las Vegas, NV 89109
- Oak Ridge Operations Office, Federal Building, 200 Administration Road, Oak Ridge, TN 37830
- Richland Operations Office, Hanford Science Center, 825 Jadwin Street, Richland, WA 99352
- San Francisco Operations Office, 1333 Broadway, 2nd Floor Oakland, CA 94612
- Savannah River Operations Office, POI Publication/Document Room, University of South Carolina—Aiken, Aiken SC 29801

Should processes change, or should new waste streams not in reports be produced, these wastes would be classified using the definition proposed today, applied in a consistent manner to achieve consistent results. DOE believes that this proposed rule provides a reasonable basis to classify the wastes produced at its AEA facilities consistent with both DOE's AEA authorities and its responsibilities under RCRA.

If the rule proposed here today is adopted by DOE, its application will have the effect of leaving under the

exclusive AEA regulatory scheme all DOE radioactive wastes currently stored or in the future to be stored in High Level Waste Tanks at DOE facilities. These wastes are regulated under a system of DOE Orders which require the proper storage and treatment of these wastes. Ultimately, all of these wastes are to be disposed of pursuant to other statutory schemes including the Energy Reorganization Act of 1974, the Department of Energy Organization Act, and the Nuclear Waste Policy Act. Other DOE radioactive hazardous wastes would either continue to be regulated under the exclusive AEA authority, if they are direct process wastes, or be regulated under both the AEA and RCRA authorities, if they are not.

### IV. Invitation to Comment and Notice of Public Hearing

Interested persons are invited to submit written comments and recommendations to the address set forth at the beginning of this document. All comments or recommendations received on or before December 2, 1985 will be considered before the issuance of final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period in Room 1E-190, 1000 Independence Ave., SW., Washington, DC, 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Pursuant to section 501 of the Department of Energy Organization Act the Department will provide an opportunity for oral presentation of views, data and arguments. Interested persons may request a public hearing by the date set forth above. If any requests for a public hearing are timely received, the Department will conduct a public hearing on November 13, 1985, at 9:00 a.m. in Room 1E-245, 1000 Independence Ave., SW., Washington, DC. If no requests for a hearing are received, the hearing will be cancelled. Procedural rules for the hearing will be announced at the commencement of the hearing.

### V. Related Rulemaking

This proposed rule clarifies the jurisdictional basis for the application of RCRA to certain DOE wastes. The Environmental Protection Agency has proposed, or will shortly propose, rules under its RCRA authorities to govern other issues involved in RCRA's application to DOE facilities including issues of national security, state

program consistency, protection of data and access to DOE facilities. Interested persons should also review that rulemaking in order to have an awareness of all of the issues involving RCRA application to DOE facilities.

#### VI. Procedural Matters

##### A. Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified major because they do not meet the criteria for major regulations established in that Order.

##### B. Regulatory Flexibility Act Certification

The regulations will not have a significant impact on a substantial number of small entities.

##### C. Paperwork Reduction Act of 1980

There are no information collection requirements in the proposed rules.

##### List of Subjects in 10 CFR Part 962

Nuclear materials, Byproduct material.

Issued in Washington, DC, October 24, 1985.

J. Michael Farrell,  
General Counsel.

In consideration of the foregoing, Part 962 of 10 CFR Chapter III is proposed to be added as set forth below.

Part 962 is added to 10 CFR Chapter II to read as follows:

#### PART 962—BYPRODUCT MATERIAL

Sec.

962.1 Scope.

962.2 Purpose.

962.3 Byproduct material.

**Authority:** The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*); Energy Reorganization Act of 1974 (42 U.S.C. 5801 *et seq.*); Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*); Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 96 Stat. 2201).

##### § 962.1 Scope.

This part applies to radioactive waste substances which are owned or produced by the Department of Energy at facilities owned or operated by the Department of Energy under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*).

##### § 962.2 Purpose.

The purpose of this Part is to clarify the term Byproduct Material under section 11e(1) of the Atomic Energy Act (42 U.S.C. 2014(e)(1)) for use in determining the Department of Energy's obligations under the Resource Conservation and Recovery Act with regard to radioactive waste substances owned or produced by the Department of Energy pursuant to the exercise of its authority under the Atomic Energy Act of 1954, as amended. It does not affect the definition of Byproduct Material contained in section 11e(2) of the Act.

##### § 962.3 Byproduct material.

For purposes of this part, the term Byproduct Material means a waste substance containing radioactivity that is either directly yielded in the process of producing or utilizing Special Nuclear Material as that term is defined in the Atomic Energy Act of 1954, as amended, or its being made radioactive is a direct and necessary consequence of that process.

[FR Doc. 85-26312 Filed 10-31-85; 10:53 am]

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# federal register

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Friday  
November 1, 1985

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Part VII

## Department of Agriculture

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Farmers Home Administration

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7 CFR Part 1864 et al.

Special Supervision of Delinquent and  
Problem Case FmHA Farm Borrowers;  
Final Rule

## DEPARTMENT OF AGRICULTURE

## Farmers Home Administration

7 CFR Parts 1864, 1872, 1900, 1910, 1924, 1941, 1943, 1945, 1950, 1951, 1955, 1960 and 1962

## Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its account servicing and supervision of delinquent and problem case FmHA farm borrowers' regulations. These amendments are necessary because of recent court decisions. The intended effect of these amendments is to set up a procedure substantially similar to that in the "Pretermination" package that was issued to FmHA field offices on December 20, 1983 (see 49 FR 470 published on January 4, 1984). The differences between the "Pretermination" package and the requirements of the amendments result from FmHA's experience using the "Pretermination" package. The amendments provide for notifying borrowers of various servicing alternatives, set standards for using the servicing alternatives and provide the opportunity for borrowers to assist FmHA field staff in planning the use of proceeds from the sale of security. FmHA borrowers in judicial foreclosure States are not affected by these amendments if FmHA has received a court decree authorizing liquidation of FmHA security. Borrowers who were sent both the "Pretermination" package and an acceleration notice before October 20, 1984, are not affected by these amendments; FmHA will proceed to liquidate its security.

**EFFECTIVE DATE:** Effective November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Edward Yaxley, Senior Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449-S, Washington, D.C. 20250, telephone (202) 447-3646.

**SUPPLEMENTARY INFORMATION:**

## Classification

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 non-major, 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 effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

## Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded 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:

- 10.404—Emergency Loans
- 10.406—Farm Operation Loans
- 10.407—Farm Ownership Loans
- 10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
- 10.416—Soil and Water Loans

## Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

## Paperwork Reduction Act

Under the Paperwork Reduction Act and 5 CFR 1320, the Farmers Home Administration has submitted the information collection requirements contained in this regulation for review by the Office of Management and Budget (OMB). The OMB has approved the information collection request and assigned OMB Control Nos. 0575-0061 and 0575-0111.

## Background

The supervision and servicing of FmHA farm borrowers is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. §§ 1921-1996). This action implements a procedure for deferring payments for farmer program borrowers to conform with 7 U.S.C. § 1981a and various court orders and establishes a method of informing farmer program borrowers of available servicing alternatives including deferral.

The effects of this proposed action are:

- a. To comply with the various court orders.
- b. To establish a new method to provide for loan deferrals to borrowers who do not have sufficient cash flow because of circumstances beyond their control.
- c. To not consider FmHA borrowers who receive a loan deferral as delinquent. A maximum of five consecutive annual installments can be deferred with one deferral, which will strengthen borrowers' cash flow positions during the time needed to recover from devastating natural disasters or other conditions beyond a farmer's control, such as poor farming economy. A borrower who receives a deferral usually will have to wait two years after that deferral expires before another deferral can be considered.

On November 30, 1984, FmHA published in the Federal Register (49 FR 47007) a proposed rule giving interested parties until January 29, 1985, to submit comments.

## Discussion of Comments Received

In response to the proposed rule 255 written comments were received. Seventy-eight of the comments were received after the January 29 deadline; however, all comments were considered in developing the final rule. Comments were received from individuals, FmHA employees, interest groups, United States Congressmen and State government officials. Two hundred eight of the comments were copies of four very similar letters. Eight areas of general comments are discussed under "A. General Comments".

Other comments are discussed under "B. Other Comments."

## A. General Comments

1. Most respondents are concerned that the proposed changes will eliminate the priority of allowing FmHA borrowers to use proceeds from the sale of security for farm operating and family living expenses. Specifically, they are referring to the change in § 1962.17 of

Subpart A of Part 1962, which lists the purposes for which the proceeds may be used, the listed first purpose being to pay on the FmHA debt. This list does not establish any priorities for the use of farm income. Farm product sales proceeds can be released for any of the listed purposes, including planned operating and family living expenses. The changes in § 1962.17 explain how FmHA County Supervisors and borrowers will plan the use of proceeds at the beginning of each production year. An agreement will be signed which will identify the farm sales proceeds which will be used to repay FmHA and the proceeds which will be used for other items. This will increase the borrower's awareness of what FmHA expects the borrower to do with proceeds. Borrowers will be allowed to make changes to this plan during the year, with FmHA's approval. The elimination of a priority list gives County Supervisors the flexibility they need to treat each farmer as an individual when reaching an agreement on the use of proceeds. FmHA must be included as a recipient of some of the proceeds since FmHA will have made a loan which the borrower has promised to repay. FmHA, as a lender, expects payment from the sale of such security to protect the Government's interest. Therefore, the proposed amendment is adopted.

The following comments refer to the proposed rule of § 1951.44 of Subpart A of Part 1951:

2. Many of respondents are opposed to the condition in § 1951.44(b)(1)(i) which states that, to be considered for a deferral, a borrower must have a reduction of income within the 2 full calendar years immediately preceding the date of the request for a deferral which reduces the operation's cash flow to a point where outflows exceeds inflows. The respondents believed that such a condition would preclude borrowers who had a reduction of income prior to the two years, and who still do not have a positive cash flow, from requesting a deferral. We believe that this comment has merit. The rule is amended to require a reduction in income which causes the need for deferral. The rule is also amended to clarify the items the borrower must submit to FmHA to show the reduction in income.

3. A majority of the respondents commented that § 1951.44 of Subpart A of Part 1951 did not include "cost price squeeze" or poor economic conditions as acceptable reasons that were beyond the borrower's control which could make a borrower eligible for a deferral. They commented that low commodity

prices, high interest rates, and unexpected increases in input costs are economic conditions which are beyond their control. We have changed this section to list some of the economic conditions which could make a borrower eligible for a deferral. We point out that the amendment includes a list of acceptable reasons for reduction of income; it is by no means an all-inclusive list.

4. A few respondents are opposed to the requirement that the need for a deferral be "temporary." The word "temporary" is from the authorizing statute, section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a). Thus, the Agency cannot change this language of the proposed rule.

5. A number of respondents object to the condition in § 1951.44(b)(5) that a borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors before receiving a deferral. The respondents believed this to be unduly harsh on suppliers, feed dealers and other creditors who expect full payment of debts in order to operate a viable business. FmHA, as a creditor, also expects full payment but has a responsibility to assist the borrower through a temporary period of reduced income with forbearance, in the form of a deferral. As long as the borrower's situation can improve, all creditors share that responsibility to assist borrowers through a time of financial difficulties for the benefit of the agricultural community. Many creditors may even improve their chances of debt collection because, if debt adjustment or rescheduling is not provided, the borrower may seek protection under the bankruptcy laws. Consequently, the proposed amendment is adopted.

6. Many respondents commented that it was unreasonable to expect that the borrower have paid, when due, expenses such as real estate taxes and insurance premiums, prior to receiving a deferral. They believed that conditions beyond their control may have prevented them from making such payments. We believe that many respondents may have misinterpreted the amendment. Section 1951.44(c)(3) states that the FmHA official must determine that the borrower, *before experiencing* the hardship, had paid, when due, all real estate taxes and property insurance premiums. A borrower who has been unable to pay taxes and insurance premiums due to the hardship is not barred from receiving a deferral. The proposed amendment is not changed.

7. Many respondents commented that FmHA should not cancel the special debt set-aside provided under § 1951.41 of Subpart A of Part 1951 when a borrower requests a deferral on the same loan. They went on to say that borrowers should be granted both a deferral and debt set-aside on their FmHA loans. We agree that borrowers should not have the debt set-aside cancelled when they request a deferral. However, the cancellation will occur when the deferral is *approved*. The wording of this section has been changed to make this clear. Both debt set-aside and deferral are servicing tools that provide relief to borrowers in the form of reduced payments. Consideration for such relief is sequential because debt set-aside requires payment of annual installments on the portion of the loan not set-aside while deferral requires no installment payments on the entire loan for 5 annual installments. Therefore, the borrower obtains greater relief if he/she qualifies for a deferral; cumulative benefits do not exceed those received with a deferral. However, a borrower may retain a debt set-aside on one loan and, if the borrower's cash flow worsens, obtain a deferral on other loan(s).

8. Many respondents commented that the proposed changes reduce the FmHA County Supervisor's responsibility to assist borrowers, and that FmHA is becoming "money oriented" rather than "people oriented." Although these comments refer to no particular amendment, FmHA believes that the comments are misdirected. The amendments requiring FmHA County Supervisors to plan with the borrower the use of proceeds for the production year will increase the County Supervisor's assistance. Moreover, the notification of servicing options, including deferral, as required in these amendments increases the assistance by County Supervisors. The proposed amendments are not in conflict with FmHA's purpose of providing supervised credit to its borrowers; however, FmHA has, as a credit agency, a responsibility to collect its loans.

#### B. Other Comments

##### Part 1872—Subpart A

The servicing of single family housing loans was removed from this Subpart with the publication of Subpart C of Part 1965 of this chapter, "Security Servicing for Single Family Rural Housing Loans."

##### Section 1872.1 General

This section is amended by adding the definition of farmer program loans.

Since no negative responses were received, the Agency adopts this amendment.

#### *Section 1872.17 Liquidation action*

Four respondents, including FmHA field office officials and special interest groups, commented that the amendment prohibiting the granting of time for voluntary liquidation after acceleration in Farmer Program cases was too harsh. They believed that FmHA could recover more if a voluntary liquidation were allowed. From the time the borrower receives a notice of intent to liquidate, the borrower has 150 days to voluntarily liquidate, if the borrower so chooses. This is ample time for a borrower, who is making a good faith effort, to voluntarily liquidate. One respondent commented that the last sentence of § 1872.17(f)(3) is unclear. The Agency inadvertently overlooked two sentences that were run together in the proposed amendment. This is corrected in the final rule. However, due to the removal of the housing program from this Subpart, it was necessary to reletter the paragraph.

Another respondent suggested that the language at the end of the first sentence of § 1872.17(e) be changed from "any other loan" to "any and all other loans" to ensure that the cumulative effect of liquidation on a borrower's repayment ability is determined before action is taken. The Agency concurs with the respondent and the amendment is changed to reflect that clarification. The same respondent suggested a change in wording in § 1872.17(f) to clarify the County Supervisor's responsibility in approving cash sales of FmHA secured real estate in cases where the secured debts will not be paid in full. The Agency agrees that the section needed to be clarified and the change in the amendment is made. However, it had to be relettered.

One agricultural interest group respondent commented that the amendment eliminates the requirement that the FmHA County Committee review liquidation cases before farmer program accounts are accelerated. The respondent believed that such a change removes from the liquidation process the only component of the FmHA chain of command that has a direct link with the borrowers and also reduces FmHA's responsiveness. The Agency points out that other amendments require that all servicing options be considered and curative actions taken prior to liquidation. After all options are exhausted and the problem has still not been resolved, the case must be liquidated. Therefore, it would serve no purpose for the County Committee to act

on the case. The Agency chooses to adopt the proposed amendment.

#### *Section 1872.18 Transfer of real estate security.*

The amendments to this section provide for notifying farmer program borrowers of servicing options when they contemplate transferring their real estate security. Also, this section explains how interest that accrued during a deferral period must be handled when a transfer of real estate security takes place.

Once agricultural interest group respondent commented that parts of this section should be rewritten to encourage borrowers who choose to transfer their real estate to do so to eligible applicants. Such encouragement may help to sustain the Agency's mission of providing opportunities for family-sized farm operations, and may benefit the transferor. The Agency believes that this would impose an added burden on the borrower who decides to voluntarily liquidate the real estate. The way the regulation is written, the borrower who wants to voluntarily liquidate can sell the security, refinance the FmHA debt, convey the security to FmHA or transfer the security to either eligible or ineligible transferees. The Agency does not want to limit a borrower's choices as the respondent suggested.

No changes are made concerning the transfer of real estate and the proposed amendment is adopted.

The Agency adopts a change to the introductory paragraph of section 1872.18 to require the borrower be sent Form FmHA 1924-14 within 3 working days after inquiring about a transfer. The remainder of this proposed amendment to section 1872.18 is adopted.

#### **Part 1900, Subpart B**

##### *Section 1900.51 General.*

The change prohibits the termination of releases for certain family living and farm operating expenses until after the farmer program borrower has received the proper notice and any appeal has been concluded. No negative responses were received. The Agency adopts the proposed amendment.

##### *Section 1900.52 Definitions.*

FmHA added farmer program loans as a definition. Since no unfavorable comments were received, the Agency adopts the proposed amendment.

##### *Section 1900.53 Decisions which are not appealable.*

FmHA added a provision that borrowers who do not return Form

FmHA 1924-26 or who complete Form FmHA 1924-26 indicating they do not wish to appeal cannot appeal when the adverse action is taken. Some language was deleted from the proposed change for the final rule. One USDA respondent recommended some minor changes in language in this section. However, the Agency chooses not to adopt such changes since the impact would be minimal. One attorney commented that appeal waiver notices may not be adequate in Forms FmHA 1924-25 and 1924-26, but could not tell because such forms were not published. FmHA provided copies of these forms to all parties who requested them and many of the comments received by FmHA resulted in changes being made to those forms. The notice is clear, unambiguous and adequate. We have amended Subpart B of Part 1924 of this chapter to include a description of the contents of the forms. The proposed amendment is adopted as changed.

##### *Section 1900.55 FmHA actions to limit the need for appeals.*

This change indicates that borrowers who receive Forms FmHA 1924-25 and 1924-26 will be, in most cases, required to attend a conference prior to the beginning of the appeals process. If the borrower does not attend such a conference, the appeal is waived. One respondent commented that additional language should be included in this section to clarify FmHA personnel's responsibilities regarding documentation and calculations in the case files. The Agency adopts these changes to the proposed rule.

##### *Section 1900.56 Appeal from an initial FmHA decision.*

This change provides further guidance on handling appeals of borrowers who receive Forms FmHA 1924-25 and 1924-26. One USDA respondent suggested changes that would not be consistent with the remainder of this Subpart. Therefore, the proposed amendment is adopted with minor changes to clarify the difference in handling farmer program and non-farmer program loans.

Exhibit B-1 was changed to strengthen the language for requiring a meeting and providing new information for consideration.

Exhibit B-2 was changed to add a statement for use of the letter to farm program borrowers who have been asked to graduate.

Exhibit B-3 was changed to add the word "conference" in the title and in the second sentence.

Exhibit B-4 was changed to delete a reference to chattel acceleration notices.

No negative comments were received; therefore, the proposed amendment is adopted unchanged.

Exhibit B-5 was changed to provide an exception on the use of the exhibit. No negative comments were received. The Agency adopts the proposed amendment.

Exhibit B-6 was added to be used to notify certain borrowers they had waived or forfeited their right to appeal.

Exhibit D was changed to clarify levels of review for certain decisions. The Agency changes the proposed amendment to include final rulemaking that was published in a previous final rule on June 7, 1985, for Subpart A, B and C of Part 1955 of this chapter.

#### Part 1910, Subpart A

##### Section 1910.4 Processing Applications

This change in the proposed rule required the removal of paragraph (b) from this section and redesignate the remaining paragraphs. In the proposed rule, paragraph (b) was mistakenly referred to as paragraph (h). However, paragraph (b) will not be removed in the final rule.

Paragraph (b) of § 1910.4 requires FmHA to send a guide letter concerning the limited resource program to a farmer program applicant before County Committee action is taken on the application. That will be retained. One respondent erroneously stated that paragraph (b) required the guide letter to be sent to all farmer program borrowers each November, and that eliminating this notification process violated the authorizing legislation. The Agency would like to point out that the November notification is required in 7 CFR Part 1924, Subpart B, § 1924.59(d). However, that change will be discussed in the narrative for Part 1924, Subpart B.

The proposed rule would have removed the notification required under paragraph (b) of § 1910.4(b) and replaced that notice with a Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals, and Borrower Responsibilities." That form is to be reviewed with FO, OL, SW and EM applicants and includes notification of the limited resource program as well as deferrals. However, one respondent stated that the review of that form is not early enough in the loan application process to allow applicants to develop plans using Limited Resource rates and terms. The Agency agrees and will not remove § 1910.4(b) so that applicants can use Limited Resource information in their plans. One respondent suggested that a list similar to the servicing options in Form FmHA 1924-14 be

posted in all FmHA County Offices. The Agency believes that is not necessary and prefers giving actual notice of such options instead of posting a notice in County Offices.

##### Section 1910.8 Reaching an Understanding.

This change requires the use of Form FmHA 1924-14 in the application process to inform applicants of the availability of limited resource loans and servicing options, including deferrals. One respondent commented that, by using the form before or at loan closing, the notification would not be during the loan application process. The Agency believes the loan application process ends when the loan is closed. Therefore, if Form FmHA 1924-14 is given to applicants before or at loan closing, the notification is during the loan application process. Moreover, the Agency will retain applicant notification of the Limited Resource program under § 1910.4(b). The proposed rule is adopted.

#### Part 1924, Subpart B

##### Section 1924.51 General.

This change includes several farmer program loans under this subpart. There were no negative comments on this change; therefore, the Agency adopts this amendment.

##### § 1924.56 Credit Counseling.

This change clarifies the County Supervisor's responsibilities to act in an advisory capacity when credit counseling applicants and borrowers. No negative comments were received. Minor changes were made in the proposed amendment by including conforming paragraph headlines.

##### Section 1924.57 Planning.

This change clarifies the borrower's and County Supervisor's responsibilities for performing planning and explains under what conditions such plans must be prepared. The annual plan was broadened to include both Form FmHA 431-2, "Farm and Home Plan," or other plan of operation acceptable to FmHA, and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security." The latter form was designed to allow borrowers to formally participate in planning the use of proceeds in their operations; there will no longer be a priority list for use of proceeds.

As previously mentioned, a large number of respondents commented on the elimination of priorities for the use of proceeds in Part 1962, Subpart A, § 1962.17. They likewise did so for

§ 1924.57. As previously explained, FmHA clarifies the use of proceeds by initiating the use of Form FmHA 1962-1 which allows the borrower and FmHA to plan the use of proceeds for the coming year. Such uses include family living and farm operating expenses and payments to FmHA and other creditors. The Agency believes the use of this form will increase the borrower's awareness and understanding for what purpose the borrower's income can be used.

One agricultural interest group respondent commented that the use of Form FmHA 1962-1 formalizes the planning process and will make changes by borrowers more difficult to make. The respondent suggested that borrowers be made aware of the form's importance and that the Agency should create a new form to explain the mechanics of the form as well as other aspects of FmHA programs. The Agency has included an explanation of the use of Form FmHA 1962-1 on Form 1924-14, which is given to applicants and borrowers. The same respondent commented that both the borrower and FmHA County Supervisor should be required to initial and date major revisions to Form FmHA 1962-1, instead of only the borrower as stated on § 1924.57(d). The Agency agrees with this comment and has incorporated the change, along with other minor changes in language and additions, in the final rule.

Another respondent from USDA recommended that, in § 1924.57, the meaning of paragraph (c)(3), be clarified by replacing ". . . fully utilize plans developed, if any, with the assistance . . ." with ". . . fully utilize any plans developed with the assistance . . ." The Agency adopts this change to the proposed rule but also replaces "fully utilize" with "take into consideration." The same respondent recommended that "sufficient detail" in § 1924.57(d)(1) be further defined to provide clearer guidance to FmHA County Office staff. The Agency does not believe this is necessary as the Forms Manual Insert (FMI), referred to in § 1924.57(b) gives examples to the County Supervisor of the details required in the plan.

Other minor changes were made, such as requiring both Forms FmHA 431-2 and 1962-1 be completed at the same time and setting forth procedures for handling cases in which the borrower and County Supervisor do not agree on the entries on Form FmHA 1962-1.

##### Section 1924.58 Recordkeeping.

This change clarifies the responsibilities of both the borrower in keeping adequate records and the

County Supervisor in analyzing such records. No negative comments were received on this change; therefore, the Agency adopts the proposed amendment.

#### *Section 1924.59 Supervision.*

This change clarifies the County Supervisor's responsibility in supervising borrowers and in scheduling visits to borrower's farms. Such visits must be made to borrowers who have been indebted for less than one full crop year, who have been sent a notice of intent to take adverse action, who have had loans rescheduled, reamortized and/or consolidated, and who have limited resource loans. Two respondents commented that removing the requirement that the limited resource program notice be given to borrowers every November was in conflict with the authorizing legislation and should be reinstated. The Agency changes the amendment to include such notice be provided by sending Form FmHA 1924-14 to each borrower every November in paragraph (d) and to explain the contents of the form. That form will include notice of both the limited resource program and deferrals. One respondent recommended that § 1924-59(c) be expanded to clarify information required to be recorded on farm visits, meetings and other contacts and the follow-up actions. Such a record will identify negative and positive findings and provide a timetable for completion of follow-up actions. The respondent also suggested that the words "handled properly" at the end of the second sentence of § 1924.59(d)(1) be replaced by "properly supervised." The Agency concurs with both recommendations and hereby changes the proposed rule. The remainder of the proposed amendment remains unchanged except for restructuring of paragraph.

#### *Section 1924.60 Analysis.*

This change clarifies the purposes, uses and content of analyses of farm borrowers' operations. This allows County Supervisors to prepare for such analyses, to assist the borrowers and to monitor the borrowers' operations. The information obtained in analyses will assist the borrower in making financial and production management decisions. One respondent from USDA made four different recommendations for changes that would clarify the meaning in several paragraphs. In § 1924.60(a), it was suggested that revisions be made to pinpoint the purposes of analyses and to identify the borrower's and County Supervisor's responsibilities in preparing and updating the analyses. In § 1924.60(c)(1), it was suggested that the

words "adjusted to" be replaced by "predict."

It was suggested that, in § 1924.60(d)(2) that ". . . which jeopardize their repayment ability" be added to the end of the paragraph. In § 1924.60(d)(4) it was recommended that "until the County Supervisor determines the borrower is conducting the operations satisfactorily" be replaced by "until the County Supervisor determines the borrower is operating the enterprise within reasonable conformity to plans and prescribed goals." The Agency does not concur with the suggestions and believes the proposed language is adequate with minor revisions.

#### *Section 1924.61 Nonfarm enterprises.*

This section was unchanged from the existing regulation. No negative comments were received; therefore, this action remains unchanged.

#### *Section 1924.62 State Supplements.*

One respondent offered two comments on clarifying language in this section. In § 1924.62(a), it was suggested that "area" be replaced by "topic." It was suggested also that § 1924.62(c) be revised to require that standards for key farm management and financial management practices be kept current in the County Office and be made available to borrowers. This section is condensed in the final rule and requires that such practices be kept current in the County Offices. Also, the State Supplements issued to field offices should set the time of year for conducting analyses.

#### *Section 1924.71 Delinquent borrowers.*

This change requires that farmer program borrowers who are \$100 or more delinquent on their FmHA loan accounts as of December 31 (rather than March 31 as originally proposed) will be sent a notice of FmHA's intent to accelerate and liquidate their accounts. This would provide a definite standard for accelerating loan accounts. Eleven respondents offered negative comments on this change. Eight respondents from FmHA field offices suggested that the March 31 date does not allow sufficient time for borrowers to bring their account current after the January 1 due date and for County Offices to complete annual analyses for the borrowers' previous crop year. They believe that determining appropriate servicing actions, such as rescheduling, reamortization and deferrals cannot be done by March 31. Alternative dates suggested were June 30 and September 30. Also seven respondents believed that \$100 was too low of an amount of delinquency to initiate liquidation. One respondent

suggests that a percentage of a borrower's annual installment be used. It was believed that borrowers with small delinquencies would be agitated by receiving such a notice of intent. One agricultural special interest group respondent suggested that, due to a potential for backlog after sending notices to delinquent borrowers, the Agency wait one full year before adopting this proposed rule.

After further analysis, the Agency changed the date to December 31. This will allow the borrower almost a full year to make the annual installment. It will also reduce the number of intent to take adverse action notices sent out and allow the borrower and the County Supervisor more time to consider other options such as rescheduling and deferral.

The \$100 figure is used so that there will be a consistent clear-cut standard for County Supervisors which would eliminate any capricious liquidation decisions. Increasing the amount may create an incentive for borrowers to maintain a level of delinquency without concern that any action could be taken against them to enforce the covenants of the FmHA security instruments. Farmers who have delinquencies and who are able to bring their accounts current should do so. Farmers who cannot bring their accounts current should be considered for servicing relief immediately. The regulations make it clear that FmHA will take action quickly so that small delinquencies do not grow into large ones.

The Agency agrees with postponing the use of the notice for delinquent borrowers. The notification will be effective December 31, 1985. The remainder of the proposed amendment is adopted.

#### *Section 1924.72 Borrowers who receive Form FmHA 1924-25 and 1924-26.*

This change sets forth the actions County Supervisors must take after borrowers receive Forms FmHA 1924-25 and 1924-26. When borrowers do not respond to the forms, the County Supervisor will continue with the intended adverse action. In other cases, the County Supervisor will be processing requests for servicing actions, attending appeal hearings or considering curative or liquidation actions after the borrower returns the acknowledgement form, Form FmHA 1924-26.

Two respondents offered comments on this proposed change. One respondent from USDA suggested that § 1924.72(e) (redesignated as paragraph (f) in final rule) be changed to allow

borrowers who return incorrectly completed acknowledgement forms the full 30 day response period in which to correct deficiencies, rather than 10 days as set forth in the proposed rule. They also suggested that "within 10 days" be clarified as to "calendar" or "working" days. The Agency concurs with the recommendations and thereby changes the proposed rule.

An agricultural interest group respondent suggested that "60 days" be increased to "120 days" in § 1924.71(d). They believed that this would be a reasonable period of time to allow the borrower to complete the action the borrower chose on the acknowledgement form, such as selling or transferring real estate. The Agency concurs and hereby adopts the change to the proposed amendment as well as the addition of subheadings in this section. The Agency also added the description of the contents of the forms.

*Section 1924.73 Follow-up supervisory actions by District Director and State office staff.*

This change sets forth the oversight system for proper monitoring of supervisory actions taken by County Supervisors. One respondent suggested that results of visits by District Directors to County Offices be documented regarding the County Supervisor's management of the loan portfolio and that copies of the results be given to the County Supervisor and State Director. The Agency is of the opinion that other FmHA regulations concerning internal control require sufficient reporting documents. Therefore, the proposed rule is adopted.

**Part 1941, Subpart A**

*Section 1941.18 Rates and terms.*

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Loans may have reduced installments scheduled in the beginning of the repayment term. The requirement for an annual review of limited resource loans at the time of conducting an analysis has been added to the final rule.

**Part 1943, Subpart A**

*Section 1943.18 Rates and terms.*

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Language was added so that loans may have reduced annual installments scheduled of at least partial interest for the first 5 years.

Also, the requirement for an annual review of limited resource loans at the

time an analysis is conducted was added to the final rule.

**Part 1943, Subpart B**

*Section 1943.68 Rates and terms.*

This change removes deferral as a loan making action to avoid confusion with deferral as a loan servicing action. Language was added to indicate that reduced payments can be scheduled. No negative comments were received on this amendment; therefore, the proposed amendment is adopted as changed.

**Part 1943, Subpart C**

*Section 1943.118 Rates and terms.*

This change was made to remove deferrals as a loan making action to avoid confusion with deferral used as a servicing action. Language was added to indicate that reduced payments can be scheduled. The proposed rule is adopted as changed.

**Part 1945, Subpart D**

*Section 1945.168 Rates and terms.*

This change was made to remove deferral as a loan making action to avoid confusion with deferral used as a loan servicing action. One respondent commented on language in § 1945.168(b) that was not a part of the proposed change. Language has been added to the proposed rule to show that reduced installments can be scheduled annually for the first 5 years. Also the last sentence of § 1945.168(b)(1)(i) is removed to correct a previous error.

**Part 1951, Subpart A**

*Section 1951.1 Purpose.*

This change includes several Farmer Program loans for servicing in this Subpart. No negative comments were received; therefore, the proposed rule is adopted unchanged, except to include a reference to servicing loans on Predetermined Amortization Schedule System (PASS).

*Section 1951.7 Accounts of borrowers.*

These changes were made to delete use of payment reminders as farmer program delinquency notices and to provide a reference to Part 1924, Subpart B, for subsequent servicing of loans when a farmer program borrower fails to make a payment. Also, a change was made to update references to forms and other regulations.

One respondent from a special interest group commented that this amendment should include provisions for notifying borrowers of dates and amounts of payments due. Also, the respondent suggested that County Supervisors be required to notify

borrowers of how and when payments are applied to existing debts. The Agency cannot adopt such changes at this time due to changes being proposed and made in the automated data processing systems in the central Finance Office. Progress is being made to include all FmHA County offices on the system, which will eventually provide increased information for borrowers on payment application. The Agency adopts this proposed rule unchanged, except that, in paragraph (d), servicing farmer program loans has been clarified and differentiated from other FmHA loans and (b)(2) was removed as new regulations will have to be issued for off-sets on Federal employee wages.

*Section 1951.8 Types of payments.*

This change cross-references to a definition of the term "farm income." Also, the sources of extra payments are claimed in the light of the definition of "farm income." A reference to Part 1962, Subpart A, is added for the definition of farm income. No negative comments were received.

*Section 1951.10 Application of Payments on Operating (OL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO) loans to individuals, Soil and Water Conservation (SW) coded "24", and other production type loan accounts.*

The priority of application of income to accounts is amended to show that payments must be applied first to interest accrued during a deferral period. One respondent commented that this section be amended to clarify which FmHA employees are responsible for various steps in the payment process. Other sections of this Subpart, which were not affected by the proposed changes, deal with employee responsibilities and were not published. Therefore, the Agency believes no changes are required. The Agency has removed a subsection in § 1951.10 (b) that is no longer needed and adopts the proposed amendment.

*Section 1951.11 Application of payments on real estate accounts.*

These changes revise the priority of application of payments on real estate accounts so that payments are applied to interest accrued during a deferral period before interest accrued to the date of payment and then principal. No negative comments were received on these changes. To avoid repetition, the Agency did eliminate the reference to the priority of payments in § 1951.11(a)(2) because the same priority

list is included in § 1951.11(d)(1)(i). The proposed amendment is adopted as changed.

*Section 1951.25 Review of limited resource FO and OL loans.*

This change deletes a reference to an increase in FO limited resource rates. No negative comments were received on this change. However, the Agency proposed to adopt further changes to this section to require an annual review of limited resource loans. The Agency believes that this is feasible because limited resource borrowers receive analyses every year at which time financial information is obtained and repayment ability is determined. The limited resource interest rate is increased by whole number increments in accordance with the borrower's repayment ability until the current interest rate is reached. The automatic interest rate increase provision was removed as this had expired. Also, borrowers who have received a deferral cannot have the interest rate of their limited resource loans increased during a deferral period. That change is required to conform with Finance Office requirements.

*Section 1951.33 Consolidation and rescheduling of OL, SL, EO, and EM and EE loans made for Subtitle B purposes.*

These changes remove deferral as a servicing action from this section. The deferral action was placed under § 1951.44. Also, several farmer program loan programs, heretofore excluded from this section, were added. No negative comments were received on these changes. Therefore, the Agency adopted the proposed amendment with minor changes, such as prohibiting the consolidation of deferred limited resource loans during the deferral period and allowing rescheduling or consolidating to be performed any number of times on any loan.

*Section 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.*

These changes remove deferral as a servicing action from this section and add several farmer program loans that were previously excluded. Having received no negative comments, the Agency adopts this proposed amendment with minor changes including prohibiting deferred limited resource loans from being reamortized during the deferral period, conforming general requirements with those for rescheduling and consolidation under § 1951.33 of this part, and clarifying reamortization of limited resource loans.

*§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans.*

This section is added so that the eligibility requirements for and processing of deferrals could be explained in detail. Some general comments on this proposed change were addressed earlier in this document and the changes noted. Other respondents provided more specific comments which will now be addressed. One special interest group respondent commented that poor financial management decisions, such as untimely marketing practices, should not be excluded as a reason not to be considered for deferral. They believed that things such as untimely marketing are hard to control. The Agency realizes this; however, borrowers who are withholding grain or livestock from markets in anticipation of higher prices should not receive deferrals if they receive low prices because they held the commodities too long. Such speculation may cause a reduction in income and, if the borrower received a deferral, may be a disincentive for borrowers to use good marketing practices. The Agency chooses not to adopt this change.

Another respondent, from a USDA office, recommended that more specific items be required from the borrower to determine need for a deferral. Such items included death certificates, letters of employment termination, certificates of cost, etc. The Agency believes that requiring such items would place an unnecessary burden on the borrowers. The most necessary items, such as financial records, income tax records, etc., will provide the most accurate documentation of the borrower's financial position that indicates a need for deferral. The Agency chooses not to adopt this comment. This respondent also suggested that clarification be made in the proposed rules to show that subsequent deferrals must at least meet the criteria for an initial deferral. The Agency agrees and hereby adds the word "initial" to the first sentence of § 1951.44(f)(1) so that it reads ". . . meets the conditions for an initial deferral."

This respondent also recommended that a maximum term be stated in "5 years" instead of "5 installments." The Agency believes that clarification is necessary and hereby changes § 1951.44(i) to 5 annual installments. Finally, this respondent commented that expenditures for repairing security property that FmHA has determined not essential to the operation should not be considered to be "beyond the borrower's control." The Agency agrees that this language is not clear. The non-

essentiality refers only to required insurance coverage. Therefore, § 1951.44(b)(1)(ii)(B) is changed to reflect the insurance requirements.

Another agricultural interest group commented that the eligibility requirement for a deferral which states that the borrower must have applied "recommended and recognized successful production and financial management practices" is too subjective. The Agency believes that including very specific management practices would be too cumbersome and may, in fact, limit eligibility for a deferral. Also, subjective determinations made without adequate documentation are controlled through the administrative appeal process. The Agency chooses not to adopt this suggested change.

One FmHA field office respondent believes that FmHA should be adequately secured before a deferral could be granted. The respondent also commented that the proposed rule did not address the losses that the Agency could incur because of deferrals. The Agency believes that conditions beyond a borrower's control that lead to a need for a deferral may adversely affect security value and borrowers should not be penalized for such declines in value. Also, security value may recover during the deferral period. Potential losses should not be addressed in a servicing regulation. The Agency is not making any changes in response to these comments.

One attorney and a State Attorney General commented that notice of deferral to borrowers is not adequate to comply with one of the judge's orders. The Agency believes that more notices are provided under these proposed rules than what was required. One respondent further commented that the notices are placed throughout regulations and are difficult to locate, unlike the rural housing moratorium regulations, and the deferral regulation is not based on the rural housing moratorium regulation. FmHA's farmer programs operate under many more regulations than rural housing programs and the notices of deferral are logically placed in the appropriate farmer program regulations. Also, the Agency believes that the deferral standards are more suited to farmer program loans than the rural housing moratorium standards. Some requirements, such as standards for subsequent relief, are similar. Both respondents offered comments on eligibility for deferrals that are similar to those comments addressed earlier. The attorney commented on the cancellation of

deferrals, indicating that some of the reasons for which deferrals will be cancelled are vague. The cancellation of deferrals has been removed from the final amendment. This respondent went on to criticize the requirement that loans must be rescheduled and/or reamortized before deferral is granted. The respondent believed that would result in an increase in interest rates in virtually all cases. This is not true. Loans may be rescheduled or reamortized at the current or original note interest rates, whichever is lesser. Borrowers will not be penalized with higher interest rates. Finally, this respondent commented that deferral rights are not provided in acceleration notices, contrary to the Court's ruling. Reference to deferrals is made in the farmer program acceleration notices, the same as the reference to moratorium is made in the housing acceleration notice.

The Agency has added a statement to the Addendum for Deferred Interest under § 1951.44(j). That statement requires the borrower to sign a Supplementary Payment Agreement if, during the deferral period, the borrower has a substantial increase in income and can make additional payments. Finally, recoverable cost item accounts do not have to be current when a deferral is granted because such accounts cannot be rescheduled.

Considering the above, the Agency adopts this proposed amendment with noted changes.

The Agency is publishing the complete regulation for Subpart A of Part 1951 of this chapter for administrative convenience in issuing the regulation to its field offices. §§ 1951.2 through 5, 9, 12 through 24, 26 through 32, 34 through 39, and 41 through 43 remain unchanged from previous publications except to correct punctuation and form numbers previously overlooked. The interim rule titled, "Special Debt Set-Aside of a Portion of the Indebtedness of Farmer Program Borrowers," (§ 1951.41) published on October 19, 1984, FR Vol. 49, No. 204, pages 41220 through 41223, received several comments during the allowed 30 day period. Those comments will not be addressed in this publication. The Agency needs more time to evaluate the program.

#### Part 1951, Subpart F

##### *Section 1951.262 Action when borrower fails to cooperate, respond and/or graduate.*

This change provides appeal rights to farmer program borrowers who did not comply with FmHA's graduation requirements. One respondent commented that the changes regarding

appeals were confusing. The Agency amended the proposed rule so that more appropriate notification is given and to include a reference to Part 1900, Subpart B, for handling appeals.

#### Part 1955, Subpart A

This Subpart was revised for a final rule after the publication of this proposed rule. The proposed amendments are incorporated into this subpart and do not present significant changes. The comments received are addressed where appropriate.

##### *Section 1955.3 Definitions.*

This change includes rural housing loans for farm service buildings in the definition of farmer program loans. No negative comments were received; therefore, this change is adopted.

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

This change indicates that voluntary conveyances from a farmer program borrower cannot be accepted until the borrower has been sent Form FmHA 1924-14. Also, a change was made to require Form FmHA 1924-26 be in the case file, properly executed by the borrower, in cases where the borrower decides to voluntarily convey after receiving Form FmHA 1924-25. No negative comments were received. Language has been added to further define voluntary conveyance and to prohibit FmHA from demanding a voluntary conveyance from a borrower.

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

This change requires that farmer program borrowers receive Forms FmHA 1924-14, 1924-25 and 1924-26 before foreclosure action is initiated; to include references to Exhibits D and E as acceleration notices for farmer program borrowers; to indicate that farmer program borrowers do not receive the name of hearing officers on the acceleration notice; to require that non-farmer program loans and farmer program loans, if both are secured by the same security, be accelerated; and to prohibit the authorization of time for voluntary liquidation in farmer program cases after acceleration. One special interest group commented that borrowers should be given the opportunity to cure monetary and nonmonetary defaults for 60 days prior to acceleration when such borrowers have been denied servicing options. The Agency believes that borrowers have sufficient time to cure defaults prior to appeal hearings, if they choose to do so.

Also, borrowers may make offers to cure defaults until foreclosure is completed. However, such offers must be approved by the State Director. The Agency chooses not to adopt this comment. One FmHA field office pointed out two conflicts with other Subparts that should be changed in the proposed rule. However, the recent publication of a revision of this subpart has eliminated such conflicts. Also added to this change was the requirement that both chattel and real estate secured loans be accelerated at the same time.

##### *Section 1955.20 Acquisition of chattel property.*

This change was added to the final FmHA rule to require that farmer program borrowers receive Form FmHA 1924-14 before FmHA can accept a voluntary conveyance.

#### Part 1962, Subpart A

##### *Section 1962.2 Policy.*

This change includes the requirement that Forms FmHA 1924-14, 1924-25 and 1924-26 be used prior to liquidating security for farmer program loans. No negative comments were received on this change. However, the Agency wished to modify the proposed rule to remove this paragraph as this information is now included in other Subparts of the regulation. The proposed rule is adopted with this change.

##### *Section 1962.3 Authorities and responsibilities.*

Paragraph (c) was added to this section to provide an exception authority for the provisions or requirements of Part 1962, Subpart B. The authority is given to the Administrator who will determine if such exceptions can be made, based on the recommendations of the FmHA State Director. No negative comments were received on this change; therefore, the Agency adopts this proposed rule.

##### *Section 1962.4 Definitions.*

This change adds a definition of borrower to include corporations, cooperatives and partnerships; broadens the definition of chattel security; includes the definitions of farm income, which is proceeds from the sale of chattel security; security, which also means chattel security; and farmer program loans. No negative comments were received on this proposed rule. However, the Agency is including a change to § 1962.4(f)(7) to make it clear that minor deviations from FmHA regulations committed by borrowers should be referred to the Office of the Inspector General in order to protect the

Government's interest. Also included is the definition of Farmer Program loans. Therefore, the proposed amendment as changed is adopted.

*Section 1962.16 Accounting by County Supervisor.*

This change sets forth the use of Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," which requires the borrower and the FmHA County Supervisor to plan the use of proceeds for the coming year so that a clear understanding of such uses is established. This allows borrowers an increased participation in determining the use of proceeds. One respondent from a federal Agency believed that internal control is not sufficient to assure security property is accounted for. FmHA believes that the use of Form FmHA 1962-1 will provide greater control over accounting for security. That form, along with security agreement, will be updated during the year when borrowers make dispositions of security, thereby increasing accountability by the borrower. The Agency chooses not to make any change as a result of this comment. However, the Agency does adopt changes that will require changes on Form FmHA 1962-1 to be initialed by the borrower and the FmHA County Supervisor, will require the County Supervisor to approve or disapprove dispositions on Form FmHA 1962-1, will require the borrower to list potential purchasers of chattel security, and will refer employees to §§ 1962.18 and 1962.49 of Subpart A of Part 1962 for direction on dealing with unapproved dispositions of security. The Agency adopts this proposed rule so changed.

*Section 1962.17 Disposition of chattel security, use of proceeds and release of lien.*

This change sets forth the conditions under which the disposition of chattel security may be made, the handling of the use of proceeds and the process whereby changes can be made to Form FmHA 1962-1. Also, the proceeding of the release of chattel security was clarified. This discussion previously addressed the numerous comments relating to the removal of the priority list for the use of proceeds. Another respondent, from the USDA, commented that language in § 1962.17(b)(2)(ii) should be strengthened to indicate that, in cases where the security property is exchanged or traded, FmHA's relative lien position be maintained. The Agency concurs and the proposed rule is so changed. The same respondent, plus another respondent from an agricultural interest group, believed that a range in deviation from planned proceeds be

included so that small variations be excluded from the reporting requirements imposed on the borrower. The Agency believes that allowing any deviations provides an opportunity for borrowers to be negligent in using proceeds properly and reporting such deviations. Small deviations may lead to large deviations. Therefore, this comment is not adopted. Another agricultural interest group respondent suggested that the requirement that new plans on Forms FmHA 1962-1 and 431-2 be developed when changes in the disposition of security occur is too burdensome and that revisions to existing plans should be allowed. The Agency concurs and the change to the proposed rule is made. Other changes to the proposed rule are made to require the FmHA County Supervisor to approve or not approve dispositions and to record changes on Form FmHA 1962-1, to require the automatic termination of releases when the borrower's accounts are accelerated but not prior to that time, to set forth the conditions on Form FmHA 1962-1 the borrower must meet, and to allow plans of operation similar to farm and home plans to be used by the borrower. The proposed rule is adopted as changed.

*Section 1962.18 Unapproved disposition of chattel security.*

This change sets forth the notice that must be given to borrowers when proceeds have not been accounted for and the method of reporting such unapproved dispositions to the FmHA State Office. The Office of Inspector General (OIG) and the Office of the General Counsel (OGC) are informed if the borrower does not make restitution. Such cases are handled as criminal actions under § 1962.49 of Subpart A of Part 1962. Logs on unapproved disposition must be maintained by County Office and forwarded to State Offices, who then forward the logs to the Regional OIG, on a quarterly basis. The Office of Investigation (OI) made a number of comments on this proposed rule. The OI believes that a borrower counseling statement should be adopted for use when borrowers made unauthorized dispositions of security. Such a statement would set forth the borrower's responsibilities. The Agency believes that Form FmHA 1962-1 sets forth such responsibilities and the use of this form signed by the borrowers provides adequate accountability. It was also recommended that first offenses be reported on the log. The Agency chooses not to make this change because of the possibility the borrower made an honest mistake. Subsequent offenses will be reported. Also, it was recommended that

unauthorized dispositions above a minimum value be reported to avoid a large number of reportings. The Agency believes that, after the first offense, all unapproved dispositions of security must be reported to avoid the possibility of giving borrowers the incentive to make repeated small dispositions and to establish culpability. This comment is not adopted, as well as the comment that the "Unapproved Disposition of Security Log" be changed to "Borrower Counseling Log." The name change is not necessary as the counseling takes place before the dispositions are made.

Comments by OI that the Agency are adopting include reporting of unapproved dispositions, and keeping borrowers names on logs for two years instead of one year. These changes require other changes such as clarifying how to put new entries on the log and requiring the State Offices to also maintain a log. Also changed is requiring the log to be forwarded by the County Supervisor to OIG on a quarterly basis. The proposed amendment is adopted as changed.

*Section 1962.26 Correcting errors in security instruments.*

This change was added to update a reference for Form FmHA 462-12.

*Section 1962.28 Assignment of notes and security instruments.*

This change was added to remove this section from the regulation as it is obsolete.

*Section 1962.34 Transfer of chattel security and EO property and assumption of debts.*

This change requires sending Form FmHA 1924-14 to borrowers who inquire about making a transfer of chattels so that they are aware of servicing options and requires that any deferred interest be paid prior to an assumption of the FmHA debt on new terms. No negative comments were received on this proposed rule. It is adopted unchanged except to delete an obsolete interest rate for limited resource loans, and to add that any unassumed debt exceeding \$25,000 must be approved by the Administrator prior to release of liability.

*Section 1962.40 Liquidation.*

This change requires notice to borrowers on Form FmHA 1924-14, 1924-25, and 1924-26 prior to liquidation taking place. Those forms provide the borrowers a means of applying for other servicing options or appealing the intent to liquidate. Also, changed is reference to Exhibits D and E of Subpart A of Part

1955 for accelerating accounts. Also the change separates voluntary and involuntary liquidation to clarify the difference. No negative comments were received on this proposed amendment. The Agency adopts this amendment as changed.

**Section 1962.41 Sale of chattel security or EO property by borrowers.**

This change provides for giving the borrower Form FmHA 1924-14 before the sale occurs and using revised Form FmHA 455-3, "Agreement for Sales by Borrower (Chattel and/or Real Estate)." It also provides for the borrower to voluntarily turn over the possession of chattels to the government and for the government to hire a caretaker by use of Form FmHA 120-10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." The Agency adopts the amendment as changed.

**Section 1962.42 Repossession, care and sale of chattel security or EO property by the County Supervisor.**

This change requires that borrowers receive Forms FmHA 1924-14, 1924-25 and 1924-26 prior to repossessing that borrower's chattel security.

It also provides for the handling of security abandoned by the borrower. There were no negative comments. The Agency adopts the proposed amendment with changes that require the cosigners of loans, if any, receive Forms FmHA 1924-14, 1924-25, and 1924-26 prior to repossession and clarifies the handling of cases in which the borrower abandons the FmHA security.

**Section 1962.43 Liquidation of chattel security or EO property by other parties.**

This change deletes the provision that FmHA consider foreclosure in cases where junior lienholders are foreclosing. The FmHA will inform such lienholders of FmHA's security interest and the borrower's indebtedness and that a sale of any security is subject to FmHA's lien. There were no comments on this proposed amendment; therefore, it is adopted.

**Section 1962.47 Bankruptcy and insolvency.**

This change requires that prior notice on Forms FmHA 1924-14, 1924-25 and 1924-26 will be sent to the borrower's attorney when FmHA learns that either a chapter 7, 11 or 13 bankruptcy proceeding has been filed. Also sent is a guide letter which explains that the automatic stay must be lifted, the proceedings dismissed or the debt reaffirmed before the borrower can

request servicing options on Form FmHA 1924-26. This proposed amendment rule is adopted as changed.

**Section 1962.48 [Removed].**

This change was not commented on. The Agency hereby removes and reserves this section on setoffs.

**Section 1962.49 Civil and criminal cases.**

The proposed amendment requires Forms FmHA 1924-25 and 1924-26 be sent to borrowers prior to collection actions being taken in civil and criminal cases; to include a reference to Exhibits D or E of Subpart A of Part 1955 for acceleration of accounts; to remove reference to obsolete Form FmHA 455-21, to include District Office actions, to state that the period of time in which to take civil or criminal action is set by law, and to clarify information required to be sent to OGC for action. No negative comments were received on this proposed amendment. However, the Agency wishes to adopt changes to eliminate the use of Forms FmHA 1924-25 and 1924-26 because other methods of notifying borrowers of collection are used in this section. Also, this section was revised to clarify the referral of cases to OIG for criminal investigation. The proposed amendment is adopted as changed.

The Agency is publishing the complete regulation for Subpart A of Part 1962 of this chapter for administrative convenience in issuing the regulation to its field offices. Section 1962.5 through 9; 12 through 14; 19; 26; 27; 29; 30; 44; 45 and 46 remain unchanged from previous publications except to correct punctuation and form numbers previously overlooked and to allow plans of operation similar to farm and home plans be used by borrowers wherever a reference to farm and home plan is made.

**Miscellaneous Revisions**

Several additions are made to this final rule.

1. *7 CFR Part 1951, Subpart L* was published as a proposed rule in 49 FR 101, May 23, 1984, and is added to this final rule. The proposed rule set forth the administrative requirements for handling farmer program loans or other financial assistance that were determined by the Agency or the Office of the Inspector General to have been unauthorized. The borrowers of such loans are placed on notice that the unauthorized assistance must be repaid, regardless of whether the borrowers or FmHA was at fault in obtaining or providing the unauthorized assistance. Servicing options and account

adjustments may be considered in lieu of liquidation. No negative comments were received on the proposed amendment. However, the Agency is adopting changes to include, in § 1951.558, a cross reference to 7 CFR Part 1955, Subpart A, § 1955.10 for handling voluntary conveyances from borrowers whose cases cannot be handled with the use of servicing options or account adjustments. Such borrowers will not receive Forms FmHA 1924-14, 1924-25, and 1924-26 as required in § 1955.10. Also, borrowers who take no action to correct the unauthorized assistance or do not appeal will have their accounts accelerated in accordance with 7 CFR Part 1955, Subpart A, § 1955.16 without being given appeal rights or being sent Forms FmHA 1924-14, 1924-25, and 1924-26.

2. *7 CFR Part 1864*. This part sets forth policies and procedures for settling FmHA debts. A definition of Farmer Program Loans was included and § 1864.2 (C) and (D) are retitled and revised for clarification. The Agency adopts the amendment as changed.

3. *7 CFR Part 1872*. Other revisions to this part have been previously discussed. The Agency is adding § 1872.20 to this part which sets forth the servicing of non-program loans which are loans that result when credit is extended to ineligible applicants and/or transferees in connection with sale of inventory properties and loan assumptions. The Agency's regulations dealing with such loans were inadequate. The addition of this section will remove such inadequacies and provide direction that is consistent with past Agency practices and policies. The Agency also added revisions to §§ 1872.2 and 3 which add references to Subpart A of Part 1955 of this chapter and to remove references to RH loans.

4. *7 CFR Part 1950, Subpart C*. This subpart sets forth policies for servicing FmHA loans of borrowers who have entered or who are entering military service. This regulation had been overlooked when the proposed amendments were published and the agency hereby adopts changes in sections 1950.102, 1950.103 and 1950.104. Those changes separate the servicing of farmer program and non-farmer program loans owed by borrowers in the military.

5. Other changes were made to include form revisions that were issued since the proposed rulemaking was published. These changes have no bearing on the content or intent of the amendments.

A number of comments were received recommending changes that did not

pertain to the proposed changes. Such recommendations will be taken under consideration when the applicable Subparts are revised and published for proposed rulemaking. Also, one agricultural interest group made recommendations on Forms FmHA 1924-14, 1924-25 and 1924-26 which were not published for proposed rulemaking. The Agency concurs with some of the recommendations on the forms and has adopted some changes.

#### List of Subjects

##### 7 CFR Part 1864

Accounting, Loan programs—  
Agriculture, Rural areas.

##### 7 CFR Part 1872

Foreclosure, Loan programs—  
Agriculture, Rural areas.

##### 7 CFR Part 1900

Appeals, Credit, Loan programs—  
Agriculture.

##### 7 CFR Part 1910

Applications, Credit, Loan programs—  
Agriculture.

##### 7 CFR Part 1924

Agriculture, Construction and repair,  
Loan programs—Agriculture.

##### 7 CFR Part 1941

Crops, Livestock, Loan programs—  
Agriculture.

##### 7 CFR Part 1943

Credit, Loan programs—Agriculture,  
Recreation, Water resources.

##### 7 CFR Part 1945

Agriculture, Disaster assistance.

##### 7 CFR Part 1950

Accounting, Loan programs—  
Agriculture—Military personnel.

##### 7 CFR Part 1951

Account servicing, Credit, Loan  
programs—Agriculture, Loan  
programs—Housing and community  
development, Mortgages.

##### 7 CFR Part 1955

Foreclosure, Government acquired  
property.

##### 7 CFR Part 1960

Credit, Loan programs—Agriculture,  
Rural areas.

##### 7 CFR Part 1962

Crops, Government property,  
Livestock, Loan programs—Agriculture,  
Rural areas.

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

#### PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 is revised to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 31 USC 3711; 7 CFR 2.23; 7 CFR 2.70.

2. In Section 1864.2, paragraphs (a)(5) and (a)(6) are redesignated as (a)(8) and (a)(7), a new paragraph (a)(5) is added and paragraphs (c) and (d) are revised to read as follows:

##### § 1864.2 General policies.

(a) \* \* \*

(5) "Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing loans for farm service buildings (RHF).

(c) *Disposition of property.* Ordinarily, all security and nonsecurity property which was purchased or refinanced with loan funds will have been disposed of before processing a debt settlement action. Security and nonsecurity property which was purchased or refinanced with loan funds can be retained only under the conditions specified in § 1864.3(a)(2) or § 1864.5(a)(1) of this part.

(d) *Negotiating the settlement.* After all security has been disposed of or after the conditions of § 1864.3(a)(2) or § 1864.5(a)(1) of this part have been met, the County Supervisor should obtain from the borrower information concerning the borrower's financial condition. Enough information must be obtained so that either Form FHA 456-1, "Application for Settlement of Indebtedness," or Form FHA 456-2, "Cancellation or Charge-Off of FmHA Indebtedness," can be completed. All of these factors which are pertinent to determining ability to pay will be discussed with the borrower to arrive at the proper type and terms of a settlement. Present and future repayment ability, the factors mentioned in this part, and any other pertinent information will be the basis for 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 accurately forecast the borrower's future repayment ability over a long period of time; consequently, the period of time during which payments on adjustment offers are to be made should not, except in unusual cases, exceed 3 years. If a

borrower's income is derived from sources which do not appear to be stable, it may be preferable to consider a compromise offer in a lesser amount than an adjustment offer payable over a period of time. Likewise, it may be preferable to consider an adjustment offer in a smaller amount providing for larger payments over a shorter period of time, rather than an adjustment offer providing for a larger total payment over a longer period of time but with smaller payments. Borrowers may, however, make compromise or adjustment offers in any amount. All offers should be considered and processed, but an adjustment offer will not be approved unless there is reasonable assurance that the borrower will be able to make the payments as they become due. Since County Supervisors have no authority to approve debt settlement actions, they will make no statements to borrowers concerning the action that may be taken on their applications.

#### PART 1872—REAL ESTATE SECURITY

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

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

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

4. In § 1872.1, a sentence is added to the end of paragraph (g) to read as follows:

##### § 1872.1 General.

(g) *Definitions.* \* \* \* "Farmer program loans" means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

5. In § 1872.2 paragraph (b)(4) is revised to read as follows:

##### § 1872.2 Preservation of security property and protection of liens.

(b) \* \* \*

(4) *Maintenance.* In abandonment and pending liquidation cases, the State Director may authorize emergency repairs necessary to protect the interest of the FmHA. In all other cases, complete information concerning the borrower's failure to adequately maintain the security property and the

State Director's recommendation for continuing the loan will be submitted to the National Office for prior authorization to advance funds for needed repairs. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

6. In § 1872.3, paragraph (a) is revised to read as follows:

**§ 1872.3 Subordination of FmHA mortgage to permit refinancing, extension, reamortization, increase in amount of existing prior lien, or to permit a prior lien.**

(a) *Reamortizing Existing FmHA Debts.* Existing FmHA loans may be reamortized to permit a loan of another lender in lieu of a subsequent loan of the kind involved with prior approval of the District Director or State Director as applicable. Authority to reamortize an account will be granted when it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. When a loan is reamortized, it will be processed in accordance with applicable program regulations. Section 1872.20(b)(2) of this subpart should be referred to if an NP loan is involved.

7. In § 1872.4 the introductory paragraph is revised to read as follows:

**§ 1872.4 Consent by partial release, subordination, or otherwise to sale or other disposition of portion of or interest in security, except leases.**

The consent of FmHA or other lienholders may be in the form of a partial release, subordination, or other form of written consent, depending on the circumstances. If an NP loan is involved, § 1872.20(b) of this subpart also applies. The consent authorized herein is applicable to the disposition of security, or an interest in the security, rather than to a release of security granted to a mortgagor upon reduction of the debt from regular or other personal funds. A formal release may not be delivered for 15 days after the payment is received unless such payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available.

8. In § 1872.8 the introductory paragraph and paragraph (a)(1)(i) are revised as follows:

**§ 1872.8 Consent to borrower's granting lease of security.**

When consent to a lease is required by the security instruments and a borrower requests FmHA's consent to lease all or a portion of the security, or the County Supervisor discovers that a borrower is leasing the security without consent, Form FmHA 465-1 will be prepared when the County Supervisor recommends approval of the lease. That form will show the terms of the proposed lease and will specify the use of proceeds including any proceeds to be released to the borrower. When another lienholder's mortgage requires consent to lease, this consent will be obtained as provided in § 1872.1(f) of this subpart. FmHA consent to the lease may be granted on the basis of the situation at the time of the proposed action when: the lease or its terms will not adversely affect the repayment of the loan or the Government's rights under the mortgage; leasing is not an alternative to, or means of, delaying liquidation action, the operation of all or a portion of the security under the lease will not adversely affect any applicable crop allotments, the lease and use of any proceeds will further the objectives of the loan, liquidation is not pending and rental income sufficient to make regular payments under the note, pay taxes and insurance, and maintain the security assigned to FmHA for these purposes unless such payments are otherwise reasonably assured, the lease is advantageous to the borrower and is not to the Government's disadvantage, and if foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions by the OCC. In cases where the borrower leases property without consent and consent may not be granted in accordance with the above provisions, or when further approval of a lease cannot be granted in accordance with the conditions of the paragraph, the case will be serviced promptly in accordance with § 1872.17 of this subpart unless the borrower corrects the violation. If an NP loan is involved, § 1872.20(b) of this subpart also applies. Consent to lease will be subject to the additional conditions specified below for each kind of lease:

(a) \* \* \*

(1) \* \* \*

(i) *RH Loans on farms, or SW or RL.*

For the purpose of this paragraph, leases for an annual term with option to the lessor to renew for a longer term and to cancel at least at the end of each year will be considered annual leases. The FmHA will reserve the right to withdraw the consent at the end of any year

should liquidation or other servicing action be required by FmHA.

9. Section 1872.17 is revised to read as follows:

**§ 1872.17 Liquidation action.**

(a) *Voluntary Liquidation.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by: (1) selling the security under paragraph (c) of this section, (2) transferring the security under § 1872.18 of this subpart, (3) conveying the security to the Government under Subpart A of Part 1955 of this chapter, or (4) refinancing the FmHA debt with another lender. The provisions of these regulations will be explained to the borrower. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed \$100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than \$100,000 and the concurrence of the State Director if the secured debt exceeds \$100,000.

(b) *Involuntary Liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under policy stated in § 1872.1(b) of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In former program cases, borrowers must receive Form FmHA 1924-14, "Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any of the following actions can be taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security under paragraph (c) of this section, (ii) transferring the security under § 1872.18 of this subpart, (iii) conveying the

security to the government under Subpart A of Part 1955 of this chapter, or (iv) refinancing the FmHA debt with another lender, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924-26 and has returned the form to the County Supervisor. If the property is to be sold or transferred for its present market value which is less than the total secured debts against it, the County Supervisor will appraise the property immediately. If the unpaid FmHA secured debt and any prior lien do not exceed \$100,000, the County Supervisor will establish the present market value of the security. Otherwise, the County Supervisor will obtain the concurrence of the District Director if the secured debt is less than \$160,000 and the concurrence of the State Director if the secured debts exceeds \$160,000.

(2) *Problem Case Report.* If the borrower is unwilling to take any of the actions specified in paragraph (b)(1) of this section or fails to carry out any such actions within the time set out in that paragraph, the County Supervisor will complete Form FmHA 1955-2 and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

(4) *Voluntary liquidation after acceleration.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loan accounts.

(5) *Multiple loans and loans secured by both real estate and chattels.* When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated. If a borrower has a loan(s) secured only by real estate and other loan(s) secured only by chattels or if a borrower has a loan(s) secured by both real estate and chattels, liquidation of real estate and chattel security will be started at the same time. Chattel security will be liquidated under Subpart A or Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattels and real estate will be transferred, such transfer(s) will be accomplished in

accordance with § 1872.18 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924-25.

(c) *Operation of the security or personal occupancy.* A borrower with farmer program loan(s) who without FmHA's consent does not personally operate the farm or recreational facility is violating agreements with FmHA. After complying with the requirements of paragraph (b) of this section pertaining to notices and appeals, such a borrower's account will be accelerated in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(d) *Accelerated repayment agreement.* When liquidation of the account is necessary because of failure to refinance or for other reasons and the remaining loan repayment period exceeds ten years for real estate loans or two years for OL and EM loans, the State Director may, in-lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. Farmer program loan borrowers must be sent Form FmHA 1924-14 before an accelerated repayment agreement is signed. For real estate loans other than RH loans on nonfarm tracts, the term of the agreement will not exceed ten years. For OL, EM, and RH nonfarm loans, the terms of the agreement will not exceed five years. In either case, the balance of the debt will be scheduled for repayment in equal annual or monthly amortized installments of combined principal and interest, except that, if annual payments are required, the first installment may be less than a full amortized installment if it is due substantially less than a full year after the date of the agreement and the borrower will not be able to pay the full amount. Interest will be at the rate shown in the note. The State Director will determine that authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest and (1) the borrower can reasonably be expected to meet the accelerated payments, and (2) the borrower will continue to comply with other requirements of the loans and security instruments. When an understanding is reached with the borrower, Form FmHA 1965-11, "Accelerated Repayment Agreement," will be completed and executed. Separate Forms FmHA 1965-11 will be used for each type of loan and for direct

or insured loans. If the borrower fails to meet any installment when due as provided in such an agreement, foreclosure action will be initiated and accounts accelerated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter.

(e) *Cash sale.* Before any cash sale takes place, farmer program loan borrowers must be sent Form FmHA 1924-14. If a cash sale of mortgaged real estate would result in less than full payment of secured debts, the County Supervisor is authorized in accordance with § 1872.17(a) of this subpart to approve the sale at not less than the present market value of the property and to release the Government's liens, provided:

(1) Substantial recovery. A substantial recovery can be made on the FmHA secured indebtedness based on a recent appraisal report showing the present market value of the property.

(2) Application. All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1872.4(c)(2) of this subpart.

(3) Release. The FmHA liens are not released by the County Supervisor until receipt of the appropriate sale proceeds for application on the Government's claim. The release will be made on forms approved or prepared by OGC. If it appears the debt will not be paid in full, the borrower will be sent Form FmHA 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)," and the debt will be considered for debt settlement. The case will be reclassified to "collection-only" when a judgment will not be obtained and if the debt cannot be settled, and if the requirements of FmHA Instruction 404.1 (available in any FmHA office) concerning, "Case Classifications," can be met. When a cause is reclassified to collection-only, Form FmHA 404-1, "Case Reclassification" and Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office.

(f) *Environmental requirements.* Any applicable requirements of Subpart G or Part 1940 of this chapter must be met.

10. In § 1872.18, the introductory paragraph, paragraphs (b)(1), (b)(7), (b)(8), (b)(14), (b)(17), the introductory text of paragraph (c), paragraphs (c)(2)(i), (c)(2)(ii); (e), (g)(1), and the table and explanations in paragraph (g)(1), (g)(2)(iii), (g)(2)(iv) and paragraph (g)(3), are revised and (b)(19) and (f)(4) are added as follows:

**§ 1872.18 Transfer of real estate security.**

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security for FmHA loans, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924-14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If the proposed sale would not result in the FmHA account being paid in full at the time of the sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1872.4 or 1872.17 of this subpart, as appropriate. When the transferor is receiving a substantial downpayment in connection with the sale of the property, the purchaser should be required to contact other sources of credit to secure a loan for repayment of the FmHA loan in full. If an NP loan is involved, § 1972.20(b)(5) of his subpart also applies. When real estate security, including water rights, is sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate paragraphs of this subpart, the account will be liquidated as required in § 1872.17 of this subpart.

(b) \* \* \*

(1) *Agreement.* Form FmHA 465-5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferee. This agreement will not be completed for farmer program loan borrowers until the borrower has received Form FmHA 1924-14

(7) *Loan type.* The kind(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as Non Program Loans (NP).

(8) *Transfer of a portion of the security.* Generally, title to all FmHA real estate security, including water rights, must be conveyed to the transferee not later than the date of closing the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the total indebtedness may be approved, provided: (i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower of such indebtedness is reduced by a cash payment to the present market value of

such property, (ii) the transaction is advantageous to the Government, and (iii) in the case of RH loans, the property improved with RH funds is conveyed to the person assuming the RH loan. In such a transaction, the security retained by the transferor will be released from the Government's lien.

(14) *Loans.* An initial or subsequent loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay equity. When real estate security for an RH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an RH loan to purchase such real estate, RH loan funds may be used to pay the equity. This, however, does not include income-producing land or buildings. In lieu of the subsequent loan of the kind involved, the Government's lien may be subordinated to (i) enable the transferor to take a first mortgage to secure the amount of the equity payment, or (ii) to permit another lender to furnish the funds needed in connection with the transfer. In such cases, the subordination will be processed in accordance with the applicable provisions of § 1872.3 of this subpart. The transferor may convey title to the property by warranty deed or, when the transferor agrees to take a first lien to secure the downpayment, the property may be sold by purchase contract or similar instrument that meets the conditions of § 1943.16(a)(3) of Subpart A of Part 1943 of this chapter. In such cases, prior lienholders' agreements will be obtained in accordance with § 1807.2(f)(5) of Part 1807 of this chapter. When necessary to settle a divorce action, a subsequent loan may be made or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property.

(17) *Date.* The effective date of the transfer will be the actual date the transfer is closed. This is the date on which Forms FmHA 460-5 or 460-9 are signed. In connection with the use of either form, the unpaid principal balance and accrued interest will be shown in Table 1 and the accrued interest will be computed from Form FmHA 451-25, "Transaction Record," Form FmHA 451-31, "Borrower Transaction Record," or the monthly payment account Status Report. If Form FmHA 460-9 is used, the transferee will be informed of the amount of principal and interest owed.

The transferee also will be advised of the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period and any accounts that must be paid to bring any monthly payments up to date.

(19) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter must be met.

(c) *Transfer of loans to eligible applicants.*

(2) \* \* \*

(i) *Form FmHA 460-9.* Except as noted below for RH loans, assumption of any FmHA loan may be approved without any change in the balance owed, interest rate, or other terms. In such cases, Form FmHA 460-9 will be used. A loan may be transferred even though it is on schedule, ahead of schedule, or behind schedule. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be placed on new rates and terms by using Form FmHA 460-5.

(A) Rural Housing Disaster (RHD) loans will be transferred at the current rate for Section 502 loans unless the transferee is eligible for a RHD loan.

(B) Direct Sections 502, 503, and direct Senior Citizen RH loans will be transferred at the current rate for Section 502 loans.

(C) Low and moderate RH loans transferred to a person having an above-moderate income will be transferred at the current rate for an above-moderate Section 502 loan.

(ii) *Form FmHA 460-5.* If an extension of the existing loan repayment period is necessary to enable the transferee to be successful, or if interest accrued during a deferral period is not paid in full at the time of transfer, Form FmHA 460-5 will be used. The new repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, and RH—33 years. If a new repayment period is used, the current interest rate for a new loan of the type involved will be used and any insurance charge

applicable to such a loan will be provided for, except in assumptions by a surviving spouse under § 1872.18(b)(4). In determining the new repayment period and interest rate, (A) an NP loan will be considered an FO or RH loan as appropriate, if the applicant and the property meet the requirements of § 1872.18(c)(1), and (B) an SL or other emergency-type loans no longer being made will be considered an EM loan.

(e) *Consent of FmHA not required to transfer.* Even in cases where the FmHA mortgage(s) does not require the Government's consent to the sale of the security, if the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with § 1872.18 (c) or (d), the Government will not consent to the sale.

(1) *Sections 502 and 504 RH loans.* In such cases, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default, and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the borrower and otherwise serviced in the usual manner.

(2) *Farmer program loans.* The borrows will be sent Form FmHA 1924-14.

(f) \* \* \*

(4) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office).

(g) \* \* \*

(1) *Refund of Unused Funds, Loan Funds Not Advanced, Transaction Record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, RH, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any

obligation of or request for loan funds not yet advanced will be cancelled. Form FmHA 451-28, or the monthly payment account Status Report will be

used to compute the unpaid balance due on the effective date of the transfer.

(2) \* \* \*

(iii) \* \* \*

FmHA form No.	Name of form	Total number of copies	Signed by transferee	Transfer docket	Copy for transferee
*1940-1	Request for Obligation of Funds	3	2-O and C*	2-O and C	1-C
*400-4	Nondiscrimination Agreement	2	1-O	1-O	1-C
*410-1	Application for FmHA Services, (with attachments)	*1	1-O	1-O	
*410-4	Application for Rural Housing Assistance (Non Farm Tract)	*1		1	
*1910-5	Request for Verification of Employment	1			
*465-5	Transfer of Real Estate Security	3	1-O	1-O	1-C
*440-2	County Committee Certification or Recommendation	1		1-O	
*431-2 <sup>1</sup>	Farm and Home Plan	1	1-O	1-C	In record book
*431-1	Long-Time Farm and Home Plan	2	2-O and C	1-C	1-O
*431-3 <sup>1</sup>	Household Financial Statement and Budget	2	1-O	1-C	1-O
*431-4 <sup>1</sup>	Business Analysis-Nonagricultural Enterprise	2	2-O and C	1-C	1-O
*422-1	Appraisal Report (Farm Tract)	1		1-O	
*422-3	Map of Property	1		1-O	
*1922-8	Residential Appraisal Report	1		1-O	
*1940-21	Environmental Assessment for Class I Actions	1		1-O	
*1940-22	Environmental Checklist for Categorical Exclusions	1		1-O	
*424-1	Development Plan	2	1-O	2-O and C	1-C
*426-1	Valuation of Building	1		1-O	1-C
*440-9	Supplementary Payment Agreement	2	1-O	2-O and C	1-C
*460-5 <sup>1</sup>	Assumption Agreement (New Terms)	4	1-O	1-O	1-C
*460-9 <sup>1</sup>	Assumption Agreement (Same Terms-Eligible Transferee)	4	1-O	1-O	1-C
*465-8 <sup>1</sup>	Release From Personal Liability	2		1-C	1-C
*443-17	Agreement to Sell Nonessential Real Estate	2	2-O and C	1-C	1-C
*1924-14	Notice-Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities	2		1-C	1-C
*1924-25	Notice of Intent to Take Adverse Action	2		1-C	1-O
*1924-26	Borrower Acknowledgement of Notice to Take Adverse Action	1		1-O	
*1940-41 <sup>1</sup>	Truth in Lending Disclosure Statement	2	1-C	1-C	1-O
*1940-43 <sup>1</sup>	Notice of Right to Cancel	3	1*	*1	2-O and C
*451-10	Request for Statement of Account	3		2-O and C (O to FC)	
*451-25	Status of Account	2		2-O and C	
*1960-6	Assumption Agreement	1*	1-C		
*1965-22	Information on Assumption on New Terms or Other	2		1-O	
	Change of Terms				
*1965-23	Supplemental Information on Assumption and/or	2		1-O	
	Change of Terms				

O—Original, C—Copy

\*—When applicable.

<sup>1</sup> In addition to plan for first full year, interim plan, if prepared, will be included in the docket.

<sup>2</sup> The original Form will not be executed until date of closing the transfer.

<sup>3</sup> In right to cancel cases, original and sufficient copies for each person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter.

<sup>4</sup> Original and one copy to transferee, two copies to each other person who has right to cancel in accordance with Subpart I of Part 1940 of this chapter. If the person exercises the right to cancel, he/she will sign one copy of the form and return it to the County Office.

<sup>5</sup> When requested, prepare an additional copy for delivery to transferee.

<sup>6</sup> Applicant must sign and date this form unless a similar certification is obtained on the application form.

<sup>7</sup> For eligible transferees, delete the first sentence referring to other credit in item 34 of the form. The deletion will be initialed by the applicant.

<sup>8</sup> For ineligible transferees, delete the first sentence in the applicant's certification (item 23 on the Form FmHA 410-1 or item 12 on the Form FmHA 410-4) which refers to other credit. The deletion will be initialed by the applicant.

<sup>9</sup> Original to Finance Office.

(iv) *Other transfer docket items when applicable:* Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and co-signer(s). When the County Supervisor is the approving official he/she may, in lieu of including the document evidencing ownership, include a statement in the docket indicating that he/she has seen and reviewed the document. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451-26 will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, he/she should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

11. § 1872.20 is added to read as follows:

§ 1872.20 Servicing non-program loans (NP).

(a) *Definition.* A non-program loan results when credits are extended to ineligible applicants and/or transferees in connection with sale of inventory properties and loan assumptions.

(b) *Servicing authorities.* (1) Except as set out in the following paragraphs, debtors to FmHA with NP loans are not eligible to receive any program benefits including supervision and servicing. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral, and appeal rights.

(2) Subordination of FmHA NP loan mortgages may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien *only* when the security for the NP loan is also the security for another FmHA Insured Farmer Program type loan and the request for the subordination meets all the requirements for the subordination of the other FmHA Insured Farmer Program type loan and is in the best interest of the government. Such actions can only be approved by the State Director.

(3) Any consent by partial release, subordination or other agreement involving road rights of way, gas line easements, utility line easements, mineral right easements or leases, other leases, etc. may be approved providing that the funds received are applied to the liens in order of priority. Such actions can only be approved by the State Director.

(4) Voluntary conveyance of security for NP loans will only be considered when it is clearly in the best interest of the government. The debtor will not be released from liability for any FmHA debt that exceeds the value of the security plus any additional cost which might result in a charge to the government such as closing cost and maintenance of the security property. Such actions can only be approved by the State Director.

(5) NP loans will be transferred to an FmHA applicant unless the security and the transferee meet the requirements for an OL or FO loan as applicable. In such cases the transfer will be processed the same as on the OL or FO loan being transferred to an eligible applicant. EM and EE loans will *not* be transferred as an NP loan to eligible OL or FO transferees.

(6) When an NP loan debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year), the account will be accelerated by the use of Exhibits D and E of subpart A of Part 1955 (available in any FmHA Office). Exhibit D will be completed in accordance with the FMI to delete the statement regarding deferrals. If the borrower has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure as set forth in Subpart A of Part 1955 of this chapter,

without further notice or any extension of time.

(7) Any borrower having NP debts and farmer program loans will be serviced in accordance with the regulation applicable to those loans.

§ 1872.22 [Reserved]

12. § 1872.22 is removed and reserved.

PART 1900—GENERAL

13. The authority citation for Part 1900 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 B—Farmers Home Administration Appeal Procedure

14. In § 1900.51, two sentences are added at the end of the text as follows:

§ 1900.51 General.

... FmHA officials may not deny or delay approved assistance pending the outcome of an appeal of a partial adverse action. For farmer borrowers with farmer program loans as defined in § 1900.52(d) of this subpart, releases for certain family living and farm operating expenses cannot be terminated until the borrower has received Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," in accordance with Subpart A of Part 1862 of this chapter and any appeal has been concluded *and* Exhibit D or E to Subpart A of Part 1955 of this chapter has been sent to the borrower.

15. Section 1900.52 is amended by redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as follows:

§ 1900.52 Definitions.

(d) *Farmer Program Loans* means Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF).

16. Section 1900.53 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) and by adding a new paragraph (a)(15) to read as follows:

**§ 1900.53 Decisions which are not appealable.**

(a) \* \* \*

(15) Nonprogram loan debtors are not eligible to receive any program benefits such as appeal rights as provided in § 1872.20(b)(1) Part 1872 of this chapter (FmHA Instruction 465.1XXB1).

(f) If a borrower fails to return Form FmHA 1924-26 on time, or if the borrower completes Form FmHA 1924-26 to show that no appeal is requested, the borrower will be sent Exhibit B-6 and FmHA will take the adverse action.

17. Section 1900.55 is amended by revising paragraphs (a), (b), and (c) and adding new paragraphs (d) and (e) to read as follows:

**§ 1900.55 FmHA actions to limit the need for appeals.**

(a) FmHA personnel should carefully check that all documentation and/or calculations used in the determination to initiate adverse actions are accurate and complete.

(b) The specific reasons for intended adverse actions should be clearly explained to the applicant or borrower. Vague reasons should be avoided. For example, avoid "you lack repayment ability." Calculations and documentation which demonstrate the lack of repayment ability shall be provided and explained to the borrower or applicant.

(c) Except for farmer program loan borrowers who are sent Forms FmHA 1924-25 and 1924-26, a meeting must be held between the affected parties and the decisionmaker to explain the adverse decision before the appeals process will begin. The required meeting may be waived by the decisionmaker if the decisionmaker previously met with or advised the affected parties of the specific reasons for the denial or the decisionmaker determines that a meeting would likely not avoid an appeal. The decision maker will document in the affected party's file the reason for deciding to waive the meeting. In such cases, Exhibit B-2 with attachment Exhibit B-4 will be used without revision, except in cases involving acceleration of accounts which are provided for in § 1900.56(a) of this subpart. When a meeting is required, Exhibit B-1 will be used without revision to inform the appellant. If the appellant or appellant's representative [or legal counsel] without good cause, fails to schedule/attend this meeting, there will be no appeal.

(d) Farmer program loan borrowers who are sent Form FmHA 1924-25 and

who complete Part I, III or IV or Form FmHA 1924-26 are entitled to a conference with the decisionmaker before the appeals process begins. The conference cannot be waived by the decisionmaker. If the borrower or the borrower's representative fails to attend the conference without having a reasonable excuse or if the borrower fails to bring the information requested, the borrower will be sent Exhibit B-6 and there will be no appeal of the intended adverse action.

(e) When the person or organization officials attend a meeting or conference with the decisionmaking official and the meeting or conference results in a resolution of the matter, the official will send the person or organization a letter within 7 calendar days of the meeting or conference, setting forth the conclusions reached. If the meeting or conference does not result in a resolution of the matter, Exhibit B-5 with attachment and Exhibit B-4 will be sent without revision to notify the person or organization of appeal rights within 7 calendar days of the meeting or conference. If the person or organization has returned Form FmHA 1926-26 indicating no appeal is desired, Exhibit B-6 will be sent.

18. In § 1900.56, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (e); a new paragraph (a) is added, the introductory paragraph of newly designated paragraph (b) and paragraphs (b)(3) and (d)(2) are revised, and paragraph (b)(5) is added to read as follows:

**§ 1900.56 Appeal from an initial FmHA decision.**

(a) Farmer program loan borrowers who are sent Forms FmHA 1924-25 and 1924-26 (in accordance with Part 1872, Subpart B of Part 1924, Subpart A of Part 1962, or Subpart C of Part 1950 of this chapter) are given an opportunity to appeal before the adverse action is taken unless Part II-D or Part III or IV of Form FmHA 1924-26 was completed. If an appeal is taken and the decision to take adverse action is upheld, the final letter upholding the initial decision will contain the following statement:

This review concludes the administrative appeal of your case. FmHA will proceed to take the adverse action noted on Form FmHA 1924-25, "Notice of Intent to Take Adverse Action." You are not entitled to any further appeal in connection with the adverse action.

(b) If an applicant for FmHA assistance, an FmHA borrower (except those farmer program loan borrowers who are sent Forms FmHA 1924-25 and 1924-26), or an FmHA grantee is directly and adversely affected by an FmHA decision or action, the official taking action or making the decision will

inform that person or organization by letter of the action taken within 15 calendar days of the action. The term "directly and adversely affected" means having a request for FmHA assistance denied in whole or in part or having FmHA assistance reduced, canceled, or not renewed. Letters, as indicated in § 1900.53 or § 1900.55 of this subpart, as appropriate, will be used to notify the applicant. The following actions will also be taken if the adverse action is an acceleration of an FmHA loan:

(3) Except for farmer program loan acceleration notices, the letter will read substantially as found in Exhibit B or C, "Notice of Acceleration . . ." of Subpart A, Part 1955 of this Chapter with attachment Exhibit B-4 or B-5 as appropriate. The following language, or other similar language mandated by FmHA regulations, must be included in the acceleration notice: "The request for this hearing must be made within 30 calendar days from the date of this notice." Farmer program loan accounts will be accelerated after all appeals have been concluded by sending either Exhibit D or E of Subpart A, Part 1955 of this chapter, as appropriate.

(5) When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan(s), the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924-25. One appeal hearing and one review will be held jointly for both adverse actions. The hearing officer and review officer will be the people designated in Exhibit D of this subpart as further explained by footnote 5 of that Exhibit.

(d) \* \* \*

(2) If the appellant has made a request to examine or copy the FmHA material concerning the case, except where the acceleration of a loan secured by real estate is involved, the material (unless privileged) will be made available to the appellant or the appellant's representative [or legal counsel] at the FmHA decision maker's office for 10 calendar days following the receipt of the request for appeal. When a real estate loan acceleration is involved, and the appellant has made a request to examine or copy the FmHA material concerning the case, the hearing officer will arrange for the file (other than privileged material) to be available in the servicing office for a reasonable period of time. An FmHA employee should ensure that no material is

destroyed or removed from the files. The decision maker will then submit the request for hearing with the complete file to the hearing officer.

19. Exhibit B-1 to Subpart B of Part 1900 is amended by revising the first paragraph to read as follows:

**Exhibit B-1 to Subpart B—Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable**

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration services] [are canceling/reducing the assistance you are presently receiving]. The specific reasons for our decision are: [Insert here the adverse decision and all of the specific reasons for the adverse action.] If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you must request a meeting with (this office) (the County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative (or legal counsel) with you. Should we be unable to satisfactorily resolve your case, you will be advised of your appeal rights and how to begin the appeal process. If without good cause, you fail to schedule or attend this meeting, there will be no further appeal.

20. Exhibit B-2 to Subpart B of Part 1900 is amended by revising the first sentence and by adding a footnote to read as follows:

**Exhibit B-2 to Subpart B—Letter for Notifying Applicants and Borrowers of Adverse Decisions Where the Decision is Appealable**

After careful consideration, FmHA [was unable to approve your application/request for service] [is canceling/reducing the assistance you are presently receiving] [is planning to accelerate and liquidate your account(s)]<sup>1</sup>

21. Exhibit B-3 to Subpart B of Part 1900 is amended by revising the title and the second sentence in the first paragraph to read as follows:

**Exhibit B-3 to Subpart B—Letter for Notifying Applicants and Borrowers of Unfavorable Decision Reached at the Pre-Hearing Meeting or Conference.**

We regret that our [meeting] [conference] with you did not result in a satisfactory conclusion.

<sup>1</sup>Used only for Farmer Program graduation.

**Exhibit B-4 to Subpart B—Appeals of Adverse Actions [Amended]**

22. Exhibit B-4 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use as an Attachment to Exhibit B-2, B-3, and Chattel Acceleration Notices, as Applicable)" to read "Use as an Attachment to Exhibits B-2 and B-3."

**Exhibit B-5 to Subpart B—Appeals of Real Estate Acceleration [Amended]**

23. Exhibit B-5 to Subpart B of Part 1900 is amended by revising the opening parenthetical statement now reading "(Use of an Attachment to Real Estate Acceleration Notices)" to read "(Use as an attachment to Real Estate Acceleration Notices Except Farmer Program Loan Accelerations)."

24. Exhibit B-6 is added to Subpart B of Part 1900 to read as follows:

**Exhibit B-6 to Subpart B of Part 1900—Letter for Notifying Borrowers, Who Received Form FmHA 1924-25 But Who Have Waived or Forfeited Their Appeal Rights**

U.S. Department of Agriculture

Farmers Home Administration

[Insert Address]

[Date]

Dear \_\_\_\_\_

You were sent Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and attachments, on (date). You have (waived) (forfeited) your opportunity for an appeal hearing concerning the adverse action the Farmers Home Administration intends to take as indicated on Form FmHA 1924-25 because

[you failed to return Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to take Adverse Action," in response to Form FmHA 1924-25 during the time period provided.]

[you] [your representative] failed to attend the conference scheduled on (date) in response to your request on Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," without having a reasonable excuse.]

[you failed to bring the information requested on Form FmHA 1924-25 to the conference held on (date).]

[you indicated on Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," you did not wish to appeal.]

This is notice that FmHA is proceeding to take adverse action shown on Form FmHA 1924-25. You will receive no further appeal rights in connection with this adverse action.

Sincerely,

(County Supervisor)

25. Exhibit D to Subpart B of Part 1900 is revised to read as follows:

**Exhibit D to Subpart B—Hearing/Review Officers Designation**

Decisionmaker or decision	Hearing Officer	Review officer
County Supervisor...	District Director from another district or a person of equal or greater rank not involved in the case designated by the State Director.	State Director or designee (who has not been significantly involved with the case).
County Committee...	State Director or designee.	Deputy Administrator, Program Operations or designee.
District Director.....	State Director or designee.	Deputy Administrator, Program Operations or designee. (No review).
State Director.....	Deputy Administrator, Program Operations or designee.	(No review).
Division Director or Assistant Administrator.	Deputy Administrator, Program Operations or designee.	(No review).
Deputy or Associate Administrator, Intent to foreclose Chattels.	Administrator or designee.	(No review).
Intent to foreclose Real Estate (for Farmer Program Loans).	District Director from another district or a person of equal or greater rank not involved in the initial decision designated by the State Director.	State Director or designee.
Decision to foreclose Real Estate (for Single-Family Housing accounts). (For accounts serviced in the District Office).	State Director or designee <sup>1</sup> .	Deputy Administrator, Program Operations, or designee.
	Deputy Administrator, Program Operations or designee.	(No review).

<sup>1</sup> The individual designated as Hearing Officer may not be an employee who is supervised by the person who approved the foreclosure and accelerated the account, nor can be designee have been involved in the decision to foreclose.

**Notes**

1. District Director also means Assistant District Director or District Loan Specialist.
2. County Supervisor also means Assistant County Supervisor with loan approval authority.
3. Designee is the person designated by the Hearing/Review Officer to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:
  - a. For hearing on County Committee decisions. For these hearings the State

Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State Director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer, designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file, hearing notes, tape recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operations, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the State Director of what corrective action will have to be taken.

4. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

5. When a hearing involves both the action on Form FmHA 1924-25 and any other loan acceleration, the appeal process will follow that for the decision maker to foreclose the non-farmer program loan account.

#### PART 1910—General

26. The authority citation for Part 1910 continues to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart A—Receiving and Processing Applications

27. In § 1910.8 paragraph (e) is added to read as follows:

##### § 1910.8 Reaching an understanding.

(e) *Use of Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities."* Before or at loan closing, all FO, OL, SW, and EM applicants for initial or subsequent loans will have Form FmHA 1924-14 reviewed with them by the County Supervisor. In addition to some of the items listed in paragraph (d) of this section, Form FmHA 1924-14 explains servicing options that are available to the borrower, including deferral, and the limited resource program. Form FmHA 1924-14 will be signed and distributed in accordance with the FMI.

#### PART 1924—CONSTRUCTION AND REPAIR

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

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart B—Management Advice to Individual Borrowers and Applicants

29. Subpart B of Part 1924 is revised to read as follows (Exhibit A remains unchanged):

#### PART 1924—CONSTRUCTION AND REPAIR

#### Subpart B—Management Advice to Individual Borrowers and Applicants

Sec.

- 1924.51 General.
- 1924.52-1924.55 [Reserved]
- 1924.56 Credit counseling.
- 1924.57 Planning.
- 1924.58 Recordkeeping.
- 1924.59 Supervision.
- 1924.60 Analysis.
- 1924.61 Nonfarm enterprises.
- 1924.62 State supplements.
- 1924.63-1924.70 [Reserved]
- 1924.71 Delinquent borrowers.
- 1924.72 Borrowers who receive Form FmHA 1924-25 and 1924-26.
- 1924.73 Follow-up Supervisory actions by District Directors and State office staff.
- 1924.74-1924.99 [Reserved].
- 1924.100 OMB number.

#### Exhibit A—New Full-Time Family Farm and Rancher Development Projects

#### Subpart B—Management Advice to Individual Borrowers and Applicants.

##### § 1924.51 General.

This subpart sets forth policies for providing management advice to farmer programs loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loans, and/or (RHF) Rural Housing loans for farm service buildings. This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a Farmer Program loan that is not collection-only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart). This subpart does not apply to individuals who owe non-program loans (defined in § 1872.20(a) of Subpart A of Part 1972 of this chapter).

##### §§ 1924.52-1924.55 [Reserved]

##### § 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers by advising them of ways to use credit to make profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) *Ineligible applicants.* In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available. If the applicant has filed an application for FmHA assistance, the procedure set out in Subpart B of Part 1900 of this chapter must be followed.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) *Eligible applicants.* In credit counseling with eligible applicants and borrowers, the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's credit-elsewhere requirements and assist in the determination of the amount of other credit best suited for the applicant or borrower.

##### § 1924.57 Planning.

(a) *Long-Time plans (Form FmHA 431-1, "Long-Time Farm and Home Plan").* This plan reflects long-time aims and objectives. It will be completed by each applicant or borrower engaged in farming who is receiving a loan when necessary major adjustments or improvements will not be completed during one crop year. The long-time plan will cover the period of time required to complete the major adjustments or improvements and will be revised as conditions require.

(b) *Annual plan (Form FmHA 431-2, "Farm and Home Plan", and Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security").* These two forms will cover the 12-month period (or crop year) which most accurately reflects the annual production cycle of the operation. The references to Form FmHA 431-2 in this subpart mean this form or other plans or documents acceptable to FmHA which include similar information necessary for FmHA to make a decision.

(1) Form FmHA 1962-1 must be completed once each year and revised as needed in accordance with the Forms

Manual Insert (FMI) for all borrowers with FmHA loans secured by chattels. Form FmHA 1962-1 should be filled out at the same time as a Form FmHA 431-2 is being completed, if a Form FmHA 431-2 is required. The figures on the two forms must be consistent. For example, if the Form FmHA 431-2 shows the borrower plans to spend \$10,000 on equipment and no FmHA loan funds are being advanced for that purpose, the Form FmHA 1962-1 should show where the \$10,000 will come from. (Example—sale of wheat) Form FmHA 431-2 will be required for those borrowers:

- (i) Receiving initial loans.
- (ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.
- (iii) Who are experiencing financial and/or production management problems.
- (iv) Who are requesting servicing options on Form FmHA 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action."
- (v) Who have had payments deferred.
- (vi) Who are making major adjustments to their operation.
- (vii) Who have limited resource loans.

(2) Interim plans may be developed for the remainder of the current year's operation to supplement an annual plan (if one was required) for the following year in those cases where the annual plan alone would not be sufficient to show accurately the complete cycle of the operation. Interim plans and Form FmHA 1962-1 will show the planned use of income to be received from livestock and crops held for sale, and cash on hand at that time.

(3) If the borrower and the County Supervisor cannot reach an agreement on the planned uses of proceeds on Forms FmHA 431-2 and 1962-1 when a new or subsequent loan is not involved, the County Supervisor will arrange for a meeting with the District Director, borrower and the County Supervisor. If during the meeting the District Director cannot negotiate a satisfactory agreement, the District Director will make the decision on the planned use of proceeds. Form FmHA 1962-1 will be completed by the District Director in accordance with the District Director's decision. An explanation of this action will be inserted on the forms which will be signed and dated by the District Director. Dispositions in violation of Form FmHA 1962-1 will be handled in accordance with Subpart A of Part 1962 of this chapter. The District Director's decision is not appealable. When a new or subsequent loan is involved, the loan will not be made and any appeal will be

handled in accordance with Subpart B of Part 1900 of this chapter.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

- (1) Stress the need to correlate long-time and annual plans when both are being developed.
- (2) Develop a list of key farm management and financial management practices for major enterprises, which will be updated annually. The County Supervisor will advise borrowers of these practices and those practices not already used by a borrower will be incorporated into the operation when developing long-time and annual plans.
- (3) Require applicants, when developing their long-time and annual plans, to take into consideration any plans developed, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service. When such plans are not used, the County Supervisor will document in the file the reasons for not using the plans.
- (4) Plan for the appropriate use of income with the applicant in accordance with § 1962.17 of Subpart A of Part 1962 of this chapter.
- (5) Determine the feasibility of the plans. Plans must show the borrower will be able to:
  - (i) Pay all operating expenses and taxes.
  - (ii) Meet necessary payments on debts.
  - (iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.
  - (iv) Have a reasonable standard of living for the borrower or the farm operator in the case of a corporation, partnership or cooperative.
  - (v) Provide for any essential capital purchases or improvements.

(d) *Documentation and revision of plans.*

- (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation, including the borrower's current financial condition. The borrower's projected income and expenses must be based on the borrower's proven record of production and financial management. If the borrower does not have records, the County Supervisor will use Agricultural Stabilization and Conservation Service (ASCS) records, ES data, County averages or other reliable sources of data to develop the projections.
- (2) Initial and subsequent plans and Form FmHA 1962-1 will be revised whenever changes in the borrower's operation occur during the year. It is the

borrower's responsibility to notify FmHA of any changes which occur. The plan and Form FmHA 1962-1 will be marked "Revision" and changes noted by crossing out any original estimates and inserting new estimates immediately above. The borrower and the County Supervisor will initial and date revisions to the plan and Form FmHA 1962-1.

#### § 1924.58 Recordkeeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance, to analyze borrower's farming operations, and to determine whether borrowers have made prudent management decisions.

(b) *Responsibilities.*

(1) Borrowers must select and maintain a recordkeeping system which adequately meets the needs of their farming operations and which provides, as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement. Borrowers receiving EM loans of \$100,000 or more will be required to use a recordkeeping system or accounting service which provides, as a minimum, a monthly cash flow statement, a change in financial position statement, beginning and end of year balance sheets, and an income statement. Such borrowers will be encouraged to use a computer recordkeeping system when available.

(2) County Supervisors will determine whether borrowers have selected, established, and are maintaining appropriate record keeping systems. Such systems may include the farm record book available through FmHA (Form FmHA 432-1, "Farm Family Record Book"), other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service, which is acceptable to FmHA.

#### § 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to accomplish the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used for each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, etc. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require follow-up action. The record must state the advice that was given and any problems noted.

(d) *Use of Form FmHA 1924-14.* "Notice—Farmer Program Borrower Servicing Options Including Deferrals, and Borrower Responsibilities."

Before or at loan closing, the County Supervisor will provide borrowers with this form. Borrowers who voluntarily decide to sell their chattels and real estate, to transfer their assets to someone else, to convey their assets to the Government, or to sign an accelerated repayment agreement will be sent this same form before the sale, transfer, conveyance or signing of an accelerated repayment agreement takes place. The form will also be sent to all farmer program loan borrowers in November of each year to remind them of the available servicing options. The form tells borrowers that they are expected to repay their loans as scheduled, but that FmHA has several servicing options available to assist borrowers if they are not able to pay as scheduled. It goes on to give brief descriptions of deferral, rescheduling, reamortization, consolidation, subordination, restructuring the business and debt by selling a portion of the borrower's assets, and limited resource loans. If borrowers want more information about these options and want to know how to apply, they are advised on the form to contact the County Supervisor. The County Supervisor will then set up a conference with the borrower and tell the borrower what information to furnish FmHA so that FmHA can make a decision about the request. The form also summarizes some of the borrower's responsibilities regarding loan payments, loan security, use of loan funds, releases of security, and changes in the operation, and informs the borrower that a violation of any of these responsibilities not only could result in denial of further FmHA assistance but also could cause the loan(s) to be accelerated.

(e) *Farm visits.* A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, who have a limited resource loan, who have been sent Form FmHA 1924-25, "Notice of Intent to Take Adverse

Action," or who have had their loans reamortized, rescheduled, consolidated and/or deferred. The District Director will visit a sufficient number of borrowers to assure that the cases are being properly supervised. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspections ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(1) Visits will be coordinated with required inspections of security.

(2) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Borrowers who have indebted less than one full crop year or have a limited resource loan.

(ii) Borrowers who have been sent Form FmHA 1924-25.

(iii) Borrowers who have had their loans reamortized, rescheduled, consolidated and/or deferred.

(iv) Borrowers receiving annual production type loans.

(v) Other borrowers.

#### § 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses will develop information for sound lending and supervisory decisions and assist borrowers in utilizing sound business planning and management practices. Specifically, analyses are used to:

(1) Show the operator the cost of profit of a management decision. These figures can then be used to make other management decisions that will increase the efficiency and/or profitability of the operation.

(2) Assist the operator in determining whether the type and scope of the operation are practical and profitable.

(3) Determine success in key management practices resulting in an improved return; or revealing a decision that reduces net dollar return.

(4) Monitor progress of borrowers in achieving long-range goals and in graduating to other credit.

(5) Help the County Supervisor determine how much individual supervision will be required for each borrower. The analysis will also help the County Supervisor determine feasibility of continuing with a borrower.

(6) Help the borrower and the County Supervisor prepare an annual plan of operation for the next crop year; and help them make sound management decisions.

(b) *Items considered for making an analysis.* The following are some of the items that should be considered during an analysis:

(1) Resources available.

(2) Options for types of enterprise available for the operation such as corn v. soybeans, selling the crop v. feeding it to livestock, etc.

(3) Comparison of the production of livestock, livestock products or crops to past production.

(4) The production of this farming operation as compared to similar farming operations.

(5) Financial progress—increase or decrease of debts as compared to the increase or decrease of assets.

(6) Cost of operating expenses as compared to previous years and similar farming operations.

(7) Debt repayment as compared to money available to pay debts.

(8) Experience and ability of the borrower.

(9) Availability and cost of credit.

(c) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Determine the date and place of the analysis, and schedule the analysis at the time of year when the most effective results will be obtained.

(2) Assist the borrower in completing the "actual" columns on Forms FmHA 431-2 and 1982-1 and in completing Form FmHA 431-2 for the next year.

(3) Make a complete entry in the case file running record of the items discussed with the borrower and results and agreements reached during the analysis, underscoring those items requiring follow-up action.

(4) Record the results of Form FmHA 1980-12, "Financial Farm Analysis Summary."

(d) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Who are seriously delinquent (over \$100.00) or who request assistance on Form FmHA 1924-26.

(2) Who are experiencing financial and/or production management problems.

(3) Who are reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial loan and each year thereafter, until the County Supervisor determines the borrower is conducting the operation satisfactorily.

(5) Who have been granted a deferral.

(6) Who have limited resource loan(s).

#### § 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management

assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. Forms FmHA 431-4, "Business Analysis-Nonagricultural Enterprise," and FmHA 432-10, "Business and Family Record Book," available at most FmHA offices, can be used for these purposes.

#### § 1924.62 State supplements.

State supplements will be issued as necessary to implement this subpart and assure that a list of key farm management and financial management practices is established, and kept current in each County Office. The State supplement should set the time of year for conducting analyses.

#### §§ 1924.63-1924.70 [Reserved]

#### § 1924.71 Delinquent borrowers.

The Finance Office will send each County Office a list of all delinquent OL, FO, SW, RL, EM, EE, EO, SL and RHF borrowers on March 31, June 30, September 30, and December 31. Beginning December 31, 1985, all borrowers (except those under the jurisdiction of a bankruptcy court) that are more than \$100 behind schedule on their FmHA loan payments on December 31 will immediately be sent Form FmHA 1924-25, and Form FmHA 1924-14, to show that FmHA intends to accelerate the account(s), the Form FmHA 1924-26. Cases involving litigation will be handled in accordance with the advice of the Office of General Counsel (OGC). Bankruptcies will be handled in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

#### § 1924.72 Borrowers who receive Forms FmHA 1924-25 and 1924-26.

Borrowers will receive Form FmHA 1924-25 and 1924-26 along with Form FmHA 1924-14 before a farmer program loan is involuntarily liquidated (see § 1872.17 of Subpart A of Part 1872 of this chapter and §§ 1962.40 and 1962.49 of Subpart A of Part 1962 of this chapter) and when an account is more than \$100 delinquent on December 31 (see § 1924.71 of this subpart). These forms will also be provided to borrowers who have made unauthorized dispositions of security, who have stopped farming, or who have otherwise breached their loan agreements with FmHA. These forms will be provided, for information only, when a farmer program loan borrower files bankruptcy (see § 1962.47 of Subpart A of Part 1962 of this chapter). Form FmHA 1924-25 tells borrowers that FmHA intends to liquidate their loans (which will include terminating

any previously agreed-upon releases of sales proceeds) and tells borrowers exactly why FmHA plans to take such action. The form explains that the servicing options described in Form FmHA 1924-14 are available, and also explains that FmHA will proceed to liquidate a borrower's loans unless the borrower applies for at least one of the servicing options, appeals the adverse action using FmHA's administrative appeals procedure (found at Subpart B of Part 1900 of this chapter), cures existing default, or liquidates the loans. Borrowers who receive Form FmHA 1924-25 will also receive Form FmHA 1924-26. This form must be completed to show whether the borrower wants to apply for servicing options, to appeal, to cure the default or to liquidate.

(a) *Borrower fails to respond.* The borrower is told on Form FmHA 1924-26 that the form must be returned to FmHA within 30 days of the day the borrower received Forms FmHA 1924-14, 1924-25, and 1924-26. If Form FmHA 1924-26 is not returned on time, FmHA will proceed with the intended action(s). Such actions are not appealable.

(b) *Borrower checks blocks in Part I.* Part I of Form FmHA 1924-26 contains a list of available servicing actions including rescheduling, reamortization, consolidation, deferral, subordination, limited resource loans, and the restructuring of the debt and business by selling a portion of the assets. If the borrower checks one or more of these blocks, the borrower must attend a conference with FmHA to develop financial statements and proposed operating plans which FmHA will use as a basis for granting or denying the requested servicing relief. If the borrower attends the conference and the County Supervisor approves the request for servicing relief, then the notice of intent to take adverse actions will be considered terminated. If the borrower attends the conference but the County Supervisor denies the servicing request, then the County Supervisor will notify the borrower in writing of the denial with the reasons and facts supporting the denial. The borrower will be advised of appeal rights in accordance with Subpart B of Part 1900 of this chapter, and the appeal will cover both the denial of the request for servicing and the other adverse action FmHA intends to take. If the borrower (or representative) fails to attend the scheduled conference without a reasonable excuse or fails to provide necessary information, the request will be automatically denied and the borrower will not be given any administrative appeal of the adverse

decision. The County Supervisor will send Exhibit B-6 to Subpart B of Part 1900 of this chapter to the borrower and will proceed to liquidate the borrower's account.

(c) *Borrower checks blocks in Part II.* The borrower who does not want to be considered for any servicing options but who wants to request an administrative appeal of FmHA's intended adverse action must so indicate by checking one of the appropriate blocks in Part II of Form FmHA 1924-26. Any appeal will be handled under Subpart B of Part 1900 of this chapter. If the borrower wants an appeal hearing, the borrower can be represented by counsel or by any other representative, and the hearing officer will be an FmHA employee who has not been previously involved in the borrower's case. The borrower can choose to have FmHA make a review on the record rather than hold a hearing. If the borrower prevails in the administrative appeal, no adverse action will be taken by FmHA. If instead the borrower completes Part II to show that no appeal is desired, then FmHA will take the adverse action.

(d) *Borrower checks blocks in Part III.* The borrower who does not want to be considered for any servicing options or does not want to request an administrative appeal can choose to cure the default (that is, pay the delinquent account current or make restitution to FmHA for unauthorized disposition of security) and will so indicate by checking one of the blocks in Part III of that form. The borrower has 60 days from the day the borrower received Form FmHA 1924-26 to cure the default. If the action is not completed within 60 days, then FmHA will proceed to take the adverse action against the borrower and no appeal will be allowed.

(e) *Borrower checks blocks in Part IV.* If the borrower does not want to be considered for any servicing options or to request an administrative appeal or to cure the default, the borrower can choose to liquidate the account (that is, sell the security, transfer it to someone else who will assume the FmHA debt, convey it to the Government or refinance the FmHA loan with another lender). The borrower will indicate this by checking one of the blocks in Part IV of Form FmHA 1924-26. The liquidation alternative chosen must be taken within 120 days of the day the borrower received Form FmHA 1924-26. If the action is not completed within 120 days, then FmHA will proceed to take the adverse action against the borrower and no appeal will be allowed.

(f) *Borrower incorrectly completes Form.* If the borrower incorrectly completes Form FmHA 1924-26, the County Supervisor will contact the borrower to inform the borrower of the problem and request the borrower to submit a corrected form within 10 working days of the contact or within the 30 days of the date the Form FmHA 1924-25 was received, whichever is later. If the borrower fails to submit a corrected form within the required time FmHA will proceed with the intended adverse action and it will not be appealable. The contact will be recorded in the borrower's County Office case file.

**§ 1924.73 Follow-up supervisory actions by District Directors and State office staff.**

(a) *Follow-up by the District Director.* The District Director is responsible for seeing that the County Office staff correctly handled any requests made on Form FmHA 1924-26, by those borrowers listed in § 1924.60 (d) of this subpart in an effective and timely manner. This will include visits to evaluate a sufficient number of such cases to determine what further training is needed by the County Supervisor in supervising such cases. The District Director should continue follow-up actions periodically as needed to obtain the desired results in each County Office area. The District Director will report in writing to the State Director any deficiencies found and any need for additional training.

(b) *Follow-up by State Office staff.*

(1) The State Director is responsible for seeing that the special actions prescribed by this subpart are carried out by the County Supervisors and District Directors.

(2) Loan chiefs and specialists should review a representative sample of cases of those borrowers listed in § 1924.60 (d) of this subpart during each visit to a County Office to assure that a thorough analysis has been made, that appropriate action has been taken, and to determine what further training, if any, is needed for the District Director and County Supervisor.

(3) The State and/or District Offices should periodically review the progress made in servicing the cases of those borrowers listed in § 1924.60 (d) of this subpart.

**§§ 1924.74-1924.99 [Reserved]**

**§ 1924.100 OMB number.**

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been

assigned OMB control number 0575-0061.

**Exhibit A—New Full-Time Family Farmer, and Rancher Development Project**

**PART 1941—OPERATING LOANS**

30. The authority citation for Part 1941 is revised to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70

**Subpart A—Operating Loan Policies, Procedures, and Authorizations**

31. In § 1941.18 paragraphs (a)(2) and (c) are revised to read as follows:

**§ 1941.18 Rates and terms.**

(a) \* \* \*

(2) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (See § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as consolidation, rescheduling or deferral is taken to determine the interest rate to be charged. The rate may be increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter).

(c) *Consolidation or rescheduling.*

When the loan approval official determines that consolidation or rescheduling will assist in the orderly collection of an OL loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

**PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION**

32. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations**

33. In § 1943.16, paragraph (d)(2) is revised to read as follows:

**§ 1943.16 Loan purposes.**

(d) \* \* \*

(2) The County Supervisor, by contacting the appropriate lender, verifies and documents either in the running record or by letter from the lender, the need to refinance any secured debts and major unsecured

debts. The unpaid balance on the debts to be refinanced will also be verified.

34. In § 1943.18, paragraphs (a), (b) and (c)(3) are revised to read as follows:

**§ 1943.18 Rates and terms.**

(a) *Terms and loans.* Each loan will be scheduled for repayment over a period of not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any FO loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

(c) \* \* \*

(3) A lower interest rate borrower will be reviewed each year at the time the analysis is conducted (See § 1924.60 of Subpart B of Part 1924 of this chapter) and any time a servicing action such as a reamortization or deferral is taken, to determine the interest rate to be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 of Subpart A of Part 1951 of this chapter.)

**Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations**

35. In § 1943.68, paragraphs (a) and (b) are revised to read as follows:

**§ 1943.68 Rates and terms.**

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm

and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

#### Subpart C—Insured Recreation Loan Policies, Procedures, and Authorizations

36. In § 1943.118, paragraphs (a) and (b) are revised to read as follows:

##### § 1943.118 Rates and terms.

(a) *Terms of Loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any RL loan the loan approval official may take such action under Subpart A of Part 1951 of this chapter.

#### PART 1945—EMERGENCY

37. The authority citation for Part 1945 is revised to read as follows:

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

#### Subpart D—Emergency Loan Policies, Procedures and Authorizations

38. In § 1945.168, the introductory text of paragraph (b), paragraph (b)(1)(i), and

paragraph (c) are revised to read as follows:

##### § 1945.168 Rates and terms.

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan. The approval official will also consider the useful life of the security and the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, when setting the term of each loan. In any case, there must be an interest installment scheduled at least annually. Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(1) \* \* \*

(i) Actual production or physical loss loans made for operating purposes under § 1945.166(a), or major adjustment (Subtitle B) loans made for purposes under § 1945.166(c)(3) of this subpart, will be for periods not to exceed 7 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term, and the loan(s) can be secured for the longer term. Such a longer period may be approved as warranted, but cannot exceed 20 years. This longer repayment period will be used only when the Farm and Home Plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the county office case file. Generally, real estate will be needed as security when the longer repayment period is authorized.

(c) *Consolidation, rescheduling, and reamortization.* When the loan approval official determines that consolidation, rescheduling, or reamortization will assist in the orderly collection of an EM loan, the loan approval official may take such action in accordance with Subpart A of Part 1951 of this chapter.

#### PART 1950—GENERAL

39. The authority citation for Part 1950 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 C—Servicing Accounts of Borrowers Entering the Armed Forces

40. § 1950.102 is revised to read as follows:

##### § 1950.102 General.

(a) FmHA will do everything possible to assist borrowers entering the armed forces to adjust their affairs in contemplation of military service. It is not the policy FmHA to renew, postpone, or modify annual installments due under a promissory note because of the borrower's entry into the armed services. However, under the Soldiers' and Sailors' Civil Relief Act of 1940, the property of a borrower in the armed forces cannot validly be seized or sold by foreclosure or otherwise during the borrower's tenure of service, or for three months thereafter, except (1) pursuant to an agreement entered into by the borrower after having been accepted for service, or (2) by order of the Court. Any person causing an invalid sale to be made is guilty of a misdemeanor. Regardless of the foregoing, the long-time interest of the borrower can best be served by prompt and satisfactory arrangements for the use and protection, or disposition, of the security property in accordance with the policies expressed herein. Upon request, OGC will inform the State Director with respect to relief which may be secured by a borrower under the Soldiers' and Sailors' Civil Relief Act of 1940.

(b) In connection with Multiple Housing loans to individuals, references to County Supervisor and County Office in this subpart will be read as District Director and District Office.

41. § 1950.103 is amended by revising paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(2), (b)(3), (b)(4) and (c) to read as follows:

##### § 1950.103 Borrower owing FmHA loans which are secured by chattels.

(a) *Policy.* (1) Borrowers who owe loans other than Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF). When information is received that a borrower is entering the armed forces, the County Supervisor will be responsible for contacting the borrower immediately for the purpose of reaching an understanding concerning the actions to take in connection with the FmHA loan indebtedness. The borrower will be permitted to retain the chattel security if arrangements can be worked out which are satisfactory to the borrower and

FmHA. However, because of the nature of chattel security, the borrower will be informed of the usual depreciation of such property and will be encouraged to sell the property and apply the proceeds to the loan(s). In most cases, the interests of both the borrower and the Government can best be served by arranging for a voluntary sale of the security. A borrower retaining security will be expected to make payments on the loan(s) equal to the scheduled payments.

(2) Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans. If the borrower is delinquent or otherwise in default, the County Supervisor will send the borrower Forms FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," and follow the directions in Subpart A of Part 1962 of this chapter for liquidating chattel security. If the borrower is not delinquent, the County Supervisor will explain the options set out in paragraph (b) of this section.

(b) \* \* \*

(1) Voluntary sale of security. This will be accomplished in accordance with § 1962.41 of Subpart A of Part 1962 of this chapter. Any necessary forms will be signed:

(2) Assumption of indebtedness. This will be accomplished in accordance with § 1962.34 of Subpart A of Part 1962 of this chapter.

(3) Arrangements with third persons. When the borrower arranges with a relative or other reliable person to maintain the security in a satisfactory manner and to make scheduled payments, the State Director is authorized to approve the arrangement. In such a case, the borrower will be required to execute a power of attorney, prepared or approved by OGC, authorizing an attorney-in-fact to act for the borrower during the latter's absence.

(4) Possible legal actions. If the borrower fails or refuses to cooperate in the servicing of the loan indebtedness secured by chattels in accordance with one of the methods set forth in this section, the borrower's case folder will be forwarded to the State Director for referral to OGC for legal advice as to the steps to be taken in protecting the Government's interest.

(c) *Statements of accounts and transfers.* Borrowers entering the armed forces will be requested to designate mailing addresses for the delivery of

statements of account. Any changes in these addresses will be processed on Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," with appropriate explanations. Under this procedure, a statement of account may be mailed to a location other than where the account is maintained and serviced. This is a deviation from the established procedure. These cases will not be transferred unless the security, when retained by the borrower in accordance with paragraph (b)(3) of this section, is moved into another County Office territory. Then the transfer will be processed through the use of Form FmHA 450-5, "Application to Move Security Property and Verification of Address," and Form FmHA 450-10 with appropriate explanations. In cases when assumption agreements have been executed, statements of account will be mailed to the assuming borrower. Cases involving assumption agreements will be transferred when the assuming borrower moves from one County Office territory to another.

42. § 1950.104 is amended by revising the introductory text, and paragraphs (c), (d) and (e) to read as follows:

**§ 1950.104 Borrower owing FmHA loans which are secured by real estate.**

County Supervisors, to the greatest extent possible, should keep themselves informed of the plans of borrowers with FmHA loans secured by real estate who may enter the armed forces. They should encourage any borrower who is definitely entering the armed forces to consult with them before the borrower's military service begins concerning the most advantageous arrangements that can be made regarding the security. County Supervisors will assist these borrowers in working out mutually satisfactory arrangements. Borrowers who owe FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans and who are delinquent or otherwise in default must be sent Forms FmHA 1924-14, 1924-25, and 1924-26. The County Supervisor will follow the directions in Subpart A of Part 1872 of this chapter (FmHA - Instruction 465.1) for liquidating real estate security. FO, SW, RL, OL, EE, EM, SL, EO and/or RHF borrowers who are not delinquent will have their accounts handled as set out in the following paragraphs.

(c) *Borrower does not retain ownership of the security.* The security may be transferred to another approved applicant or sold in accordance with applicable procedure.

(d) *Borrower abandons the security or fails to make satisfactory arrangements.*

This paragraph does *not* apply to borrowers with FO, SW, RL, OL, EE, EM, SL, EO and/or RHF loans. Those borrowers should be sent Forms FmHA 1924-14, 1924-25, and 1924-26. When a borrower abandons the security or fails to make satisfactory arrangements for maintenance of the security and payment of taxes, insurance, and installments on the loan, the County Supervisor will send a complete report on the case to the State Director. The report will include all the information that can be obtained regarding the borrower's plans for the security and any evidence to indicate that abandonment has, in fact, taken place. In these instances, it must be recognized that the borrower may have entered into verbal arrangements for the care of the security without properly advising the County Supervisor. Whether such cases may be construed to be in violation of the provisions of the mortgage, so as to support foreclosure by order of the Court under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, will need to be determined on an individual case basis by the State Director and OGC. Clear-cut abandonment cases or instances in which the borrower fails to take action to transfer or sell the property, while evidencing no interest in it or desire to retain it, will be processed in accordance with applicable procedures.

(e) *Statement of account.* Borrowers entering the armed forces who retain ownership of the security will be requested to designate mailing addresses for the delivery of statements of account. Any changes in addresses will be processed on Form FmHA 450-10 with appropriate explanations.

**PART 1951—SERVICING AND COLLECTIONS**

43. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1490; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart A—Account Servicing Policies**

44. Subpart A is revised to read as follows (Exhibits C-1, C-2, D, F, and G remain unchanged):

**PART 1951—SERVICING AND COLLECTIONS**

**Subpart A—Account Servicing Policies**

Sec.	
1951.1	Purpose.
1951.2	Policy.
1951.3	Authorities and responsibilities.
1951.4-1951.5	[Reserved].
1951.6	Handling payments.

- Sec.
- 1951.7 Accounts of borrowers.
- 1951.8 Types of payments.
- 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.
- 1951.10 Application of payments on production type loan accounts.
- 1951.11 Application of payments on real estate accounts.
- 1951.12 Changes in the application of loan payments.
- 1951.13 Overpayments and refunds.
- 1951.14 Recoverable and nonrecoverable cost charges.
- 1951.15 Return of paid-in-full or satisfied notes to borrower.
- 1951.16 Other servicing actions on real estate type loan accounts.
- 1951.17-1951.24 [Reserved]
- 1951.25 Review of limited resource FO and OL loans.
- 1951.26-1951.32 [Reserved]
- 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans, and EM loans made for Subtitle B purposes.
- 1951.34-1951.39 [Reserved]
- 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.
- 1951.41 Special debt set-aside of a portion of the insured loan indebtedness of farmer program borrowers.
- 1951.42-1951.43 [Reserved]
- 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.
- 1951.45-1951.50 [Reserved]
- Exhibit A—[Reserved]
- Exhibit B—Notice of Change in Interest Rate.
- Exhibit C-1—Notice of the Availability of the Special Debt Set-aside.
- Exhibit C-2—Confirmation of Appointment to Discuss Special Debt Set-aside.
- Exhibit D—Examples of a Farm Ownership (FO) and Limited Resource Operating Loan (OL) Rescheduled with Set-aside Approved on October 25, 1984.
- Exhibit E—[Reserved]
- Exhibit F—Agreement for Special Set-aside of a Portion of a Farmer Program Loan.
- Exhibit G—Notice to borrowers who received a Pretermination Notice.
- Note.—Exhibits C-1, C-2, D, F, and G do not appear in the Code of Federal Regulations.

#### Subpart A—Account Servicing Policies

##### § 1951.1 Purpose.

This Subpart sets forth the policies and procedures to use in servicing Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing Loan for farm service buildings (RHF) accounts. This Subpart also applies to Rural Rental Housing Loan (RRH), Rural Cooperative Housing Loan (RCH), Labor Housing Loan (LH), Rural

Housing Site Loan (RHS), and Site Option Loan (SO) accounts not covered under the Predetermined Amortization Schedule System (PASS). Loans on PASS will be administered under Subpart K of Part 1951 of this chapter. Cases involving unauthorized assistance will be serviced under Subparts L and N of this Part. Cases involving graduation of borrowers to other sources of credit will be serviced under Subpart F of this Part.

##### § 1951.2 Policy.

Borrowers are expected to pay their debts to the Farmers Home Administration (FmHA) in accordance with their agreements and ability to pay. They will be encouraged to pay ahead of schedule, consistent with sound financial management. When borrowers have acted in good faith and have exercised due diligence in an effort to pay their indebtedness but cannot pay on schedule because of circumstances beyond their control, servicing actions will be consistent with the best interests of the borrower and the Government. It is the policy of this agency to service borrower loan account without regard to race, color, religion, sex, marital status, national origin, age, physical or mental handicap (borrower must possess the capacity to enter into a legal contract for services).

##### § 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA accounts serviced by the County and District Offices as prescribed by this subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the County Office Management System in account servicing. For the purposes of this Subpart, all references to "County Supervisor" shall be construed to mean "District Director" for all loans serviced by the District Office.

##### § 1951.4-1951.5 [Reserved]

##### § 1951.6 Handling payments.

(a) *Payments on Rural Housing (RH) loans.* Payments on RH loans will be handled in accordance with Subparts B and G of this Part.

(b) *Payments for other than RH, FO and SW loans.* These payments will be handled in accordance with Part 1951, Subpart B.

(c) *Payments for FO and SW loans.*

(1) Payments made through the County Office without direct payment cards for FO and SW loans will be handled in accordance with Part 1951, Subpart B.

(2) Payments for FO and SW loans made through the County Office with direct payment cards will be handled as follows:

(i) County Supervisors may put FO and SW borrowers on direct payment cards systems if the borrower only needs limited credit counseling or only makes one annual installment payment per year on the loan.

(ii) For new loans, the County Supervisor will indicate by checking the appropriate block on Form FmHA 1940-1, "Request for Obligation of Funds," that for selected borrowers direct payment cards are to be mailed to the County Office.

(iii) An existing loan borrower may be put on or taken off this direct payment card system by filling out Form FmHA 451-34, "Direct Payment Plan Change," in accordance with the Forms Manual Insert (FMI) and mailing it to the Finance Office.

(iv) Payments must be made by check or money order payable to the Farmers Home Administration. The check or money order with the appropriate payment card should be placed in the direct payment envelope and forwarded directly to the Finance Office with any other items being mailed that day.

(v) The Finance Office, upon receipt of the payment card and check or money order, will credit the borrower's account with payment as of the date the payment is received in the Finance Office.

(vi) When the Finance Office receives payment card number 10, a new supply of cards will be mailed to the County Office. All 12 payment cards should be used before using the new supply.

(3) Direct payment for FO and SW loans mailed directly to the Finance Office by the borrower are handled as follows:

(i) The County Supervisor will select the FO and SW borrowers who, in the Supervisor's opinion, are capable of making direct payments to the Financing Office. The County Supervisor will not select borrowers who (A) will need frequent credit counseling, (B) because of the lack of education or other reasons, are not capable of assuming responsibility for making payments directly to the Finance Office, or (C) have payments directly assigned to FmHA, such as milk assignments. The fact that a borrower does not maintain a checking account will not, however, prevent selection for direct payments.

(ii) For new loans the County Supervisor will indicate on Form FmHA 1940-1 the selected borrowers by checking the appropriate box. The payment card packet will be forwarded

to the County Office at the time the loan is obligated. It will be delivered to the borrower at loan closing, at which time the use of the payment cards will be explained to the borrower.

(iii) For Assumption Agreements, the packet will be mailed to the borrower at the time the Assumption Agreement is processed in the Finance Office.

(iv) The payment cards and pre-addressed envelopes, together with instructions on how to use the cards and a record keeping card, will be assembled into an envelope in which the borrower may retain the records. The Form FmHA 370-45 "Direct Payment Card," will be numbered 1-12, even though the borrower may have less or more than 12 payments scheduled during the year.

(v) The Finance Office, upon receipt of Form FmHA 370-45 and a check or money order, will credit the borrower's account with payment as of the date the payment is received by the Finance Office.

(vi) When the Finance Office receives Form FmHA 370-45 for payment number 10, a new supply of Forms FmHA 370-45 will be prepared and mailed to the borrower. All 12 copies of Form FmHA 370-45 should be used before using the new supply.

(vii) If a borrower is on direct payment and receives a subsequent FO or SW loan, the Finance Office will send a set of Forms FmHA 370-45 with "FO" or "SW" in the loan number block. This indicates the borrower has more than one loan of the particular type. The borrower will be instructed by the County Office to send a Form FmHA 370-45 showing the amount and a check or money order for the total payment.

(d) *County Office handling of direct payment accounts.* Form FmHA 1905-1, "Management System Card—Individual" and Form FmHA 1905-5 "Management System Card—Individual (Rural Housing only)," will be used in the County Office Management System Box. These forms and the transaction records will be maintained as prescribed in FmHA Instruction 1905-A (available in any FmHA office). In addition, an orange signal will be placed to the left of Position A on Form FmHA 1905-1 to denote that the borrower is on the direct payment system. If a borrower fails to make payments as agreed, or becomes delinquent in taxes or insurance so that it is necessary for FmHA to pay taxes or insurance by voucher, the County Supervisor may request the Finance Office to remove the borrower from the direct payment method. If this decision is made, the County Supervisor will contact the borrower and collect the remaining

supply of Forms FmHA 370-45 which will be destroyed. The borrower will be informed that payment after that date should be made to the County Office. If at a later date the borrower is making payments on schedule, the County Supervisor may request the Finance Office to put the borrower back on the direct payment method and provide a new set of Forms FmHA 370-45. These changes are made by filling out Form FmHA 451-34 in accordance with the FMI and mailing it to the Finance Office.

(e) *Account servicing actions retained by the County Office.* For those borrowers who make direct payments to the Finance Office, the County Supervisor will continue to handle the following servicing actions:

(1) Any regular payments a borrower is to make prior to receiving the packet of payment cards will be made through the County Office in the usual manner.

(2) All payments other than regular payments will be made through the County Office in the usual manner.

(3) The County Supervisor will counsel with borrowers concerning questions they have about their account. If assistance is needed, the County Supervisor will contact the State or Finance Office as appropriate.

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account and a new Form FmHA 451-26, "Transaction Record," reflecting the uncollectible amount will be prepared. The Form FmHA 451-26 will be mailed to the County Office. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment card to the Finance Office.

(f) *Borrowers receiving other type loans.* If a borrower is on direct payment and subsequently receives another type loan, the original loan may remain on the direct payment system.

(g) *Borrowers with RRH, RCH, or LH loans on a Predetermined Amortization Schedule System (PASS).* Loans or PASS will be administered under Subpart K of this part.

(h) *Borrowers with RRH, RCH, LH, RHS and SO loans administered under this subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this subpart are subject to the direct billing and payment requirements in § 1951.506 of Subpart k of this part. All payments are due on the first day of the months following the date shown on the promissory note, except loans with principal and interest

bonds issued before May 1, 1985. All payments are considered delinquent for reporting purposes on the 15th day of the month following the payment due date if the unpaid portion of the payment exceeds \$15.00.

#### § 1951.7 Accounts of borrowers

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound farm and home planning or budgeting, including plans for debt payment, supplemented by effective followup management assistance. Account servicing, therefore, must begin with initial planning and must be an integral part of analysis and subsequent planning, as well as follow-up management assistance.

(b) *Accounts of collection-only borrowers.*

(1) Collection-only borrowers are expected to pay debts to FmHA in accordance with their ability to pay. Efforts to collect such debts, including use of collection letters and account servicing visits, must be coordinated with other program activities. If these borrowers are unable to pay in full, appropriate debt settlement policies should be promptly applied.

(2) Envelopes addressed to collection-only borrowers will bear the legend "DO NOT FORWARD." When an envelope is returned indicating the borrower has moved, appropriate steps will be taken to determine the borrower's correct address.

(3) Regular County Office employees are generally expected to service the collection-only caseload when it is of moderate size. State Directors may assign additional employees to County Offices having large collection-only caseloads when necessary to service such cases to a prompt conclusion. State Directors may inform the National Office of the need for employing special collection personnel in urban areas having large collection-only caseloads when employees are not available to assign to such areas.

(4) The following actions will be taken in servicing accounts owed by collection-only borrowers:

(i) District Directors will review, yearly, all collection-only cases in each County Office with the County Supervisor as early in each fiscal year as possible. They will jointly agree on the actions to take and will complete Form FmHA 451-27, "Review of Collection-Only Accounts."

(ii) District Directors will establish with County Supervisors a systematic plan for collecting the accounts or initiating appropriate debt settlement actions during the year.

(iii) County Supervisors will include in their monthly calendars plans for servicing these accounts.

(iv) On visits to County Offices, District Directors will review the progress being made by County Supervisors to insure that goals will be reached.

(v) For collection-only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(4)(i) through (b)(4)(iv) of this section and the District Director will service the account.

(c) *Notifying borrowers of payments.* County Supervisors will notify borrowers of the dates and amounts of payments that have been agreed on for all types of accounts. Form FmHA 451-3, "Reminder of Payment to be Made," or similar form approved by the State Director, will be used. The form will not contain any language indicating that an account is delinquent. These notices will be timed to reach borrowers immediately before the receipt of the income from which the payments should be made or before the installment due date on the note, as appropriate, and may include other pertinent information such as a reference to agreements reached during the year and sources of income from which the payment was planned. Such notices need not be sent when frequent payments are scheduled and the borrower customarily makes the payments when due.

(d) *Subsequent servicing* (1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with § 1924.71(b) of Subpart B of Part 1924 of this chapter.

(2) When a borrower other than a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will contact the borrower to discuss the reasons why the payment was not made and to develop specific plans, for making the payment. Form FmHA 451-32, "Notice of Payment Due," may be used to notify borrowers who make payments directly to the Finance Office that their payment has not been received. Form FmHA 450-13, "Request for Assignment of Income From Trust Property," may be used when other methods of loan collection fail and debt repayment is possible from trust income. In the event the borrower refuses to make the payment when income is available, or if it is determined that income will not be available to make the payment within a reasonable length of time and will not be available to make future payments, action will be taken to protect the Government's interest in accordance with applicable regulations. Followup actions of subsequent

servicing will be noted on appropriate Management System Cards.

(e) *Maintaining records of accounts in County Offices.* Records of the accounts of FmHA borrowers will be maintained in the County Office on Forms FmHA 1905-1, FmHA 1905-5, FmHA 1905-10, "Management System Card-Association," as provided in FmHA Instruction 1905-A (available in any FmHA office).

(f) *Inquiry Station.* The following information concerning individual borrower transactions can be obtained from the Finance Office Inquiry Station by County Offices:

(1) Unpaid balances on accounts being transferred.

(2) Status on loan dockets submitted for obligation.

(3) Status of loan checks not received within two weeks of date requested.

(4) Unpaid balances for final payments on all types of loans.

(5) Status of insured notes for loan servicing. If a particular note is needed but is not at the County Office, ask the operator to determine the note's location. If it is held by a private investor, the Finance Office can arrange for its repurchase.

(6) Help in problem cases when information requests through regular channels within the Finance Office have not been responded to or the information received was inaccurate. *DO NOT* make initial contacts on such cases through an inquiry station—go to the appropriate unit of the Finance Office. For the telephone number and further information on use of the inquiry station please consult the booklet "Inquiry Station Helps County Offices Get the Facts on Borrower Accounts."

(g) *Inquiry for Multiple Family Housing (MFH) loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the "MFH Users Procedures" manual or by contacting the MFH Unit in the Finance Office.

#### § 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined in § 1962.4 (j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, and normal income as defined in Subpart A of Part 1872 of this chapter (FmHA Instruction

465.1), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in Subpart A of Part 1803 of this chapter (FmHA Instruction 426.1).

(5) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Agricultural Conservation Program payments as provided in Subpart A of Part 1941 of this chapter.

(7) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

(c) *Refunds.* Refunds are payments derived from the return of unused loan or grant funds, except that the term "refunds" as used in Form 1940-17, "Promissory Note," will be construed to mean the return of funds advanced for capital goods, when a loan is made for operating purposes.

#### § 1951.9 Distribution of payments when a borrower owes more than one type of FmHA loan.

"Distribution" means dividing a payment into parts according to the rule set out in this section.

(a) *Distribution of regular payments.*

(1) When a borrower owes more than one type of FmHA loan, regular payments received from each crop year's income will be distributed in accordance with the following priorities:

(i) *First*, to an amount equal to any advances made by FmHA for the crop year's living and operating expenses. If no advances were made, distribute the payment according to paragraph (a)(1)(ii) of this section. If the amount of the payment was greater than the amount of any advances, the excess should be distributed according to paragraph (a)(1)(ii) of this section.

(ii) *Second*, to FmHA loans in proportion to the approximate amounts due on each for the year. In determining the amounts due for the year, deduct an

amount equal to any advances for the year's living and operating expenses. If the amount of the payment exceeds the amount of any advances plus the amount due on each loan for the year, the excess should be distributed according to paragraph (a)(1)(iii) of this section.

(iii) *Third*, to FmHA loans in proportion to the delinquencies existing on each. If the amount of the payment exceeds the amount of any advances plus the amount due on each loan for the year plus any delinquencies, the excess should be distributed according to paragraph (a)(1)(iv) of this section.

(iv) *Fourth*, as advance payments on FmHA loans. In making such distribution consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(2) When the County Supervisor determines it is reasonable to expect that the income which will be available for payment on FmHA debts will be sufficient to pay the installments scheduled for the year under the first and second priorities, collections may be distributed so as to avoid unnecessary delinquencies, and regular payments derived from rental or lease of real estate security after approval of foreclosure or voluntary conveyance will be distributed to the real estate lien of the highest priority.

(3) Payments will be distributed differently than the priorities provided in this section if accounts are out of balance or a different distribution is needed to protect the government's interest.

(b) *Distribution of extra payments.* Extra payments will be distributed first to the FmHA loan having highest priority of lien on the security from which the payment was derived. When the payment is in excess of the unpaid balance of the FmHA lien having the highest priority, the balance of such payment will be distributed to the FmHA loan having the next highest priority.

(c) *Application of payments.* After the decision is reached as to the amount of each payment that is to be distributed to the different loan types, application of the payment will be governed by §§ 1951.10 or 1951.11 of this subpart as appropriate.

**§ 1951.10 Application of payments on production type loan accounts.**

Employees receiving payments on OL, EO, SW coded "24," EM for Subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions

of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited by the Finance Office first to unpaid billed interest and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to a portion of interest which accrues during the deferral period and then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note.

(a) *Rules for selection of accounts.* The following rules will govern the selection of accounts and installments to which payments will be applied. As used in this section, "recoverable costs" are those which the loan agreement documents say the borrower is primarily responsible for paying and which the government can charge to the borrower's account.

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

(i) To amounts due or falling due on loans made in connection with the current year's operations, except:

(A) When funds loaned for the purchase of capital goods were used to meet the current year's operating expenses, payments will be applied first to the final unpaid installments to the extent of the loan funds so used. These payments will be treated as extra payments.

(B) When installments on loans previously made fall due before the installment on the loan for the current year's operations or when such loans are delinquent and it is anticipated that sufficient income will be received to meet the installment on the current year's operations when due, collections may be applied first to installments on loans made in previous years.

(ii) To accounts having the oldest delinquencies, or if no delinquencies, to the oldest unpaid account, except that the amount available for payment on OL and EM loan accounts will be prorated between the two accounts on the basis of:

(A) The delinquent amount owed on each, or

(B) The total amount owed on each if there are no delinquencies.

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to

be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) Total refunds of loan advances will be applied to the notes which evidence such advances.

(5) When nonfarm assets have been sold, the payments will be applied as set out in § 1945.156(b)(3) of Subpart D of Part 1945 of this chapter if they were sold as a condition for EM loan assistance.

(6) In applying payments from sources other than those in paragraphs (a)(2), (3), and (4) of this section the borrower has the right to select the loan account or accounts on which such payments will be applied. In the absence of the borrower's selection, such payments generally will be applied in the following order:

(i) To accounts with small balances, including recoverable costs.

(ii) To accounts with the oldest unsecured note(s).

(iii) To accounts with the oldest delinquencies.

(iv) To accounts with the oldest secured note or notes.

(7) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA claims.

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed incorrectly will be referred to the Finance Office.

**§ 1951.11 Application of payments on real estate accounts.**

(a) *Regular payments.* If a borrower owes more than one type of real estate loan, or has received initial and subsequent real estate loans on which separate accounts are maintained, payments on such accounts should be applied so as to maintain the note accounts approximately in balance at

the end of the year with respect to installments due on the notes, other charges, and delinquencies.

(b) *Refunds and extra payments.* (1) Refunds will be applied to the note representing the loan from which the advance was made.

(2) Extra payments will be applied to the note secured by the earliest mortgage on the property from which the extra payment was obtained.

(3) Funds remaining from an RH grant or a combination loan and grant, after completion of development, will be refunded. If the borrower received a combination loan and grant, the remaining funds up to the amount of the grant are considered to be grant funds.

(c) *County Office actions.* (1) The collecting official will complete Form FmHA 451-1, "Acknowledgment of Cash Payment," in accordance with the FMI when cash or money orders are received as a payment.

(2) The collection official will complete Form FmHA 451-2, "Schedule of Remittances," in accordance with the FMI.

(d) *Finance Office handling.* (1) Regular payment will be handled as follows.

(i) Amounts paid on direct loan accounts will be credited to the borrower's account as of the date of Form FmHA 451-2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any interest which accrues during the deferral period second to interest accrued to the date received and third to principal, in accordance with the terms of the note.

(ii) Amounts paid on insured loan accounts will be credited to the borrower's account as of the date of Form FmHA 451-2 or for direct payments the date payment is received in the Finance Office, and will be applied in the following order:

(A) Advances from the insurance funds as shown on the latest Form FmHA 389-404, "Analysis of Accounts Maturing." (If the collection is intended for final payment of the loan, or to pay the insurance account in connection with an assumption agreement, the collection will be applied first to the interest accrued on the advance to the date of the payment.)

(B) Principal advanced from the insurance fund.

(C) Unamortized costs.

(D) Amount due for amortized costs for taxes and insurance.

(E) Unpaid loan insurance charges, including the current year's charge, when applicable.

(F) First to a portion of any interest which accrues during the deferral

period, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account in accordance with the terms of the note.

(2) Extra payments and refunds will be credited to the borrower's note account as of the date of Form FmHA 451-2 and will be applied first to a portion of any interest which accrues during the deferral period, second to interest accrued to the date of the receipt and third to principal in accordance with the terms of the note. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a borrower except indirectly in connection with the amortization of a direct loan.

(3) The Finance Office will remit final payments promptly to lenders. Other collections (regular, extra, and refunds) applied to a borrower's insured note will be accumulated until the annual installment due date, and will be remitted along with any advances from the insurance fund to the lender within 30 days after the installment due date. All payments to a lender will be credited first to interest to the date of the Treasury check and then to principal. Since the application of a payment to a borrower's account with the Government and the Government's account with a lender is of a different effective date, the balance owed by a borrower to the government and by the Government to a lender ordinarily will not be the same.

#### § 1951.12 Changes in the application of loan payments.

(a) *Authority to change payments.* County Supervisors and Assistant County Supervisors are hereby authorized to approve requests for changes in the application of payments between loan accounts when payments have been applied in error and such requests conform to the policies expressed in this Subpart. However, no change will be made if the payment applied in error resulted in the payment in full of any FmHA loan and the canceled note or notes have been returned to the borrower.

(b) *Form FmHA 451-7, "Request for Change in Application."* Requests for changes in application of payments will be made on Form FmHA 451-7. For requests which County Supervisors or Assistant County Supervisors are authorized to approve, the County Supervisor or Assistant County Supervisor will sign the original of Form FmHA 451-7 and forward it to the Finance Office. The Finance Office will

send Form FmHA 451-26 to the County Office when the change is made on Finance Office records.

(c) *Changes by the Finance Office in application of remittances.* (1) When reapplication of collection is made by the Finance Office Form FmHA 451-8, "Journal Voucher for Loan Account Adjustments," will be prepared. Form FmHA 451-26 will be forwarded to the County Office to show the reapplication.

(2) When necessary, the Finance Office will correct Form FmHA 451-2 as prepared by the County Office.

#### § 1951.13 Overpayments and refunds.

(a) The Finance Office will mail any overpayment refund check to the County Supervisor, who will verify that the refund is due before delivering the check.

(b) Borrower requests for overpayment refunds must be in writing. Borrowers will be discouraged from requesting refunds when the County Office records show that a refund is not due, however, the County Supervisor will forward any request to the Finance Office. Finance Office computations will control in determining the amount of any refund.

(c) Underpayments or overpayments of less than \$10 will not be collected or refunded (except as provided in paragraph (b) of this section) since the expense of processing the action would be more than the amount involved.

#### § 1951.14 Recoverable and nonrecoverable cost charges.

(a) The County Supervisor will:

(1) Prepare vouchers for recoverable and nonrecoverable cost charges according to the applicable instruction for the type of advance being made. ("Recoverable costs" is defined in § 1951.10(a) of this subpart).

(2) If a recoverable cost, show on the voucher the fund code to which the advance is to be charged.

(3) If the cost item relates to security for more than one type of account, show the code for the loan secured by the earliest promissory note (if lien secures more than one note).

(b) The Finance Office will forward Form FmHA 451-26, to the County Office when the recoverable cost charge is processed.

#### § 1951.15 Return of paid-in-full or satisfied notes to borrower.

(a) *Notes not held in County Office.* When the original of the note is not held in the County Office the County Supervisor will request the Finance Office to acquire and forward the note to the County Office.

(b) *Return of notes after collection.* When a note (or loan-type account) evidencing an OL, EM, EE, EO, special livestock (SL), SW loan coded "24", or other production-type loan has been satisfied by payment in full, the County Supervisor will examine the borrower's records in the County Office and determine that the account has been satisfied before delivering the note to the borrower (See § 1962.27 of Subpart A of Part 1962 on the satisfaction of chattel security instruments). The note(s) will be returned to the borrower immediately except that:

(1) When the final payment is made in a form other than currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note or notes will not be surrendered until 30 days after the date of final payment, and

(2) When notes are needed in making marginal releases or satisfactions or security instruments, the notes will be held until the instruments are satisfied.

(c) *Surrender of notes to effect collection.* (1) County Supervisors are authorized to surrender notes to borrowers when final payment of the amount due is made in the form of currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title trust company.

(2) The amount due on the note(s) to be surrendered will be confirmed with the Finance Office. County Supervisors will request the original note(s) from the Finance Office if it is not in the County Office.

(d) *Return of notes reduced to judgment.* Notes which have been reduced to judgment are a part of the court records and ordinarily cannot be withdrawn and returned to the borrower even after satisfaction of the judgment. Therefore, no effort will be made to obtain and return such notes except on the written request of the judgment debtor or debtor's attorney. Such requests will be referred to the Office of the General Counsel (OGC).

(e) *Debt settlement case.* See Part 1864 of this chapter (FmHA Instruction 456.1) for the handling of notes in debt settlement cases.

(f) *Lost notes.* (1) All promissory notes dated on or after 11-1-73 are held in the County Office. A few notes (with the exception of OL notes) are still held by investors. If a note dated prior to 11-1-73 cannot be located in the County Office and it is needed for servicing the

case, the County Supervisor will write a memorandum to the Finance Office explaining why the note is needed. The request should give the name and case number of the borrower, date and original amount of the loan, type of loan and loan code.

(2) If a promissory note is lost in the County Office and it is needed for servicing a case, the State Director may authorize the County Supervisor to execute an appropriate affidavit regarding the lost note. The form of such an affidavit will be provided by OGC.

#### § 1951.16 Other servicing actions on real estate type loan accounts.

(a) *Installment on note and other charges.*

(1) *Direct loan accounts.* For a borrower with a direct loan, the term "installation on note and other charges," as used in this Subpart, will be the sum of the following:

- (i) Annual installment for the year as provided in the promissory note(s).
- (ii) Any recoverable cost charges paid for the borrower during the year. ("Recoverable costs" is defined in § 1951.10(a) of this Subpart.)

(2) *Insured loan accounts.* "Loan insurance charge" means a separate insurance charge applying to FO and SW insured loans evidenced by promissory note forms bearing a form date before January 8, 1959. For all insured loans evidenced by note forms bearing a form date of January 8, 1959, or later, the insurance charge is called "annual charge" and is included in the interest position of the annual installment in the note. For a borrower with an insured loan, the term "installment on note and other charge" means the sum of the following:

- (i) Annual installment for the year as provided in the promissory note.
- (ii) Amounts owed the Agricultural Credit Insurance Fund. These amounts are covered by the general term "Insurance Account" and consist of the following:

(A) Unpaid loan insurance charges from prior years.

(B) Loan insurance charge for the current year. The loan insurance charge is computed on the basis of the amount of the unpaid principal obligation as of the installment due date and is due and payable on or before the next installment due date.

(C) Any unpaid balance on advances from the insurance fund, including any recoverable cost charges paid for the borrower during the year.

(D) Any accrued interest on advances from the insurance fund.

(iii) The amounts owned on the insurance account must be paid by

regular payments each year whether or not the note account is ahead of schedule.

(b) *Schedule status.* For direct and insured loans, a borrower will be on schedule when the sum of regular payments through the last preceding due date of the note equals the sum of installments on the note and other charges due through the same date. Such a borrower will be ahead of schedule or behind schedule when the sum of such regular payments is larger or smaller, respectively, than the sum of such installments on the note and other charges.

(c) *Real estate payments.* A borrower may make regular payments ahead of schedule at any time and use them later to forego payments or to supplement the amount available during any year for payment on the annual installment on the note and other charges. Refunds and extra payments will not be used in this way.

#### § 1951.17-1951.24 [Reserved]

#### § 1951.25 Review of limited resource FO and OL loans.

(a) *Frequency of reviews.* OL and FO loans will be reviewed each year at the time the analysis is conducted in accordance with Subpart B of Part 1924 of this chapter and any time a servicing action such as consolidation, rescheduling, reamortization or deferral is taken. The interest rate may not be changed more often than quarterly.

(b) *Method of review.* (1) Each loan will be considered on its own merit.

(2) The County Supervisor should consider:

- (i) The borrower's income and repayment record during the preceding years;
- (ii) The projections shown on the most recent Farm and Home Plan or other similar plan or operation acceptable to FmHA, in light of the previous year's projected figures and actual figures; (See Subpart B of Part 1924 of this chapter)
- (iii) Whether improved production practices have been or need to be implemented;
- (iv) The borrower's progress as a farmer; and
- (v) All other factors which the County Supervisor believes should be considered.

(3) The Farm and Home Plan projections for the coming year must show that the "balance available to pay debts" exceeds the amount needed to pay debts by at least 10 percent before an increase in interest rate is put into effect. Borrowers that continually purchase unplanned items without the

County Supervisor's approval will have the interest rate on their loans increased to the current rate for that loan type. Borrowers that fail to provide the County Supervisor with the information needed to conduct the analysis required in Subpart B of Part 1924 of this chapter will have their interest rate on their loan increased to the current rate for the OL or FO loan as applicable. The rate may increase in increments of whole numbers to the current regular interest rate for borrowers. In the borrower's case file, the County Supervisor must document the unplanned purchases and the failure to provide information in a timely manner. The County Supervisor must write the borrower a letter which sets out the facts documented in the case file and advises the borrower that the interest rate will be increased unless the unplanned purchases cease or unless the borrower provides information in a timely manner. Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the current rate for FO or LO loans, as applicable, or the borrower will be graduated from the program as provided in Subpart F of this Part.

(4) The County Office will be responsible for scheduling and completing the reviews.

(5) Borrowers who have received a deferral under § 1951.44 of this subpart will not have the interest rate increased on their limited resource loans during the deferral period.

(c) *Processing.* (1) If, after the review, the interest rate is to remain the same, no further action needs to be taken.

(2) If the interest rate is to be increased, Form FmHA 1965-22, "Information on Assumption on New Terms or Other Changes of Terms," and Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms," will be completed in accordance with the FMI and sent to the Finance Office 30 days prior to the effective date of the change. When the interest rate is increased to the current rate, the loan will be recorded as a regular loan and will no longer be considered a limited resource loan. The borrower must be notified in writing at least 30 days prior to the date of the change. Exhibit B of this subpart may be used as a guide. This exhibit may be obtained from any FmHA office. The effective date of the change in interest rate will be the effective date on the Form FmHA 1965-22. The borrower must be informed of the following for each loan:

(i) The authorization for the change,

(ii) Reason for change (repayment ability, etc.)

(iii) The effective date and rate of the increase in interest,

(iv) Amount of the new installments and dates due,

(v) Right to appeal.

(3) It is not necessary to obtain a new promissory note for this change in interest rate.

#### § 1951.26-1951.32 [Reserved]

#### § 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance the loans. This section explains how to consolidate and reschedule *existing* loans providing the borrower agrees to such actions. Non program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling. See § 1872.20(b)(1) of Part 1872 of this chapter (FmHA Instruction 465.1 XX B 1). (Revised)

##### (a) *Definitions:*

(1) Subtitle B purposes are the loan purposes stated in § 1941.16 of Subpart A of Part 1941 of this Chapter.

(2) EE operating-type loans are those made for the purposes provided in § 1945.116(a) of Subpart C of Part 1945 of this chapter.

(3) Reschedule means to rewrite the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

(4) Consolidate means to combine and reschedule the rates and terms of two or more of the same type OL or EO loans, EE operating-type loans, or EM loans made for Subtitle B purposes for other than actual losses.

(b) *General requirements.* County Supervisors are authorized to consolidate and reschedule loans. When the County Supervisor determines that consolidation or rescheduling will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) Such action is not taken to circumvent FmHA's graduation requirements;

(2) The borrower's account is not being serviced by OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the near future;

(3) The County Supervisor determines that the borrower is making satisfactory progress or will make satisfactory

progress with revised repayment terms; and

(4) The borrower is cooperating in servicing the account and is maintaining the security.

(c) *Consolidation and/or rescheduling of OL, SL, and EO loans, EE operating-type loans and EM loans made for Subtitle B purposes including EM loss loans.*

(1) Any loans secured by real estate will not be consolidated or rescheduled, unless the County Supervisor reviews the Government's real estate lien priority and value of security and determines such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the County Supervisor should ask OGC for an opinion as to what lien position the Government will have if a new note is taken.

(2) Only loans of the same type and with the same interest rate will be consolidated.

(3) The amount of outstanding accrued interest will be added to the principal at the time of consolidation and rescheduling (the date the note is signed).

(4) Consolidated and rescheduled loans will be repaid according to the borrower's repayment ability, but never in excess of fifteen years from the date of the consolidation and/or rescheduling, except:

(i) Loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling (the date the note is signed).

(ii) EE loans may not exceed 20 years from the date of the original note.

(5) The interest rate for consolidated and/or rescheduled loans will be the current interest rate for that type of loan (in the case of an OL-limited resource loan it will be the limited resource OL loan rate) or the *original* loan note rate whichever is the lesser rate.

(6) At the time of the consolidation and/or rescheduling OL loans may be changed to a limited resource rate if the borrower meets the requirements for the limited resource interest rate.

(7) EM actual loss and SL loans will not be consolidated.

(8) The County Supervisor will not consolidate a loan serviced under Subpart L of this part with another loan.

(9) Loans that have been deferred under § 1951.44 of this subpart will not be consolidated or rescheduled during the deferral period. (Added)

(d) *Processing.* (1) Form FmHA 1940-17 will be prepared for notes or assumption agreements being

consolidated or rescheduled in accordance with the provisions of the FMI. If the County Office does not have possession of the original note or assumption agreement, the County Supervisor will ask the Finance Office to return the original form so it is in the County Office before Form FmHA 1940-17 is processed. Forms FmHA 1965-22 and 1965-23 will be completed and sent to the Finance Office in accordance with the provisions of the FMI.

(2) The original and County Office copy of all notes or assumption agreements that are consolidated or rescheduled, will be stamped "Consolidated", or "Rescheduled", as appropriate, by the County Office. The original instruments being consolidated or rescheduled will be filed with the borrower's new consolidated or rescheduled note and a copy filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled in accordance with the provisions of § 1951.15 of this subpart.

(3) There is no limit on the number of times a Form FmHA 1940-17 can be processed, providing the requirements for consolidation or rescheduling are met each time this form is processed.

#### §§ 1951.34-1951.39 [Reserved]

#### § 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance loans. This section explains how the County Supervisor can reamortize existing loans. Nonprogram loan debtors are not eligible to receive any program benefits including reamortization. See § 1872.2(b)(1) Part 1872 of this Chapter (FmHA Instruction 465.1 XX B 1).

(a) *Definition.* Reamortization means to rearrange the installments of a loan which may include changing the interest rate and terms of the loan.

(b) *Requirements.* County Supervisors are authorized to reamortize loans and debts owed under assumption agreements. When the County Supervisor determines that reamortization will assist in the orderly collection of the loan, the County Supervisor should take such action, provided:

(1) Such action is not taken to circumvent FmHA's graduation requirements;

(2) The borrower's account is not being serviced by OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the near future;

(3) The County Supervisor determines that the borrower is making satisfactory progress or will make satisfactory progress with revised repayment terms; and

(4) The borrower is cooperating in servicing the account and is maintaining the security.

(c) *Terms.* (1) Reamortized installments usually will be scheduled for repayment within the remaining period of the note or assumption agreement being reamortized. If any repayment is extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less, except RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(2) The FmHA's lien priority may be affected if the final due date of the original loan is changed. A State supplement will be issued to provide instructions on the effect a change in due date has on security instruments and the action necessary to retain the Government's lien priority. The State supplement will also include instructions in releasing the original security instrument when a new one is obtained.

(3) The amount of interest accrued at the time of reamortization will be added to the principal at the time of reamortization (the date the note is signed). If there are no deferred installments, the first installment under the reamortization will be at least equal to the interest which will accrue on the new principal between the date of Form FmHA 1940-17 and the next January 1.

(4) Loans that have been deferred under § 1951.44 of this subpart will not be reamortized during the deferral period.

(d) *Interest.* The interest rate will be the current interest rate in effect on the date of reamortization (the date the note is signed), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO loan rate or the original loan note rate, whichever is less. At the time of the reamortization, the loan may be changed to a limited resource rate if the borrower meets the requirements for a limited resource interest rate.

(e) *Processing.* A separate Form FmHA 1940-17 will be used for each

note or assumption agreement being reamortized.

(1) Form FmHA 1940-17 may be processed provided the County Office has possession of the original note or assumption agreement being reamortized. If the County Office does not have possession of the original note or assumption agreement, the County Supervisor will ask the Finance Office to return the original form so it is in the County Office before Form FmHA 1940-17 is processed.

(2) Form FmHA 1940-17 will be completed, signed, and distributed as provided in the FMI.

(3) Forms FmHA 1965-22 and 1965-23 will be completed, signed and distributed as provided in the FMI.

(4) The original and County Office copy of notes or assumption agreements that are reamortized will be marked "REAMORTIZED, (date)". The original of the new Form FmHA 1940-17 will be attached to the original of the note or assumption agreement being reamortized and filed in the promissory note folder. A copy of each will be filed in the borrower's case file.

(5) There is no limit on the number of times a Form FmHA 1940-17 can be processed providing the requirements for reamortization are met each time this form is processed.

#### § 1951.41 Special debt set-aside of a portion of the insured loan indebtedness of former program borrowers.

(a) *Period of time available.* The authorities contained in this section will be available to financially stressed FmHA former program borrowers (OL, FO, EO, SW, EE, EM, RL (but not association recreation loans) and/or only those Rural Housing (RH) loans which were made for farm service buildings) until September 30, 1985, unless extended by the Administrator.

(b) *Notice to borrowers.* Borrowers who received a Pretermination Notice but who had not been sent an acceleration notice by close of business October 19, 1984, will be sent Exhibit G with Exhibit C-1 (available in any FmHA office). County Supervisors are to send Exhibit C-1 (available in any FmHA office) of this Subpart to all former program borrowers with the following exceptions:

(1) Borrowers whose accounts have been accelerated prior to close of business October 19, 1984.

(2) Borrowers who have been convicted (criminally) in a court of law of converting FmHA security.

(3) Borrowers who have been determined able to graduate to other sources of credit and have been

requested to do so. If it is later determined that a borrower cannot graduate to other credit, the borrower will then be sent Exhibit C-1 (available in any FmHA office).

(4) Borrowers who owe only loans which were assumed on ineligible rates and terms, acquired by a credit sale, and/or any Other Real Estate (ORE) loan.

(5) Borrowers who are currently under the jurisdiction of a bankruptcy court.

(6) Borrowers whose files are in the OGC or U.S. Attorney's Office for legal action. If the file is later returned to FmHA without any legal action being taken, the borrower will be sent Exhibit C-1 (available in any FmHA office).

(7) Borrowers who were not indebted to FmHA on September 18, 1984.

(8) Borrowers who have voluntarily conveyed and the deed has been recorded.

Farmer Programs borrowers who are sent Exhibit C-1 (available in any FmHA office), must, within 30 days after receiving said Exhibit, request an appointment with the County Supervisor. Any borrower not requesting an appointment will not be considered for the set-aside program. This will not be appealable. County Supervisors, upon receiving a request for an appointment, will send Exhibit C-2 (available in any FmHA office) of this subpart to the borrower, setting up an appointment to discuss the set-aside program.

(c) *Definitions.* (1) Special debt set-aside used in this section means postponing payment of a portion of a borrower's insured farm loan indebtedness to FmHA, not to exceed 25 percent of the total unpaid principal and interest owed or \$200,000, whichever is less, for a period of 5 years at zero percent rate of interest. Set-aside will not be considered for any debt not owed to FmHA on September 18, 1984.

(2) Typical year plan as used in this section means a farm budget which accurately reflects the borrower's planned cash flow and use of assets during the set-aside period.

(i) Production records used in the preparation of a typical year plan will be as set forth in § 1945.163(a)(1) of Part 1945, Subpart D of this Chapter. (Emergency Loan Program regulations). Verification by ASCS is not required.

(ii) Unit prices used in preparation of a typical year plan will be established by the State Director and issued as a State supplement. The State Director will consult with other USDA agencies and agricultural lenders in the State before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining States should consult

with each other before releasing their established commodity price list. A typical year price list will usually be in addition to the price list prepared for annual planning purposes.

(3) Cash flow projection for the purpose of this section is a listing on a monthly, quarterly, semi-annual or annual basis, of all anticipated cash inflows, and all anticipated cash outflows both farm and non-farm for the typical year.

(4) Positive cash flow projection used in this section means that the Farm and Home Plan for the typical year shows a balance available (line 16 in Table J) of at least 110 percent of the amount needed to pay all the year's debts due including tax liability shown on Table K. For borrowers using the Coordinated Financial Statement for Agriculture (CFSA), Form FmHA 1930-2, "Cash Flow Statement," balance available (the total of lines 16, 52, and 54 less the total of lines 36 thru 47 except 46) will be at least 110 percent of debt repayment (lines 46, 48, 49, 55 and 56.)

(d) *General requirements.* County Supervisors are authorized to approve the special set-asides, provided the following requirements are met.

(1) The County Supervisor must determine that a positive cash flow projection is not possible without servicing action. The County Supervisor must then calculate the borrower's cash flow projection, using the rescheduling reamortization authorities set out in § 1951.33 and § 1951.40 of this Subpart. Next, the County Supervisor will calculate the borrower's cash flow projection, using rescheduling and reamortization at the limited resource rate, if the borrower is eligible for the limited resource rate. Not all borrowers are eligible for limited resource rates. If a positive cash flow projection can be achieved by using the rescheduling and reamortization authorities, the borrower's account will be rescheduled or reamortized (including at the limited resource rate, if eligible) but the borrower will not receive a special set-aside. The County Supervisor must thoroughly document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a positive cash flow can be achieved. *If a positive cash flow projection is possible, the borrower is not eligible for a special set-aside.* The borrowers will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this Chapter.

(2) The County Supervisor must determine whether the borrower owns

any assets which do not contribute to essential family living expenses or to the maintenance of a sound farming operation. The County Supervisor must determine whether the borrower could sell those assets and, if so, for how much. The County Supervisor will then prepare new cash flow projections which take into account the sale of these assets. If a positive cash flow projection can be achieved, the borrower is not eligible for a special set-aside. The borrower will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this chapter.

(3) The County Supervisor will take the balance available shown on the cash flow projections and will subtract the amount needed to pay all the years' debts including tax liability, except the payment due on the FmHA debt. The result is the amount available to be paid on the FmHA debt. The County Supervisor will then determine how much of a borrower's total FmHA debt (principal plus interest on all loans) would have to be set-aside in order for the borrower's operation to have a positive cash flow projections during the next 5 years, with the borrower paying whatever the cash flow projections show is the amount available on the FmHA debt. Only as much of the FmHA debt will be set-aside as is needed to create a positive cash flow projection within the next 5 years. In no case will this reduction exceed \$200,000 or 25 percent, whichever is less, of the borrower's total FmHA debt.

If a borrower has more than one FmHA loan, the loan with the highest interest rate after rescheduling will be considered for set-aside first. When loan(s) with less than the highest interest rate are set aside, thereby causing a higher interest rate loan(s) to be excluded from the set-aside, the County Supervisor must document in the case file the reason for taking such action.

(4) If a positive cash flow projection cannot be achieved with the maximum (25 percent or \$200,000, whichever is less) special set-aside, the County Supervisor will assist the borrower in asking other creditors to voluntarily adjust their debts, as authorized in Subpart A of Part 1903 of this Chapter. If other creditors adjust their debts and a special set-aside of the FmHA debt will result in a positive cash flow projection, a special set-aside may be approved.

(5) If a positive cash flow projection during the next 5 years cannot be achieved, even with other creditors voluntarily adjusting their debts and with the maximum special set-aside (25 percent of the total FmHA debt or

\$200,000, whichever is less), no portion of the debt will be set-aside. The borrower will be given an opportunity to appeal, as provided in Subpart B of Part 1900 of this chapter.

(6) In order for a borrower to receive a set-aside, the typical year plan must show that a positive cash flow can be expected during the set-aside period and that the borrower will be able to begin making payments on the set-aside portion of the debt at the end of the 5 year set-aside period. Also, the County Committee must certify on Form FmHA 440-2, "County Committee Certification or Recommendation," that the borrower meets all of the following requirements:

(i) Has acted in good faith by demonstrating sincerity and honesty in meeting agreements and promises made with FmHA;

(ii) Has been able to pay their accounts as scheduled due to:

(A) Reduction in essential farm income and/or from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

(B) Reduction in income due to illness, injury or death of an individual borrower, or stockholder, member or partners who operates the farm; or

(C) Reduction in income due to natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments cannot be made.

(iii) Has applied the improvements and key practices spelled out in Item D of the Farm and Home Plan or identified in the CFSA's cash flow schedules.

(iv) Has properly maintained chattel and real estate security and properly accounted for the sale of security, including crops, livestock and livestock production.

(7) If the County Committee does not make this certification, the borrower will be given an opportunity to appeal as provided in Subpart B or Part 1900 of this Chapter.

(8) The best lien obtainable will be taken on all assets except for household goods and personal automobiles needed for family living. Also, principal partners and stockholders will have to sign the new note as individuals. Borrowers who refuse to comply with these requirements will not be given a special set-aside and this denial is not appealable.

(9) Special set-asides of more than \$100,000 will be reviewed by the District Director, who will note his/her recommendation in the file.

(10) A borrower will be given only one special set-aside. A borrower who receives a special set-aside of less than the maximum will not be able to obtain a larger amount of set-aside at a later date unless original calculations were in error.

(11) Exhibit F (available in any FmHA office) of this Subpart will be completed when a set-aside is approved.

(e) *Processing.* (1) Borrowers who are eligible for a special set-aside will have their loans rescheduled or reamortized in accordance with § 1951.33 and § 1951.40 of this Subpart, except that the original note(s) will be marked "Reamortized with Set-Aside" or "Rescheduled with Set-Aside." If the borrower is eligible, the loan will be rescheduled or reamortized at the limited resource interest rate. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date of approval of the special set-aside. All loan servicing actions approved in connection with the debt set-aside must be dated the same date. See Exhibit D of this subpart for example(s) of a FO and Limited Resource OL with set-aside.

(2) Form FmHA 440-2 will contain the following statement: "The borrower meets the criteria for obtaining a special set-aside." The list of criteria found in § 1951.41(d)(6) will either be written on or attached to Form FmHA 440-2.

(3) The date of approval is when the 5 year set-aside period begins. The date of approval is also the date that will be inserted on the rescheduled or reamortized Form FmHA 1940-17, "Promissory Note" and on Form FmHA 1951-6, "Borrower Account Description Flag."

(4) The County Supervisor will send the Finance Office Form FmHA 1951-6 prepared according to the FMI.

(5) The County Supervisor will record and maintain a record of approved special set-asides, in accordance with FmHA Instruction 1905-A, available in any FmHA office.

(f) *Finance Office Actions.* (1) The Finance Office will establish the set-aside portion of the debt as a separate account, in accordance with Form FmHA 1951-6.

(2) The Finance Office will remove the borrower's name from its delinquency report.

(3) The Finance Office will provide the County Office with a quarterly status report for each borrower receiving a set-aside.

(4) Six months prior to the end of the set-aside period, the Finance Office will notify the County Supervisor of the amount and date of the upcoming borrower's installment(s) due.

(5) The interest rate on the set-aside portion of the note, after the set-aside period will be the same on the non-set-aside portion.

(g) *Cancellation of special set-aside.*

(1) Borrowers who incur debt or purchase items not planned for in the farm budget without the County Supervisor's approval, violate any of the covenants contained in any security instruments, loan agreements of cease farming will have their set-aside cancelled by the County Supervisor.

(2) The County Supervisor will give notice to the borrower of FmHA's intention to cancel the set-aside, setting forth the specific facts requiring cancellation and inform the borrower of appeal rights. Exhibit B-1 and B-2 of Part 1900 of Subpart B of this chapter will be used. If the borrower does not appeal or if the decision to cancel is upheld in an appeal, the borrower will be notified in writing of cancellation of the set-aside. The actual cancellation is not appealable.

(3) The County Office will be responsible for notifying the Finance Office of the cancellation using a properly executed Form FmHA 1951-8 prepared according to the FMI.

(h) *Servicing.* (1) Notes which are rescheduled and set-aside in accordance with this section will not be consolidated during the set-aside period.

(2) Notes which are rescheduled and not set-aside in accordance with this section may be rescheduled or reamortized in accordance with §§ 1951.33 and 1951-40, of this subpart during the set-aside period. The rescheduling or reamortization may be at the Limited Resource rate. The set-aside will stay in effect, but will not be increased or extended beyond the original five year term. The County Office will forward to the Finance Office Form FmHA 1951-4 any time the interest rate is changed on a note during the set-aside period. The top of the form will be marked "Interest Change in Set-Aside" in red.

(i) *Deficiency Judgments.* (1) Interest will begin to accrue (at the higher of the rate or the judgment rate) on the set-aside portion if FmHA receives a deficiency judgment.

§§ 1951.42-1951.43 [Reserved]

§ 1951.44 *Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF and EE loans.*

All borrowers are expected to repay their loans according to planned repayment schedules. However, borrowers may request a deferral at the FmHA County Office when circumstances occur which will not

permit borrowers to pay as scheduled. Loan deferrals will be considered by FmHA only after it has been determined that consolidation, rescheduling, reamortization or debt set-aside, if available, in accordance with this subpart will not provide the cash flow needed to service the debt, operate the farm and provide family living expenses.

(a) *Definitions.*

(1) Cash flow projection for the purpose of this section is a listing on a monthly, quarterly semi-annual or annual basis, of all anticipated cash inflows, and all anticipated cash outflows—both farm and non-farm for the typical year.

(2) Loan Deferral: An approved delay in making regularly scheduled payments.

(3) Unduly impaired standard of living: A condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, corporations and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, corporation or cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(b) *Conditions.* In order to be considered for a deferral, the borrower must meet all of the following conditions:

(1) The reasons for needing the deferral are due to circumstances which are beyond the borrower's control. Circumstances beyond a borrower's control are limited to one of the following:

(i) A reduction of income which reduces the operation's cash flow to a point where outflows exceed inflows and which causes the need for a deferral. All other debt restructuring alternatives such as consolidation, rescheduling, reamortization or debt set-aside, if available, of any existing loan(s) must have been considered. A reduction of income does not by itself mean that the borrower is eligible for a deferral. A reduction in income due to inadequate or poor financial management decisions, such as untimely marketing practices, is not an acceptable reason for a deferral since the borrower had control over the situation. Acceptable reasons for reduction of income which could make a borrower eligible for a deferral include:

(A) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse caused

by circumstances beyond the borrower's control; or

(B) Illness, injury or death of an individual borrower, stockholder, member or partner who operated the farm; or

(C) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made; or

(D) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that the scheduled payments cannot be made.

(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers, essential family living expenses. Unplanned expenses are those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security. Proceeds for such sales can be used for unplanned purposes only if FmHA releases such proceeds in accordance with Subpart A of Part 1962 of this chapter governing disposition of chattel security. These unplanned expenses may result from:

(A) Accident, death, illness or injury to an individual borrower or dependent member of the borrower's family (stockholders, members or partners of an entity borrower are excluded except when that stockholder member or partner is the manager of the farming operation); or

(B) Cost of repair of uninsured damage to the security (crops are excluded), provided the loss occurred because adequate insurance coverage was not available.

(2) The need for the deferral must be temporary. To be "temporary" means that the borrower will be able to show to the satisfaction of FmHA that the debt will be paid current by the end of the deferral period or that the new payments, as established by using the servicing alternatives of consolidation, rescheduling or reamortization, can be resumed at the end of the deferral period.

(3) Continuing to make the loan payments as presently scheduled without change will unduly impair the borrower's standard of living.

(4) The borrower must attend a conference with the County Supervisor. At the conference the borrower must provide sufficient financial and production records and cash flow

projections to allow FmHA to make a decision on the request for a deferral.

(5) The borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 of this chapter.

(c) FmHA's determinations. The FmHA official must determine that the borrower:

(1) Acted in good faith in trying to meet agreements with FmHA and made an honest effort to pay but cannot due to reasons beyond the borrower's control;

(2) Requested a deferral of payments and appropriately documented the conditions causing the unduly impaired standard of living;

(3) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and otherwise has complied with the other conditions of the loan documents;

(4) Will be able to make scheduled payments after the deferral and plans to continue to operate the farm;

(5) Applied recommended and recognized successful production and financial management practices;

(6) Properly maintained and accounted for security;

(7) Has disposed of all nonessential assets in accordance with agreements made with FmHA, and applied the proceeds to the FmHA loan account(s) or paid other creditors in accordance with lien priorities or other approved agreements;

(8) Demonstrated by a realistic farm plan of operation, cash flow or other financial projections acceptable to FmHA that during the deferral period, the borrower can at least pay essential family living and/or farm operating expenses (for partnerships, corporations and cooperatives living expenses are excluded), repay any loans made during the deferral period for operating and family living expenses, meet all installments owed other creditors, and FmHA loans not deferred.

(d) *Borrower's financial and production history.* The showing under paragraph (b) of this section and the determination under paragraph (c) of this section will be based on:

(1) The borrower's financial and production history as reflected by the FmHA case file;

(2) A farm plan of operation, or similar financial and operating documents acceptable to FmHA, which details the borrower's actual current financial situation and the productive capacity of the farming or ranching operation;

(3) Additional farm plan(s) of operation, or similar financial and

operating documents acceptable to FmHA which detail realistic projections of the farming or ranching operation after the temporary situation is alleviated;

(4) Other information as needed by FmHA such as financial or production records, copies of leases, marketing plans, agreements with other lienholders, etc.; and

(5) Other information the borrower presents at the conference with the County Supervisor.

(e) *Loans to be deferred.* It may not be necessary to defer all the borrower's loans. Deferrals will only be approved for a sufficient number of loans which will provide a cash flow needed under this section.

(f) *Additional and subsequent deferrals.* (1) If, during the period of the initial deferral, the borrower is unable to make the scheduled payments and meets the conditions for an initial deferral, other loans may be deferred. However, the deferral period for such other loans will not extend beyond the expiration date of the initial deferral.

(2) Borrowers may request and have subsequent deferrals approved on a loan(s) provided the conditions of this section are met and at least two years have lapsed from the date of expiration of prior deferrals unless prior concurrence of the State Director is obtained.

(g) *Special debt set-aside loans.* If a borrower has requested a deferral for a loan that has a portion of the debt set-aside under § 1951.41 of this subpart the set-aside will be canceled at the time the deferral is granted. The borrower may retain the set-aside loan and request a deferral on other loans. A borrower who requests a deferral of a set-aside loan must agree in writing to the cancellation of the set-aside.

(h) *Approval authority.* County Supervisors are authorized to approve or disapprove requests for deferrals of loan payments after consideration of all of the items in this section. A request will be denied if the borrower(s) failed to attend the required conference without good reason and/or does not provide the required information within 30 calendar days from date of request. This denial will not be appealable.

(i) *Term and interest rate.* A deferral will be for five (5) annual installments except for additional deferrals as provided for in subsection (f) of this section. Interest that accrues during the deferral period will not bear interest during the remaining term of the loan. However, interest will begin to accrue (at the higher of the note rate or the judgment rate) on the accrued interest if FmHA receives a deficiency judgment.

(j) *Processing.* (1) If the deferral is approved, all loans being deferred will be rescheduled, reamortized or consolidated as applicable. Interest that has accrued will be added to the principal as of the date the new note(s) will be signed. All FmHA loans must be current on or before the date the note is signed except for vouchered recoverable cost items that cannot be rescheduled. All delinquent loans will be rescheduled, reamortized, consolidated or deferred as applicable to bring the account current. The County Supervisor will contact the Finance Office to find out the amount of interest and principal owed on the date the new note(s) will be signed. This date will be the date of the beginning period of the deferral. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral. The County Supervisor will determine the amount of interest that will accrue during the deferral period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. This calculated installment will be added to the calculated installment for the remaining principal balance and inserted on the promissory note as the scheduled installment for the remaining period of the loan. The FMI for Form FmHA 1940-17 has examples (IV, V, and X) which explain this. The Finance Office will apply the payments made on the note in accordance with this subpart. The following addendum will be typed, completed, signed by the borrower and attached to the promissory note:

**Addendum For Deferred Interest**

Addendum to promissory note dated \_\_\_\_\_ in the original amount of \$ \_\_\_\_\_ at an annual interest rate of \_\_\_\_\_ percent. This agreement amends and attaches to the above note. \$ \_\_\_\_\_ of each regular payment on the note will be applied to the interest which accrued during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR Part 1951, Subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

Borrower \_\_\_\_\_

Borrower \_\_\_\_\_

The Finance Office will be notified of the deferral by the County Office sending Forms FmHA 1965-22, 1965-23, and 1951-8 to the Finance Office. The

borrower will be notified by letter. The Finance Office will remove the borrower's name from the delinquency report and will set up a subaccount for interest that accrues during the deferral period.

(2) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with Subpart A of Part 1905 of this chapter. The Finance Office will provide the County Office with a quarterly status report for each borrower receiving a deferral.

(3) If the request for a deferral is denied, the borrower will be informed in writing of the specific facts supporting the denial and also will be notified of the appeal rights in accordance with Subpart B of Part 1900 of this chapter.

(4) Six months prior to the end of the deferral period the County Supervisor will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's upcoming installment on the FmHA debt.

(5) The County Supervisor must notify the Finance Office of any cancellation of a deferral.

(k) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had a substantial increase in income and repayment ability. If an increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440-9 within the required time, the borrower's account will be liquidated in accordance with Subpart A of Part 1962 or Subpart A of Part 1872 of this chapter.

**§ 1951.45-1951.50 [Reserved]**

Attachments: Exhibits A, [Reserved], B, C-1, C-2, D, E [Reserved], F, and G.

Note.—Exhibits C-1, C-2, D, F, and G do not appear in the Code of Federal Regulations.

**Exhibit B to Subpart A—Notice of Change in Interest Rate**

(insert date)

*Notice of Change in Interest Rate*

(insert borrower's address)

Dear (insert borrower's name)

Your promissory note dated \_\_\_\_\_ for the original amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) provides for a change in interest rate for a limited resource loan in accordance with the Farmers Home Administration regulations.

Effective (insert date) the interest rate on this loan will be \_\_\_\_\_ percent ( \_\_\_\_\_ %) on the unpaid principal balance. Your installment due January 1, 19\_\_\_\_, will be \_\_\_\_\_ dollars (\$ \_\_\_\_\_). This change in interest rate is for the reason indicated below.

Increase in repayment ability as per Farm and Home Plan dated \_\_\_\_\_.

(insert reason if other than above for increase in interest rate).

You may appeal this action by writing to (hearing officer) (address) within 30 calendar days of the date of this letter, giving the reason why you believe this matter should be decided differently. This time may be extended if you cannot notify the hearing officer within 30 days for reasons beyond your control.

Sincerely,  
County Supervisor

#### Subpart F—Analyzing Credit Needs and Graduation of Borrowers

45. In § 1951.252, paragraphs (a) through (d) are redesignated as (b) through (e) and a new paragraph (a) is added to read as follows:

##### § 1951.252 Definitions.

(a) *Farmer program loans* means Farm Ownership (FO) Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), and Special Livestock (SL) Loans and/or Rural Housing loans for farm service buildings (RHF).

46. In § 1951.262 the introductory texts of paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

##### § 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) When a borrower with other than farmer program loans fails to:

(b) For borrowers with other than farmer program loans, the official authorized to approve foreclosure will review those cases submitted to his or her office and determine what action must be taken on the basis of the FmHA notes, security instruments, and/or loans agreements signed by the borrower and the facts and recommendations provided by the servicing official.

(c) When a farmer program loan borrower fails to provide information following the receipt of both FmHA Guide Letters 1951-1 and 1951-2, or fails to graduate after receipt of both FmHA

Guide Letters 1951-5 and 1951-3, or letters of similar format, the County Supervisor will prepare the documents required for OGC's review listed in § 1951.265 of this subpart. The County Supervisor will forward the case to the District Office for the District Director's concurrence for legal action to liquidate the account. If the District Director concurs with the decision of the County Supervisor, the case will be forwarded to OGC through the State Office for their concurrence.

(1) If the District Director or the OGC do not concur with the County Supervisor's decision to take legal action to liquidate the account, the District Director after consultation with the Farmer Program Staff will return the case to the County Supervisor with appropriate instructions for the future servicing of the case. The County Supervisor will notify the borrower of the withdrawal of the request in accordance with § 1951.261 of this subpart.

(2) If the District Director and OGC concur with the County Supervisor's decision to take legal action to liquidate the account, the case will be returned to the County Supervisor. The County Supervisor should use the appropriate statement of Exhibit B-2 to Subpart B of Part 1900 of this chapter and use it to notify the borrower of FmHA's intent to accelerate the account and to foreclose for failure to graduate or failure to provide requested information. Any appeal will be conducted in accordance with the regulations in the Subpart B of Part 1900 of this chapter. If the borrower does not appeal the notice of intent to accelerate or if the adverse decision is upheld, the County Supervisor will send the case to the District Director for acceleration of the account in accordance with Subpart A of Part 1955 of this Chapter except that Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," and Form FmHA 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," will not be used. Exhibit D of Subpart A of Part 1955 (available in any FmHA office) will be completed in accordance with the FMI to delete the statement regarding deferrals.

(3) If the borrower appeals the County Supervisor's decision to accelerate and liquidate the account and the decision is reversed, the District Director after consultation with the Farmer Program Staff will provide the County Supervisor appropriate instructions on the future servicing of the case.

#### Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

47. Subpart L is added to read as follows:

##### Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

Sec.

1951.551	Purpose.
1951.552	Definitions.
1951.553	Policy.
1951.554-1951.555	[Reserved]
1951.556	Initial determination that unauthorized assistance was received.
1951.557	Notification to borrower.
1951.558	Decision on servicing actions.
1951.559-1951.560	[Reserved]
1951.561	Servicing options in lieu of liquidation or legal action.
1951.562-1951.567	[Reserved]
1951.568	Account adjustments and reporting requirements.
1951.569	Exception authority.
1951.570-1951.589	[Reserved]
1951.600	OMB Control Number.

Note.—Exhibits A, B, C and D available from any FmHA office and do not appear in the Code of Federal Regulations.

#### Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

##### § 1951.551 Purpose.

This Subpart prescribes the policies and procedures for servicing insured Operating (OL), Farm Ownership (FO), Soil & Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), and Economic Opportunity (EO) loans, and Rural Housing Loans for farm service buildings (RHF) (referred to as farmer program (FP) loans) when it is determined that the borrower was not eligible for all or part of the financial assistance received in the form of a loan or subsidy granted. It does not apply to guaranteed loans.

##### § 1951.552 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without borrower being released from liability or where liquidation did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan or interest subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note or assumption agreement.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former active borrower whose loan(s) has(have) been paid in full or assumed by another party(ies), and who does not have an outstanding account in the records of the Finance Office.

(g) *Unauthorized assistance.* Any loan of interest subsidy received for which there was no authorization, for which the borrower was not eligible, or which was obligated from the wrong appropriation or fund. An unauthorized interest subsidy is a benefit received through a loan that was made at a lower interest rate than that to which the borrower was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

#### § 1951.553 Policy.

When it is determined that unauthorized assistance has been received, an effort must be made to collect from the borrower the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

#### §§ 1951.554-1951.555 [Reserved]

#### § 1951.556 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by Farmers Home Administration (FmHA) personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a borrower. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested, as provided for in FmHA Instruction 2012-B (available in

any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.557 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the borrower will be well documented in the case file, and will specifically state whether it was due to:

- (a) Submission of inaccurate information by the borrower;
- (b) Submission of false information by the borrower;
- (c) Submission of inaccurate or false information by another party on the borrower's behalf such as a seller, developer, real estate broker, or attorney, when the borrower did not know the other party had submitted inaccurate or false information;
- (d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or
- (e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

#### § 1951.557 Notification to borrower.

(a) Collection efforts will be initiated by the County Supervisor by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the borrower by "Certified Mail, Return Receipt Requested," with a copy to the State Director; and, for a case identified in an OIG audit report, copies to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all borrowers who received unauthorized assistance, regardless of amount. The letter will:

- (1) Specify in detail the reason(s) the assistance was determined to be unauthorized;
- (2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA office); and
- (3) Establish an appointment for the borrower to discuss with the County Supervisor the basis for FmHA's claim; and give the borrower an opportunity to provide facts, figures, written records or other information which might refute FmHA's determination that the assistance received was unauthorized.

(b) If the borrower meets with the County Supervisor, the County Supervisor will outline to the borrower why the assistance was determined to be unauthorized. The borrower will be given an opportunity to provide information to refute FmHA's findings.

When requested by the borrower, the County Supervisor may grant additional time for the borrower to assemble documentation. When an extension is granted, the County Supervisor will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

#### § 1951.558 Decision on servicing actions.

When the County Supervisor is the same official who approved the unauthorized assistance, the District Director must review the case before further actions are taken by the County Supervisor.

(a) *Payment in full.* If the borrower agrees with FmHA's determination and agrees to repay in a lump sum, the County Supervisor may allow a reasonable period of time (not to exceed 90 days) for the borrower to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The County Supervisor will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451-2, "Schedule of Remittances," for application to the borrower's account as an extra payment. After a borrower repays an unauthorized interest subsidy benefit in a lump sum, the loan will be serviced in accordance with § 1951.561(a)(3) of this Subpart. In the case of unauthorized assistance which was identified in an OIG audit, the County Supervisor will report the repayment as outlined in § 1951.568(a) of this Subpart.

(b) *Continuation with borrower.* If the borrower agrees with FmHA's determination or is willing to repay but cannot repay the unauthorized assistance in a lump sum within a reasonable period of time, continuation may be authorized. Servicing actions outlined in § 1951.561 of this Subpart will be taken, provided all of the following conditions are met:

- (1) The borrower did not provide false information as defined in § 1951.552(d) of this subpart.
- (2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and
- (3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the borrower refuses to execute the documents necessary to make account adjustments or establish

an obligation to repay the unauthorized assistance as provided in § 1951.561 of this subpart, or when a borrower fails to respond to the initial letter prescribed in § 1951.557 of this subpart within 30 days, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The County Supervisor will send Exhibit B of this subpart (available in any FmHA office.)

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in § 1955.10 or § 1955.20 as applicable, of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Forms FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities", FmHA 1924-25, "Notice of Intent to Take Adverse Action", or FmHA 1924-26, "Borrower's Acknowledgement of Notice of Intent to Take Adverse Action."

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in § 1955.15 of Subpart A of Part 1955 of this chapter, except the borrower will not be sent Forms FmHA 1924-14, 1924-25 or 1924-26.

(iv) Forced liquidation will not be pursued when:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and recoverable costs charged to the account, is less than \$1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (c)(1)(B) of this section, a request for an exception under § 1951.569 of this Subpart will be made.

(v) Account adjustments will be made by FmHA without the signature of the borrower according to § 1951.568(a)(5) of this Subpart. In these cases, the borrower will be notified by letter of the actions taken with a copy of Forms FmHA 1951-12, "Correction of Loan Account," or 1951-13, "Change in Interest Rate," as applicable, enclosed to reflect the adjustments.

(2) *Inactive borrower or active borrower with unsecured loan such as collection-only or unsatisfied balance after liquidation.* The County Supervisor will document the facts in

the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

#### §§ 1951.559-1951.560 [Reserved]

#### § 1951.561 Servicing options in lieu of liquidation or legal action.

When all of the conditions outlined in § 1951.558(b) of this subpart are met, servicing options outlined in this section will be considered; and accounts will be serviced according to this section and § 1951.568 of this Subpart.

(a) *Active borrower.*—(1) *Entire loan unauthorized.* When the entire loan is determined to be unauthorized because the borrower was not eligible for the type loan received or because the loan was approved for unauthorized purposes, the following alternatives will be considered in the order listed:

(i) Execution of Form FmHA 1965-11, "Accelerated Repayment Agreement," according to § 1872.17(d) of Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1 paragraph XVII D), for loans secured by real estate; or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

(ii) Refinancing with another type of FmHA loan to repay the unauthorized loan, if the borrower is eligible for the type loan being considered.

(iii) When the case cannot be handled according to subparagraphs (a)(1)(i) or (a)(1)(ii) of this section, continuance with the loan on the existing terms may be approved, and the loan will, thereafter, be serviced as an authorized loan.

#### (2) *Portion of loan unauthorized.*

When a portion of a loan is determined to be unauthorized, the Finance Office will be instructed to separate the authorized and unauthorized portions of the loan, setting up each as a separate loan at the correct interest rate. The correct interest rate will be taken from Exhibit C of this Subpart (available in any FmHA office) as of the date of loan approval. All payments made on the loan being corrected will be reversed and reapplied to the unauthorized portion. If after reapplication of payments the unauthorized portion is not paid in full, the options outlined in paragraph (a) of this section may be considered for repayment of the balance of the unauthorized portion; and the authorized portion will be serviced as an outlined loan. See § 1951.568 of this subpart for instructions on setting up separate accounts.

(3) *Unauthorized interest subsidy benefits received.* When the borrower was eligible for the loan, but should properly have been charged a higher interest rate than that shown in the debt instrument on all or a portion of the loan, resulting in the receipt of unauthorized interest subsidy benefits, the case will be handled as outlined below. The unauthorized interest rate will be corrected to the interest rate in effect on the date the original loan was approved as outlined in paragraph (a)(3)(iii) of this section.

(i) When a subsidized interest rate was incorrectly charged on the entire loan, all payments made will be reversed and reapplied at the correct interest rate; and future installments will be scheduled at the correct interest rate. After reapplication of payments, the loan will be treated as an authorized loan.

(ii) When a subsidized interest rate was incorrectly charged on only a portion of the loan, the Finance Office will be instructed by the County Supervisor to separate the loan into two portions, with the correct interest rate established for the portion having the incorrect subsidized interest rate. All payments made on the loan being adjusted will be reversed and reapplied, first to the portion with the corrected interest rate. After reapplication of payments at the correct interest rate, both portions will be serviced as authorized loans.

(iii) Incorrect interest rates will be corrected as follows referring to Exhibit C of this Subpart (available in any FmHA office) for interest rates in effect on specific dates:

(A) For disaster Emergency (EM) loans, to the rate for EM annual production loans.

(B) For Operating Loans—Limited Resource (OL-LR), to the rate for regular Operating Loans (OL).

(C) For Farm Ownership—Limited Resource (FO-LR), to the rate for regular Farm Ownership (FO).

(D) For all other types of FP loans, to the correct rate for the type loan involved which was in effect when the loan was approved.

(b) *Inactive borrower.* When the individual or entity does not have an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the inactive borrower execute a promissory note in the amount of the assistance determined to be unauthorized according to § 1951.557 of this subpart. This note will bear interest at the rate which was in effect for the type loan associated with the

unauthorized assistance when it was approved. The term will not exceed 10 years or the term of the original loan, whichever is the shorter term.

(2) Take the best lien obtainable on any collateral having equity value to secure the note.

#### §§ 1951.562-1951.567 (Reserved)

#### § 1951.568 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only cases of unauthorized assistance identified by OIG will be reported to the Finance Office by submission on Form FmHA 1951-12 completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" refers to an account with an active borrower unless specified as "inactive." If the borrower has arranged to repay in a lump sum, the payment will be remitted with Form FmHA 451-2, according to the FMI. Form FmHA 1951-12 will reflect the amount and the Schedule Number.

(1) *Entire loan unauthorized.* When the entire loan is unauthorized because the borrower was not eligible or because the loan was approved for unauthorized purposes, and continuation is authorized, the Finance Office will be advised as follows:

(i) *Accelerated repayment agreement or loan rescheduled.* If the borrower has executed Form FmHA 1965-11 for loans secured by real estate; or has executed Form FmHA 1951-4 for loans not secured by real estate, the form(s) will be prepared and distributed according to the FMIs, attaching the original form(s) to Form FmHA 1951-12.

(ii) *Continuation with loan on existing terms.* When it is determined that all the conditions outlined in § 1951.558(b) of this Subpart are met and continuation with the loan on the existing terms is approved, the servicing official will submit Form FmHA 1951-12 to the Finance Office to reflect this.

(2) *Portion of loan unauthorized.* When a loan is to be separated into authorized and unauthorized portions, the authorized portion will retain the original loan number, and the original

principal amount will be reduced by the unauthorized amount. A new loan in the unauthorized amount will be established as the unauthorized loan with the next available number assigned by the Finance Office. Payments made on the loan being adjusted will be reversed and reapplied first to the unauthorized loan. If the reapplication of payments does not pay the unauthorized loan in full, upon receipt of Forms FmHA 451-28, "Transaction Record," showing the balances of the authorized and unauthorized loans, the servicing official will proceed under the provisions of § 1951.561(a)(2) and will submit a revised Form FmHA 1951-12 (along with a copy of the original Form FmHA 1951-12).

(3) *Unauthorized subsidy benefits received.* (i) *Entire loan.* When the interest rate on an entire loan is changed, Form FmHA 1951-12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the original loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan.

(ii) *Portion of loan.* When the interest rate on only a portion of a loan must be changed, the portion which has the incorrect interest rate will be established as a new loan at the correct interest rate shown on Form FmHA 1951-12. Payments made on the loan being adjusted will be reversed and reapplied first to the loan with the corrected interest rate. Both loans will then be treated as authorized loans.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951-12 will be submitted to advise the Finance Office to establish the unauthorized assistance account. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.558 (c)(1)(iv)(A) or (c)(1)(iv)(B) of this subpart, will be adjusted according to § 1951.561 (a)(2) or (a)(3) of this subpart and this section, and the adjustments will be reflected on Form FmHA 1951-12. In this instance only, account adjustments will be made even though the borrower does not sign Form FmHA 1951-12 and any related documents.

(6) *Establishment of account of inactive borrower.* (i) When an inactive borrower agrees to repay unauthorized assistance and executes documents to

evidence such an obligation, Form FmHA 1951-12 will reflect this, and the Finance Office will establish or the account according to the terms indicated on Form FmHA 1951-12.

(ii) When a judgment is obtained against such a borrower Form FmHA 1955-20, "Notice of Judgment," will be prepared and distributed in accordance with the FMI to establish a judgment account.

(7) *Payments on authorized and unauthorized loans concurrently.* When a borrower has both authorized and unauthorized loans outstanding, installments may be scheduled to be paid concurrently on all loans. Payments may be adjusted by means of rescheduling or reamortizing to coincide with the borrower's repayment ability according to servicing regulations for the type loan involved. The County Supervisor will complete Form FmHA 451-2 so that payments received will be applied first to the unauthorized loan account to maintain it current, with the remainder of the payment applied to the other loan(s).

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. For reporting purposes, the following applies:

(i) For an unauthorized loan account established as provided in paragraphs (a) (1), (2), or (6) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, it will be reported on the next scheduled report only, giving the amount collected.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the unpaid balance will be reported initially and the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing terms is approved, or after a loan is rescheduled or reamortized, it will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(3) of this section, when the unauthorized amount has been repaid, or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this

section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, it will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(b) *Nonaudit cases.* Basically, servicing options which may be used are the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Each payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Forms FmHA 451-26 from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate is necessary, retroactive to the date of loan closing on all or a portion of a loan, Form FmHA 1951-13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For accounts to be rescheduled or reamortized, Forms FmHA 1951-4, or 1965-11, as applicable, will be prepared and submitted in accordance with the respective FMI.

(iii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the County Supervisor will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iv) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to the applicable servicing regulations for the type loan involved.

#### § 1951.569 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 effect 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 effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

#### §§ 1951.570-1951.599 [Reserved]

#### § 1951.600 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 0575-0102.

#### Exhibits A, B, C and D

Note.—Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

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

48. In § 1951.612 paragraph (a)(1)(i) is revised to read as follows:

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

(a) *Servicing SFH cases involving unauthorized assistance.*

(1) \* \* \*

(i) If the recipient's income was above the moderate-income level but the recipient was otherwise eligible and the loan was approved for authorized purposes, a loan closed before November 30, 1983, will be converted to an "above-moderate" RH loan. A loan in this category which was closed after November 30, 1983, will be converted to "Non Program" (NP) loan. In either case, the interest rate from Exhibit C of this subpart (available in any FmHA office) which was in effect on the date the loan was approved will be used and the final due date of the original loan will be unchanged. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i) of this Subpart, as applicable. If unauthorized interest credits are also involved, that will be serviced simultaneously according to paragraph (a)(2) of this section so that payments are reversed and reapplied only once. A delinquency created through these actions will be

serviced according to Subpart G of Part 1951 of this chapter.

49. In § 1951.618 paragraph (a)(2) is revised to read as follows:

#### § 1951.618 Account adjustments and reporting requirements.

(a) \* \* \*

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on a loan is changed, Form FmHA 1951-12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan. When a loan is converted to above-moderate RH or NP, the loan must be identified and serviced by the servicing official accordingly.

#### PART 1955—PROPERTY MANAGEMENT

50. The authority citation for Part 1955 continues to read as follows:

Authority: 7 USC 1989; 42 USC 1480; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

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

51. § 1955.2 is revised to read as follows:

#### § 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this Subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart. Non program loan debtors will be liquidated as provided in § 1872.20(b)(6) of Part 1872 of this chapter (FmHA Instruction 465.1).

52. In 1955.3, Paragraph (d) is revised to read as follows:

§ 1955.3 Definitions.

(d) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Rural Housing loans for farm service buildings (RHF), whether to individuals or entities, referred to in this Subpart as Farmer Programs (FP) loans: Land Conservation and Development (LCD); and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

53. In § 1955.10, the introductory text and paragraph (f)(2)(ii)(A)(3) are revised and paragraph (d)(8) is redesignated as (d)(9) and a new paragraph (d)(8) is added to read as follows:

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

Voluntary conveyance is a method of liquidation by which title to security is transferred to the government. FmHA will not make a demand on a borrower to voluntarily convey. A voluntary conveyance should be accepted only after all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful. The borrower should also have been encouraged to transfer or sell the property (subject to any prepayment restrictions of the respective loan program). The borrower will be informed by the servicing official of apparent equity in the property, if any. Before a voluntary conveyance from a farmer program loan borrower can be accepted, the borrower must be sent Form FmHA 1924-14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities." This form will not be sent to borrowers who received unauthorized assistance as determined under Subpart L of Part 1951 of this chapter.

(d) \* \* \*  
 (8) Farmer program loan borrowers who voluntarily convey after receiving Form FmHA 1924-25, "Notice of Intent to Take Adverse Action," must properly complete and return Form FmHA 1924-26, "Borrowers Acknowledgement of Notice of Intent to Take Adverse Action."

(f) \* \* \*  
 (2) \* \* \*

(ii) \* \* \*  
 (A) \* \* \*  
 (3) Borrower's offer of voluntary conveyance (consisting of applicable items outlined in paragraphs (d)(1) through (d)(8) of this section);

54. In § 1955.15, the introductory text, the introductory text of paragraphs (b), (d)(2) and (d)(3) are revised and paragraph (d)(2)(iv) is added to read as follows:

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

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; and when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area. Also, in Farmer Program cases, (except graduation cases under Subpart F of Part 1951 of this Chapter), the borrower must have received Forms FmHA 1924-14, 1924-25, and 1924-26, and any appeal must have been concluded.

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA 1955-2 for Farmer Program or SFH loans, Exhibit A to this subpart for MFH loans, or Exhibit A of FmHA Instruction 1951-E (available in any FmHA office) for other organization loans. If chattel security is also involved, Forms FmHA 455-1, "Request for Legal Action"; 455-2, "Evidence of Conversion"; and 455-22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA loan servicing regulations have been taken and all required notices given to the borrower.

(d) \* \* \*  
 (2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, or E of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in

accordance with § 1872.17(e) of Part 1872 of this chapter (FmHA Instruction 465.1). The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under Subpart A of Part 1962 of this chapter, that the Finance Office will be sent a copy of Exhibit D or E. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases.) If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official and, except for Farmer Program cases, to the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(iv) If a borrower has both a non-farmer program loan and a Farmer Program loan(s) that are secured with the same real estate, the non-farmer program loan must be accelerated at the same time the borrower is sent Form FmHA 1924-25. One appeal hearing and one review will be held for both adverse actions.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State Supplement is issued to specify this requirement. If payments are *mistakenly* accepted and credited to the borrower's account, no waiver or

prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result and FmHA may proceed as though no such payment had been made. The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). For Farmer Program cases, no time for voluntary liquidation is authorized after acceleration. For all other cases, the approval official will decide whether or not the borrower's offer will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer from the borrower is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. In all cases the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be advised when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

55. In § 1955.18 paragraph (f) is revised to read as follows:

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

(f) *Unsatisfied account.* Farmer program loan borrowers will be sent a letter similar to Exhibit F of this subpart (available in any FmHA office). Unsatisfied account balances will be settled in accordance with Part 1804 of this Chapter (FmHA Instruction 456.1) of the account will be reclassified to collection-only by submitting Form FmHA 404-1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," or for MFH, Form FmHA 1944-54, "Multiple Family Housing Change of Borrower Name/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

56. In § 1955.20 the introductory text of paragraph (b) and paragraph (f)(2)(v) are revised to read as follows:

**§ 1955.20 Acquisition of chattel property.**

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens and the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept Voluntary Conveyance of chattels is not authorized. Before a voluntary conveyance from a farmer program loan borrower can be accepted, the borrower must be sent form FmHA 1924-14.

- (f) \* \* \*
- (2) \* \* \*

(v) When the sale is being conducted under the terms of Form FmHA 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)".

**Subpart B—Management of Property**

57. In § 1955.80 paragraphs (d)(1) and (d)(2) are revised to read as follows:

**§ 1955.80 Management of inventory chattel property.**

- (d) \* \* \*

(1) *Losses and increases.* Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955-50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part and recorded on the original list of acquired chattel property in the inventory file.

**Subpart C—Disposal of Inventory Property**

**§ 1955.103 [Amended]**

58. § 1955.103 is amended in the last sentence of paragraph (h), by removing the words, "Other Real Estate (ORE)" and inserting in their place the words "Non Program Loans (NP)".

**§ 1955.107 [Amended]**

59. § 1955.107 is amended in the last sentence of paragraph (a) by removing the words "ORE loans" and inserting in their place the words, "NP loans."

**§ 1955.108 [Amended]**

60. § 1955.108 is amended in paragraph (g) by removing the words, "ORE loans" and inserting in their place the words, "NP loans".

**§ 1955.118 [Amended]**

61. § 1955.118 is amended in paragraph (g) by removing the words, "ORE loans" and inserting in their place the words, "NP loans."

**PART 1960—GENERAL [RESERVED]**

62. Part 1960 is removed and reserved.

**PART 1962—PERSONAL PROPERTY**

63. The authority citation for Part 1962 is revised to read as follows

Authority: 7 U.S.C. 1909; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

**Subpart A—Servicing and Liquidation of Chattel Security**

64. Sections 1962.1 through 1962.50 are revised to read as follows (Exhibits A, B, and C remain unchanged and Exhibit D is added but does not appear in the Code of Federal Regulations. Exhibit D will be available in any FmHA office.):

**PART 1962—PERSONAL PROPERTY**

**Subpart A—Servicing and Liquidation of Chattel Security**

- Sec.
- 1962.1 Purpose.
- 1962.2 Policy.
- 1962.3 Authorities and responsibilities.
- 1962.4 Definitions.
- 1962.5 Security instruments.
- 1962.6 Liens and assignments on chattel property.
- 1962.7 Securing unpaid balances on unsecured loans.
- 1962.8 Liens on real estate for additional security.
- 1962.9 Liens on chattel property as security for a real estate loan.
- 1962.10-1962.11 [Reserved]
- 1962.12 Marking ASCS peanut and tobacco marketing cards.
- 1962.13 Lists of borrowers given to business firms.
- 1962.14 Account and security information in UCC cases.
- 1962.15 [Reserved]
- 1962.16 Accounting by County Supervisor.
- 1962.17 Disposal of chattel security, use of proceeds and release of lien.
- 1962.18 Unapproved disposition of chattel security.
- 1962.19 Claims against Commodity Credit Corporation (CCC).
- 1962.20-1962.25 [Reserved]
- 1962.26 Correcting errors in security instruments.
- 1962.27 Termination or satisfaction of chattel security instruments.
- 1962.28 Reserved.

- Sec.  
 1962.29 Payment of fees and insurance premiums.  
 1962.30 Subordination and waiver of FmHA liens of chattel security.  
 1962.31-1962.33 [Reserved]  
 1962.34 Transfer of chattel security and EO property and assumption of debts.  
 1962.35-1962.39 [Reserved]  
 1962.40 Liquidation.  
 1962.41 Sale of chattel security or EO property by borrowers.  
 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.  
 1962.43 Liquidation of chattel security or EO property by other parties.  
 1962.44 Distribution of liquidation sale proceeds.  
 1962.45 Reporting sales.  
 1962.46 Deceased borrowers.  
 1962.47 Bankruptcy and insolvency.  
 1962.48 [Reserved]  
 1962.49 Civil and criminal cases.  
 1962.50 [Reserved]

**Exhibit A—Memorandum of Understanding Between Commodity Credit Corporation and Farmers Home Administration**

Appendix 1—Furnishing Notice or Information to Commodity Credit Corporation.

**Exhibit B—Memorandum of Understanding and Blanket Commodity Lien Waiver**

**Exhibit C—Memorandum of Understanding Between Farmers Home Administration and Commodity Credit Corporation—Rotation of Grain Crops**

**Exhibit D—Notice to Borrower's Attorney Regarding Loan Servicing Options**

Note.—Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

**Subpart A—Servicing and Liquidation of Chattel Security**

**§ 1962.1 Purpose.**

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration (FmHA) chattel security, Economic Opportunity (EO) loan property, and note only loans.

**§ 1962.2 Policy.**

Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect FmHA's financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

**§ 1962.3 Authorities and responsibilities.**

(a) *Redelegation of authority.* Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) *Responsibilities.*—(1) *FmHA personnel.* The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) *Borrower.* The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to FmHA for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

(c) *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 effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1962.4 Definitions.**

(a) *Abandonment.* Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

(b) *Acquired chattel property.* Former security or EO property of which FmHA has become the owner (See § 1955.20 of Subpart A of Part 1955 of this chapter).

(c) *Borrower.* Individual(s), corporation, cooperative, or partnership that is (are) liable for the loan(s) or any part thereof.

(d) *Chattel security.* Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financing statements and security agreements, chattel mortgages, and other security instruments.

(e) *Civil action.* Court proceedings to protect FmHA's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are not included.

(f) *Criminal action.* Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes. These include but are not limited to violations such as:

- (1) Unauthorized sale of security.
- (2) Purchase of security with intent to defraud and without payment of the purchase price to FmHA;
- (3) Falsification of assets or liabilities in loan applications;
- (4) Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;
- (5) Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;
- (6) By scheme, trick, or other device, covering up or concealing misuse of funds or authorized dispositions of security or EO property or other illegal action; or
- (7) Any other false statements or representations relating to FmHA matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. Unauthorized disposition of even minor items by the borrower will be considered criminal violations.

(g) *Default.* Failure of the borrower to observe the agreements with FmHA as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

- (1) Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other

operation, or other circumstances within the borrower's control.

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

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

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

(h) *EO property.* Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

(i) *EO property essential for minimum family living needs.* Nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

(j) *Farm income.* Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

(k) *Farmer Program loans.* These loans and Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Economic Emergency (EE), Emergency (EM), Economic Opportunity (EO) and Special Livestock (SL) loans and Rural Housing loans made for farm service buildings (RHF).

(1) *FmHA.* The United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies.

(m) *Foreclosure sale.* Act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(n) *Liquidation.* The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to FmHA; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

(o) *Office of the General Counsel (OGC).* The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

(p) *Purchase money security interest.* Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it. Such value must be given not later than the time the debtor acquires the collateral or obtains rights in it.

(q) *Repossessed property.* Security or EO property in FmHA's custody, but still owned by the borrower.

(r) *Security.* Also means "Chattel security" when appropriate.

#### § 1962.5 Security instruments.

County Supervisors are responsible for maintaining security instruments that will cover all security, including replacements, increases, and other after-acquired property, and for obtaining additional security as needed. They will execute continuation, extension, or renewal of security instruments as needed to protect FmHA's security interests.

(a) *Financing statement.* An FmHA Financing Statement is effective as notice for 5 years from the date of filing. A new statement needs to be taken and filed only if the debt is to be secured by property not described specifically or by type, or by crops growing or to be grown, or fixtures located or to be located on land not described on the filed statement.

(b) *Continuing the financing statement.* A filed statement must be continued to notify third parties after the original 5-year period. Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignment, Etc.," must be filed within 6 months before the end of the original 5-year period. On filing Form FmHA 462-12, the filed Financing

Statement is effective for 5 more years after the date to which the original filing was effective. Successive Continuation Statements may be filed to continue the notice to third parties. A lien search is unnecessary provided the Continuation Statement is properly filed. Form FmHA 462-11, "Request for Continuation Statement Filing Fee," may be used to notify the borrower to continue the Financing Statement and to submit the amount of the filing fee.

(c) *Security agreement.* A new security agreement will be taken when:

(1) Property not covered by specific description or the printed language of the previous security agreement is to serve as security for the debt; or

(2) It is necessary to obtain or maintain a security interest in crops; or

(3) It is necessary to supplement the security agreement to obtain an asset for security. A State supplement will be issued when considered necessary by the State Director and OGC to further explain the situations requiring the taking of an additional security agreement. Such additional security agreement usually will be taken at about the time of the annual inspection of the security required by § 1962.10(a) of this subpart; or

(4) An initial Operating (OL) loan or Emergency (EM) loan is made to an applicant, including a paid-in-full OL or EM borrower.

(d) *Chattel mortgage.* In those States which require the use of chattel mortgages, such a mortgage may be extended or renewed by obtaining a new chattel mortgage or by using a form approved for this purpose by OGC. However, it is preferable to renew or extend chattel mortgages by obtaining new ones unless there are intervening liens or other legal reasons. A State supplement will be issued stating the actions to follow to ensure that:

(1) FmHA liens and their priority are maintained by renewing or extending security instruments or by obtaining new instruments.

(2) Lien searches are made as necessary to determine that FmHA will obtain the required priority of liens.

#### § 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by FmHA lien.* (1) When additional chattel property not presently covered by an FmHA lien is available and needed to protect FmHA's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products

when such proceeds are not covered by the lien instruments.

(iii) An assignment of other income, including Agricultural Conservation Program payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect FmHA interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) *Lien search.* When a lien is taken on chattel property not covered by an FmHA lien, a lien search will be made. It will not be needed, however, if crops or other chattel property are covered by a filed FmHA Financing Statement but not by an FmHA security agreement or assignment of income. The search will be made at a time which will assure that FmHA obtains the desired lien on chattel property as set forth by a State supplement.

(c) *Assignments of upland cotton, rice, wheat and feed grain payments.*

Borrowers may assign Agricultural Stabilization and Conservation Service (ASCS) payments under ASCS upland cotton, rice, wheat and feed grain programs.

(1) *Obtaining assignments.* Assignments will be obtained as follows:

(i) In selected cases in counties agreed to by FmHA State Directors and ASCS State Committees.

(ii) Only when it appears necessary to collect the FmHA operating-type loans.

(iii) Only for the crop year for which FmHA operating-type loans are made, and

(iv) For the full amount of the applicable upland cotton, rice, wheat, and feed grain programs, including the advance and/or final payment.

(2) *Selecting counties.* State Directors will inform ASCS State Committees of the counties in which FmHA desires to obtain assignments from borrowers. When counties have been agreed to by FmHA State Directors and ASCS State Committees, the State Directors will notify the appropriate County Supervisors about obtaining the assignments. The County Supervisors then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them not later than loan closing. Special efforts will be made to obtain the bulk of assignments

before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form FmHA 1962-8, "Upland Cotton, Rice, Wheat and Feed Grain Programs—Assignments."

(3) Releasing assignments and handling checks.

(i) The County Supervisor will inform the ASCS County Office that it is releasing its assignment whenever a borrower pays FmHA the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made jointly to the producer and FmHA. Such checks may be endorsed by both parties and FmHA. Such checks may be endorsed by both parties and the proceeds used as indicated on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security."

#### § 1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with § 1962.6 of this subpart if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives.

#### § 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Such liens will be taken only when the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

(a) *Documentation.* Before taking real estate as additional security for an FmHA loan, the following information will be put in the running record:

(1) Facts justifying the real estate lien;

(2) An estimate of the present market value of the real estate to be mortgaged (no appraisal of the property to be mortgaged is needed);

(3) A brief description of any existing liens on the property and the unpaid balance on the debts secured by such existing liens; and

(4) Name of the titleholder and how title of the property is held. (Title evidence is not required.)

(b) *Forms.* Form FmHA 427-1 (State), "Real Estate Mortgage for \_\_\_\_\_" will be used for each real estate lien taken as additional security unless a State

supplement requires a form of mortgage comparable to that which secures the existing loans. The notes evidencing the FmHA loans for which the additional security will be taken will be described in the same mortgage.

#### § 1962.9 Liens on chattel property as security for a real estate loan.

Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA 440A25, "Financing Statement (carbon-interleaved)," or Form FmHA 440-25, "Financing Statement," as appropriate, will be used in Uniform Commercial Code (UCC) States. State supplements may provide for using other forms in Louisiana, Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

#### §§ 1962.10-1962.11 [Reserved]

#### § 1962.12 Marking ASCS peanut and tobacco marketing cards.

The County Supervisor will mark borrowers' ASCS peanut and tobacco crop marketing cards when FmHA advances loan funds or subordinates its crop lien for the purpose of financing the production of the crops. The marking of cards is optional in cases other than the above when FmHA has a crop lien.

(a) *Marking cards.* Just before ASCS prepares the cards, the FmHA County Office will give the appropriate ASCS County Office lists of the names and addresses of FmHA borrowers whose cards are to be marked and inform the office that FmHA will mark the cards of each borrower whose name is on the list before delivery. After FmHA determines that the cards are ready for delivery, the County Supervisor or someone designated by the County Supervisor will go to the ASCS County Office and:

(1) Stamp or insert "FmHA lien" in script in indelible ink on the cards for peanuts and tobacco, except flue-cured and burley tobacco, wherever decided by the FmHA County Supervisor and the ASCS County Office Manager.

(2) Stamp or insert "FmHA lien" in script in indelible ink on borrower's Form MQ 76, "Tobacco Marketing Card," for flue-cured and burley tobacco. The stamp will be placed on the left at the bottom of the signature strip under "Tobacco Marketing Card."

(3) If the borrower satisfies the lien or repays the amount due the current year, stamp "canceled" across "FmHA lien" followed on the same line by the name of the official making the cancellation and the date.

(b) *Notice to borrowers.* The County Supervisor will inform borrowers of marking arrangement, including the

requirements for canceling the lien notice on the card.

(c) *Notice to buyers.* Whenever possible, the County Supervisor will explain these arrangements personally to buyers (warehousemen and dealers in the case of tobacco) in the area. The County Supervisor will also explain that the lien notice on the cards is not in place of the notice given by filed or recorded lien instruments but is a courtesy and is to provide them with readily available current information. However, this information may not always be accurate and commodities covered by a card not stamped "FmHA lien" may still be subject to an FmHA lien. If too many buyers are in the area to enable the County Supervisor to make such a personal explanation, the County Supervisor may write them a letter explaining the arrangements.

**§ 1962.13 Lists of borrowers given to business firms.**

Lists of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards.

(a) The list will contain the statement: "The crop and chattel liens or financing statements of the Farmers Home Administration are recorded or filed as required by law. This list of borrowers is furnished only as a convenience. It may be incomplete or inaccurate as of any particular date. The fact that a name is not on this list does not necessarily mean that the Farmers Home Administration does not have security interest in or lien on the crops, livestock, and other chattels."

(b) Lists will be sent by Form FmHA 462-3, "List of Farmers Home Administration Borrowers," or the County Supervisor may consider it advisable to personally deliver and explain the form and list to the buyers. The County Supervisor will update all lists that have been distributed by notifying buyers in writing, on Form FmHA 462-14, "Change in List of Farmers Home Administration Borrowers," at least every 3 months, of the names of borrowers to add and to delete.

**§ 1962.14 Account and security information in UCC cases.**

Within 2 weeks after receipt of a written request from the borrower, FmHA must inform the borrower of the

security and the total unpaid balance of the FmHA indebtedness covered by the Financing Statement.

(a) If FmHA fails to provide the information, it may be liable for any loss caused the borrower and, in some States, other parties, and also may lose some of its security rights. The UCC provides that the borrower is entitled to such information once every 6 months without charge, and the FmHA may charge up to \$10 for each additional statement. However, FmHA provides them without charge. The requested information goes on Form FmHA 462-10, "Farmers Home Administration's Answer to Request for Information."

(b) Although the UCC only requires FmHA to give information pursuant to the borrower's written request, FmHA will also answer oral requests. Furthermore, the UCC does not prohibit giving this information to others who have a proper need for it, such as a bank or another creditor contemplating advancing additional credit to the borrower.

**§ 1962.15 [Reserved]**

**§ 1962.16 Accounting by County Supervisor.**

(a) *County Supervisor's responsibilities.* The County Supervisor is responsible for maintaining a current record of each borrower's FmHA security. All chattel security will be inspected at least annually by the County Supervisor. The inspection will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less than one full crop year. At the time of the annual inspection the County Supervisor will discuss the provisions of §§ 1962.17 and 1962.18 of this subpart with the borrower, and the borrower and County Supervisor will complete and sign Form FmHA 1962-1, in accordance with § 1924.57(b) of Subpart A of Part 1924 of this chapter if it has not been previously completed for the year. If a borrower does not plan to dispose of any chattel security, the form should be completed to show this and should be signed. When the County Supervisor has other contacts with the borrower, the County Supervisor should also check for dispositions and acquisitions of security, the form should be completed to show this and should be signed. Changes will be recorded on the form, dated and initialed by the borrower and the County Supervisor. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) *Dispositions.* The County Supervisor will record all dispositions of chattel security on Form FmHA 1962-1, and on the file copy of the security agreement or chattel mortgage. The original security instrument must not be altered. Additional acquired chattel security should be entered on the file copy of the security agreement or chattel mortgage and must be described on subsequent security instruments.

(c) *Unapproved dispositions.* Unapproved dispositions of security will be handled in accordance with §§ 1962.18 and 1962.49 of this subpart.

**§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.**

(a) *General.* The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. When the borrower fails to account properly for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will automatically be terminated when either Exhibit D or E to Subpart A of Part 1955 of this chapter is sent to the borrower. Termination of such releases will not occur prior to that time.

(b) *Use of Form FmHA 1962-1.* (1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor with the assistance of the borrower, or in certain cases the District Director (see § 1924.57(b)(3) of Subpart A of Part 1924 of this chapter), will complete Form FmHA 1962-1 to show how, when and to whom the borrower will sell, exchange or consume security and use sales proceeds (including milk sales proceeds) and insurance proceeds derived from the loss of security. The five conditions set out in that form must all be met. These conditions are: (1) The proceeds from the sale, if any, are used for the purposes and in the amount set forth on the form; (2) a current farm and home plan or other similar plan of operation acceptable to FmHA, if

required by the County Supervisor, has been completed and signed by the borrower and FmHA; (3) the borrower's projected income and expenses are based on the borrower's proven record of production and financial management; (4) the borrower is utilizing the key production and financial management practices required by FmHA; and (5) the property is sold or exchanged for its present market value. The conditions set out in paragraph (b)(2) of this section must also be met.

(2) Sales proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to a prior lienholder and which come to FmHA, can be used for any of the following purposes:

(i) Proceeds can be applied to the FmHA debt.

(ii) Proceeds can be used to purchase property better suited to the borrower's needs if FmHA will acquire a lien on the new property. The new property, together with any proceeds applied to the FmHA indebtedness, will have a value to FmHA at least equal to the value of the lien formerly held by FmHA on the old security.

(iii) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met with an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower and FmHA from suffering a substantial loss.

(iv) Proceeds can be used to pay for essential farm and/or family living (family living expenses are excluded for partnerships, corporations and cooperatives) expenses necessary for the continued operation of the farm in accordance with the FmHA approved current year's farm and home plan or other similar plan of operation. If no current farm and home plan is in the file, one must be developed in accordance with § 1924.57 of Subpart A of Part 1924 of this chapter.

(v) Property can be exchanged for property which is better suited to the borrower's needs if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

(vi) Property can be consumed by the borrower as follows:

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also

provided that FmHA obtains a lien (or assignment) on the livestock and livestock products at least equal in value to the lien on the crops.

(3) The borrower must maintain records of dispositions of property and the actual use of proceeds and must make these records available to FmHA at the end of the period covered by the Form FmHA 1962-1, or when requested by FmHA. The County Supervisor will complete the "Actual" columns on that form, indicating approval or disapproval, making sure that the dispositions of property and uses of proceeds were as agreed upon. If they were not, the County Supervisor will take the actions required by § 1962.18 of this subpart. On the form, the County Supervisor will note approval or disapproval of each disposition.

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received, as shown on Form FmHA 1962-1, the borrower will notify the County Supervisor. Form FmHA 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA, and Form FmHA 1962-1 will be revised to reflect the changes.

(5) If the borrower wants to sell, exchange or consume property in a way different from that shown on Form FmHA 1962-1, the borrower must get FmHA's permission, in advance. Form FmHA 1962-1 will be revised, dated and initialed by the borrower and the County Supervisor. The County Supervisor will indicate approval or disapproval of the change. Permission will be granted if the five conditions set out in that Form have been met and if the requirements of paragraph (b)(2) of this section have been met.

(c) *Release of liens.* (1) Liens will be released by the County Supervisor when security is sold, exchanged or consumed, provided the conditions set out on Form FmHA 1962-1 and in this subpart are met.

(2) Junior FmHA liens on chattels and crops serving as security for FmHA loans can be released when such property has no present or prospective security value or enforcement of the FmHA lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

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

(ii) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property which

serves as security for amounts owed to prior lienholders must be considered to determine whether the junior FmHA lien has any present or prospective value.

(3) Liens obtained through a mutual mistake can be released. The reasons for the release must be documented in the running case record.

(4) Liens can be released when there is no evidence of an existing indebtedness secured by the lien in the records of the FmHA County, State, or Finance Office.

(5) Liens on separate items of chattels can be released to another creditor for purposes set out in paragraph (b)(2)(iv) of this section when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining FmHA debt.

(d) *Processing the release of chattel security.* (1) If the borrower or an interested third party requests a release of specific items which must be recorded under the UCC or chattel mortgage laws, Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignments, etc.," Form FmHA 460-1, "Partial Release," or other Forms approved by OGC and required by State statute will be used. Care must be used to be sure that only specific items are released; for example, if a borrower requests a release of five cows, make sure that not all the cattle are released from the FmHA lien. When specific items are listed on the security agreement, the County Supervisor should record the disposition on the work copy of the security agreement and on Form FmHA 1962-1.

(2) Assignments and consent to payment of proceeds will be processed under Subpart A of Part 1941 of this chapter and recorded on Form FmHA 1962-1.

(i) When it is necessary to temporarily amend Form FmHA 441-18, "Consent to Payment of Proceeds From Sale of Farm Products," or Form FmHA 441-25, "Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest," Form FmHA 462-9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used. All amendments of assignment agreements will be made on forms approved by OGC. The State Director will issue a State Supplement with the advice of OGC and prior approval of the National Office on the use of other forms. The original form after completion will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. All

amendments of assignment agreements will be approved and recorded on Form FmHA 1962-1. Conditions of this section must be met. The County Supervisor will see that payments are made in accordance with the original consent when the amendment period expires. Normally, a temporary amendment will not exceed a six month period.

(ii) When FmHA is not expecting payment from the proceeds of a product on which it has a lien but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows:

The Farmers Home Administration (FmHA) has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owned to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FmHA for such product.

(e) *Releases of liens on wool and mohair marketed by consignment.*—(1) *Conditions.* Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(i) The producer assigns to FmHA the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs.

(ii) The producer assigns to FmHA the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(iii) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and FmHA.

(2) *Authority.* The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462-4, "Assignment, Acceptance, and Release." Since Form FmHA 462-4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

(f) *Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.* County Supervisors will notify purchasers of farm products as soon as the FmHA has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of

proceeds from the sale of the farm products. When Form FmHA 441-18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460-8, "Notice of Termination of Security Interest in Farm Products." When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State Supplements.

(g) *Release of FmHA's interest in insurance policies.* When an FmHA lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

#### § 1962.18 Unapproved disposition of chattel security.

When the County Supervisor learns that a borrower has made a disposition of chattel security in a manner not provided for on Form FmHA 1962-1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest.

(a) *Notice to borrowers.* When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide Letter 1962-A-5.

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form FmHA 1962-1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in § 1962.17(b) of this subpart. Only one such transgression can be allowed in any period covered by the Form FmHA 431-2, or other similar plan of operation acceptable to FmHA, between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or misuse of proceeds after settling the first offense as provided in paragraph (a)(1) of this section, the County Supervisor immediately must take the following action:

(i) Proceed in accordance with § 1962.49 of this subpart and

(ii) Place the borrower's name on the Unapproved Disposition of Security Log in accordance with paragraph (b) of this section.

(b) *Unapproved Disposition of Security Log.* Each County Office must maintain a log of borrowers who have made unapproved dispositions of chattel security.

(1) The following information must be included in the log:

(i) The borrower's name and address;

(ii) The date the unapproved disposition was discovered;

(iii) The item disposed of;

(iv) The amount of proceeds from the disposed item, the use of proceeds and the name and address of the purchaser, if known;

(v) The date that Guide Letter 1962-A-5 was sent to the borrower and date(s) of personal contact(s) with the borrower regarding the unapproved disposition;

(vi) The date the case was referred to the State Office; and

(vii) All subsequent actions until the case is concluded.

(2) Subsequent offenses by the same borrower must be entered separately on the log.

(3) The borrower's name must remain on the log for at least two calendar years from the date the unapproved disposition was discovered and the conclusion of the matter.

(4) The County Supervisor will forward a copy of the log to the State Director quarterly (January 1, April 1, July 1 and October 1). New additions to the log since the previous submission to the State Office should be circled in red. Repeat offenders will have a red star marked by their names.

(5) The State Director will maintain a log of the Unauthorized Disposition of Security. Upon receipt of the logs from the County Office, the State Director will list the information in the State Office log, and immediately forward a current copy of the logs to the Office of Inspector General—Regional Office—Investigation.

#### § 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA (see Exhibit A of this subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which FmHA holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA to apply against the producer's indebtedness to FmHA. In addition to the procedures outlined in Exhibit A, the following apply:

(a) *County Office action.* (1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State

Director, the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with § 1962.40 of this subpart. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form FmHA 455-1, "Request for Legal Action," with a recommendation that a claim be filed against CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect FmHA's interest with respect to the commodity if CCC is repaid.

(b) *State Office action.* (1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that FmHA holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support FmHA's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this Subpart), the State Director will give CCC the reasons. FmHA will then be

paid by CCC through the applicable ASCS office.

#### § 1962.20-1952.25 (Reserved)

#### § 1962.26 Correcting errors in security instruments.

The County Supervisor may use Form FMHA 462-12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Form FmHA 462-12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

#### § 1962.27 Termination or satisfaction of chattel security instruments.

(a) *Conditions.* The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severance agreements and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

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

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments; or

(4) FmHA has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower nor FmHA has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) *Form of payment.* (1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not

until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See subsection (c) of this section for the reason for the 10-day requirement.)

(c) *Filing or recording termination statements.* Financing statements will be terminated by use of Form FmHA 462-12 if provided by a State supplement. (1) Under UCC provisions if FmHA fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for \$100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by a State supplement. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to the borrower when the notes have been paid in full.

(2) However, if FmHA has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year, the financing statements need not be terminated in the absence of such demand unless a loan for the succeeding year will not be made or earlier termination is required by a State supplement.

(d) *Filing or recording satisfactions.* Satisfactions of chattel mortgages and similar instruments will be made on Form FmHA 460-4, "Satisfaction," or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if the State supplement based on State law requires recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor. When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form FmHA 460-4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to State supplements. In such cases, Form FmHA 460-4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FmHA 451-1, "Acknowledgment of Cash Payment," or Form FmHA 456-3, "Journal Voucher for Write-Off or Judgment," which will be retained in the borrower's case folder.

(e) *Satisfaction or termination of lien when old loans cannot be identified.* When a request is received for the satisfaction of a crop or chattel lien, or for the termination of a financing statement and the status of the account

secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in the County Office regarding the account. The letter will request the Finance Office to tell the County Supervisor whether the borrower is still indebted to FmHA and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form FmHA 460-4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form FmHA 462-12 as appropriate.

§ 1962.28 [Reserved]

§ 1962.29 Payment of fees and insurance premiums.

(a) *Fees.* (1) Security instruments. Borrowers must pay statutory fees for filing or recording financing statements or other security instruments (including Form FmHA 462-12, or other renewal statements) and any notary fees for executing these instruments. They also must pay costs of obtaining lien search reports needed in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials giving the service. When cash is accepted by FmHA employees to pay these fees, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed. If the borrower cannot pay the fees, or if there are fees referred to in paragraph (a) (2) and (3) of this section that must be paid by FmHA, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA in accordance with FmHA Instructions 2024-E and 2075-A, copies of which are available in any FmHA office.

(2) *Satisfactions.* The borrower must pay fees for filing or recording satisfactions or termination statements unless a State supplement based on State law requires FmHA to pay them.

(3) *Notary fees.* FmHA will pay fees for notary service for executing releases, subordinations, and related documents for and on behalf of FmHA if the service cannot be obtained without cost.

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel security for FmHA loans when:

(1) A borrower cannot pay the premiums from the borrower's own resources at the time due;

(2) It is not practical to process a loan for that purpose;

(3) It is necessary to protect FmHA's interests; and

(4) The amount advanced can be charged to the borrower under the provisions of the security instrument.

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

(a) *Purposes.* FmHA chattel liens securing Operating (OL), Economic Emergency (EE) and Emergency (EM) loans may be subordinated to a lien of another creditor to permit that creditor to lend for any authorized OL, EE, or EM loan (Subtitle B) purpose, including capital purchases, provided:

(1) The borrower needs the loan to continue farming operations; and

(2) The loan will help the borrower to accomplish the objectives of the FmHA loans; and

(3) FmHA's financial interest will not be adversely affected.

(b) *Limitations.* (1) When a non-FmHA loan is made to pay expenses directly related to particular crops or livestock enterprises, FmHA lien priority should be subordinated to the non-FmHA creditor's lien only so far as crops, livestock increases, feeder livestock or other normal farm income security is concerned. If the non-FmHA lender will not make a loan unless FmHA agrees to subordinate more of its priority, FmHA may subordinate any lien it holds on basic chattel security. FmHA should not give up any more of its priority to basic chattel security than is absolutely necessary to provide the non-FmHA lender with the security it requires.

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

(3) The subordination will be limited to a specific amount.

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

(5) When a subordination is executed to enable the borrower to obtain insurance on crops under lien to FmHA,

the borrower will assign the insurance proceeds to FmHA or name FmHA in the loss-payable clause of the policy.

(6) Waivers of FmHA lien priority, instead of subordinations, may be executed in favor of a creditor who has made or will make advances to produce, harvest, process, or market crops under written contract to that creditor. Such waivers are limited to the purposes for which a subordination may be made under this Subpart.

(c) *Approval.* Loan approval officials may approve subordinations and waivers of FmHA OL lien priority if the amount of the proposed subordination or waiver, plus the principal balance of existing subordinations or waivers, is not more than their OL approval authority stated in tables which are available from any FmHA office. Loan approval officials may approve subordinations and waivers of FmHA EM and EE loans lien priority if the amount of the subordination or waiver plus the unpaid principal balance of existing EM and EE loans and subordinations does not exceed their EM or EE loan approval authority stated in tables which are available from any FmHA Office. When the lien priority for more than one type of loan is subordinated or waived, the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. However, the State Director may approve subordinations or waivers regardless of the amount. State Directors may redelegate their authority for approving subordinations to qualified State Office employees.

(d) *Forms.* (1) Subordinations or lien waivers authorized in this Subpart will be made on Form FmHA 460-2, "Subordination by the Government," or on other forms approved by the State Director with OGC's advice. If Form FmHA 460-2 does not conform to a State's recording requirements, a State supplement may be used, if approved by OGC, to modify the form.

(2) *Form FmHA 431-2* or other similar plan of operation acceptable to FmHA will show the subordination or lien waiver and repayment.

(e) *Loans under CCC program.* See Exhibits B and C of this Subpart.

(1) When the ASCS County Office makes CCC loans to the borrower, FmHA will not execute a form of subordination or lien waiver.

(2) When the full value of a CCC loan on cotton is to be advanced to the borrower by a bank, ginner, or warehouseman whom the County Supervisor considers financially responsible, and when a check or draft

issued by the bank, ginner, or warehouseman is made payable to FmHA, or jointly to FmHA and the borrower, and is delivered to the County Supervisor, the County Supervisor may then execute the lienholder's waiver on Form CCC Cotton A even though item 2 of that form shows that the CCC loan will be distributed to such a bank, ginner, or warehouseman. Loan approval officials may approve waivers of crop liens in accordance with subsection (c) of this section.

(3) If the commodity covered by the CCC loan is released by CCC or redeemed by the borrower, the FmHA lien will be restored to the priority it held before the CCC loan was made.

(4) When the borrower wishes to rotate or exchange a new crop for an old crop that is stored under the CCC Grain Reserve Program, the County Supervisor and the ASCS official will proceed as set out in Exhibit C of this subpart.

#### §§ 1962.31-1962.33 [Reserved]

#### § 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1). The transferor (borrower) must be sent Form FmHA 1924-14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," as soon as the borrower contacts the County Supervisor inquiring about a transfer.

(a) *Transfer to eligibles.* Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any

delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. Form FmHA 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 460-5, "Assumption Agreement (New Terms)." The new repayment period may not exceed that for a new loan of the same type. If Form FmHA 460-5 is used, the current interest rate for such loans will be charged to all applicants. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be placed on new rates and terms.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under subsection (b) of this section. However, when one or more of the borrowers or jointly obligated partners withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers or partners may be made as an eligible transferee.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in FmHA's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the FmHA debt, or an amount equal to the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 460-5. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

(i) For OL, EE, SL, and EM loans, the current interest rate in effect for regular OL loans at the time of approval of the transfer plus one percent.

(ii) For EO loans, 6 percent.

(4) The transferee can repay the FmHA debt in accordance with the

assumption agreement and can legally enter into the contract.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any co-signer may be released from personal liability to FmHA when all the chattel security is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. The servicing official is authorized to approve releases from liability except when the FmHA debt secured by chattels less their market value exceeds \$25,000, the Administrator must approve the release from liability. When there will be no release from liability, the transferor and co-signer of a farmer program loan must be sent a letter similar to Exhibit F of Subpart A of 1955 of this chapter (available in any FmHA office).

(e) *County Committee actions.* (1) Transfer to eligible applicant. The County Committee will certify the transferee's eligibility for the types of loans to be assumed on Form FmHA 440-2, "County Committee Certification or Recommendation."

(2) Transfer to ineligible applicant. The County Committee will execute a memorandum statement on Form FmHA 440-2 as follows: "In our opinion, the transferee, (name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan."

(3) Release from liability. If the total outstanding debt is not assumed, the County Committee will execute a memorandum statement on Form FmHA 440-2 when they recommend the transferor be released from personal liability, which will read as follows:

"(Name of transferor and any co-signer) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any co-signer be released from personal liability on the transferees' assumption of a portion of

the indebtedness at least equal to the present market value of the security." If the total outstanding debt is assumed, the statement is not required.

(f) *Transfer and assumption docket.* The County Supervisor will assemble the following statements and forms for transfer and assumption:

(1) A statement of the current amount of the indebtedness.

(2) A description of the security or EO property to be transferred and a statement about its value.

(3) Form FmHA 410-1, "Application for FmHA Services."

(4) Form FmHA 440-2 for an eligible transferee, with the memorandum statement of the County Committee if the transferor is to be released from liability.

(5) County Committee memorandum statement for ineligible transferee with the additional memorandum statement if the transferor is to be released from liability.

(6) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.

(7) Transferee's plan of operation shown on Form FmHA 431-2 or other similar plan of operation acceptable to FmHA, or Form FmHA 431-3, or Form FmHA 431-4.

(8) Form FmHA 460-5 or Form FmHA 460-9, as appropriate.

(9) Form FmHA 465-8, "Release from Personal Liability," when appropriate.

(10) Form FmHA 1940-1, "Request for Obligation of Funds."

(11) Form FmHA 465-5, "Transfer of Real Estate Security," will be used to transfer real estate security.

(12) Form FmHA 1960-6, "Assumption Agreement (Information)," or Form FmHA 1965-22, "Information on Assumption on New Terms or Other Change of Terms," as appropriate, and Form FmHA 1965-23, "Supplemental Information on Assumption and/or Change of Terms."

(13) Form FmHA 1924-14. (Added)

(g) *Processing assumption agreements.* Additional security instruments will be obtained in accordance with advice from OGC.

(1) On receipt of Form FmHA 1960-6 or Form FmHA 1965-22, and Form FmHA 1965-23 the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

(2) Form FmHA 1905-1, "Management System Card—Individual," will be prepared for the transferee, and the loan record cards of the transferor will be attached.

(3) If a collection is received from the transferee after the assumption agreement is approved but before

Finance Office notification to the County Office, Form FmHA 451-2, "Schedule of Remittances," will be prepared as follows:

(i) During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account, and Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrower Transaction Record," will be forwarded to the County Office.

This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. On receiving a payment on the account not included in the latest transaction record or monthly payment account status report, the County Supervisor should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(ii) When the borrower has made a direct payment to the Finance Office and there is no record of it in the County Office, the account will be assumed based on the latest record in the County Office. The application of the direct payment will be reversed from the account, and the assumption agreement will be processed in the Finance Office. The Director, Finance Office, will contact the County Supervisor to determine how to dispose of the proceeds from the direct payment.

(iii) For payments received on the date of transfer, Form FmHA 451-2 will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (Name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 and the amount paid.

(iv) When a payment is due on the assumption agreement shortly after the transfer is completed, it should be collected if possible, at the time of transfer and remitted in the transferee's name.

(h) *Approval.* Loan approval officials are authorized to approve transfer and assumption of FmHA accounts to eligible or ineligible transferees and releases from liability when the debts are within their respective loan approval authorities stated in tables which are available from any FmHA Office (FmHA Instruction 1901-A).

(1) Loan approval officials may also approve transfers and assumptions of EO loans and releases from liability. State Directors may also approve transfers to and assumptions by ineligible transferees and releases from liability regardless of the amount of the outstanding EM loan debt.

(2) The Administrator will review for approval proposed transfers to and assumptions by eligible transferees that exceed the approval authorities of State Directors for EM loans.

#### §§ 1962.35-1962.39 [Reserved]

#### § 1962.40 Liquidation.

(a) *Voluntary liquidation.*—(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can only be accomplished by:

(i) Selling the security under § 1962.41 of this subpart.

(ii) Transferring the security under § 1962.34 of this subpart.

(iii) Conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

The provisions of these regulations will be explained to the borrower.

(2) *Lien search.* The County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources causes undue delay which interferes with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, FmHA will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(b) *Involuntary liquidation.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of the subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other

reasons further servicing cannot be justified under the policy stated in § 1962.2(a) of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section. In farmer program loan cases, borrowers must receive Forms FmHA 1924-14, "Notice—Farmers Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities," 1924-25, "Notice of Intent to Take Adverse Action," and 1924-26, "Borrower Acknowledgment of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* When liquidation is begun, it is FmHA policy to liquidate all security and EO property except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed \$600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

(3) *Agreement with borrower.* After the borrower is told that FmHA wants the account liquidated, if the borrower is willing to voluntarily liquidate the account immediately by (i) selling the security in accordance with § 1962.41 of this subpart, (ii) transferring the security in accordance with § 1962.34 of this subpart, (iii) conveying the security to FmHA under Subpart A of Part 1955 of this chapter, or (iv) refinancing the debt with another lender, the County Supervisor may allow the borrower 60 days to accomplish such action. Farmer program loan borrowers who have been sent Form FmHA 1924-25 will be given 120 days if Form FmHA 1924-26 is returned indicating that the borrower is willing to sell, transfer or voluntarily convey the security or refinance the debt.

(4) *No agreement with borrower.* After the borrower is told that FmHA wants the account liquidated, if the borrower is not willing to voluntarily liquidate, the borrower's account will be accelerated (see paragraphs (b)(4) (i) and (ii) of this paragraph). The County Supervisor will then attempt to repossess the security in accordance with § 1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with § 1962.49 of this

subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmaturing installments by using Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibit D of Exhibit E of Subpart A of Part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of § 1872.17(b) of Part 1872 of this chapter for liquidating these loans.

(d) *Assignment of insured loans.* When liquidation of an insured loan is approved, the State Director will be asked by the official who approved the liquidation to immediately obtain an assignment of the loan to FmHA if the promissory note is not held in the County Office. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless essential to protect FmHA's interests and OGC recommends such action. However, other steps need not be held up pending assignment. If any problems are encountered in obtaining the assignment, OGC may be contacted for advice.

(e) *Protective advances.* (1) After Forms FmHA 1924-25 and 1925-26 have been sent and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve protective advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of FmHA under § 1962.44(a) of this subpart.

(ii) Premiums on insurance essential to protect FmHA's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by FmHA's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's

concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or other similar official such as a local sheriff. However, if the official seizes the property and delivers it to FmHA for sale by FmHA, costs incurred by FmHA after delivery to FmHA will be paid.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;

(ii) Current lien search report;

(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) Costs incurred by FmHA in protecting its interest in security or EO property may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," in accordance with FmHA Instruction 2024-P (available in any FmHA office), and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

#### § 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Forms FmHA 1924-25 and 1924-26 will be sent Form FmHA 1924-14 before any sale occurs.

(a) *Public sale.* A borrower may voluntarily liquidate chattels by selling the property at auction in the borrower's own name. Form FmHA 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)", will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the County Supervisor. When EO property is involved delete from the Form the reference to the FmHA lien wherever it appears on the forms. No FmHA official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive the proceeds of the sale due FmHA for application on the borrower's indebtedness.

(b) *Private sale.* The borrower may sell chattel security or EO property at a private sale if:

(1)(i) The borrower has ready purchasers and can sell *all* of the property for its present market value; or

(ii) The property is perishable; or

(iii) The property is of a type customarily sold on a recognized market; or

(iv) The property consists of items of small value or a limited number of items which do not justify public sale.

(2) Form FmHA 1962-1 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified.

(3) Form FmHA 455-3 is completed before the sale.

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to FmHA by signing Form FmHA 455-4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes FmHA to sell the security at either public or private sale. If FmHA hires a caretaker, services should be obtained by use of Form FmHA 120-10: "Solicitation, Quotation, Purchase Order, Inspection, and Invoice" in accordance with Subpart D of Part 1955 of this Chapter.

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962-1.

(e) *Unpaid FmHA Debt.* If the sale results in less than full payment of the FmHA debt, the account will be considered for debt settlement.

**§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.**

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of FmHA security a borrower and all cosigners on the note must receive Forms FmHA 1924-14, 1924-25 and 1924-26 and any appeal must be concluded. The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

(1) *Conditions.* The County Supervisor will take possession under any of the following conditions:

(i) When Form FmHA 455-4 has been executed. For EO property this form will be revised by placing a period after "interest" in the first sentence beginning "The Debtor" and deleting the remainder of that clause; deleting the words "collateral covered by the security instruments" in the second part of the sentence and inserting instead "property covered by the debtor's loan

agreement which is referred to as the collateral."

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed Form FmHA 455-4.

(iv) When the property is delivered to FmHA as a result of court action.

(v) When Form FmHA 455-5, "Agreement of Secured Parties to Sale of Security Property," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property their liens may be paid if their notes and liens are assigned to FmHA on forms prepared or approved by OGC. When prior liens are paid, the payment will be made by processing Standard Form 1034 in accordance with FmHA Instruction 2024-P (available in any FmHA office) and charged to the borrower's account.

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) *Recording.* A list, dated and signed by the County Supervisor, of all security or EO property repossessed except for those items on Form FmHA 455-4, Form FmHA 455-6, or Form FmHA 455-7, "Agreement for Cultivating, Harvesting, and Delivering Crops," will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor in writing, the names of such borrowers and a list of the property repossessed in the custody of the County Supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care.* The County Supervisor will arrange for the custody and care of repossessed property as follows:

(1) *Livestock.* Care and feeding of livestock will be obtained by contract pursuant to FmHA Instruction 1955-D (available in any FmHA office). The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form FmHA 120-10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." If a contractor's services are needed for a longer period than is authorized in paragraph (c)(4)(i) of this section, the State Director may authorize the County Supervisor to continue obtaining the necessary services for the time needed.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.*

Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form FmHA 120-10. Use of property by the contractor is not authorized.

(3) *Crops.* Form FmHA 120-10 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. Where a landlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) *Sale.* Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455-4, Form FmHA 441-19, the power of sale in security agreements under the UCC or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA 455-11, "Bill of Sale 'B' (Sale by Private Party)."

(1) *Tests and inspections of livestock.* If required by State law as a condition of sale, livestock will be tested or inspected before sale. A State supplement will be issued for those States.

(2) *Public sales.* Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, or at other advantageous sales locations. No FmHA employee will bid on or acquire property at public sales except on behalf of FmHA in accordance with § 1955.20 of Subpart A of Part 1955 of this Chapter. The County Supervisor will attend all public sales of repossessed property.

(3) *Private sales.* FmHA will sell perishable property such as fresh fruits and vegetables for the best price obtainable. FmHA will sell staple crops such as when, rye, oats, corn, cotton, and tobacco for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Chattel property sold under Form FmHA 455-4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. FmHA will sell other property, including that sold when the borrower executes Form FmHA 455-11, for its present market value.

(4) *Selling period.* Repossessed property will be sold as soon as possible. However, when notice is

required by paragraph (c)(5) of this section, the sale will not be held until the notice period has expired.

(i) The sale will be made within 60 days, unless a shorter period is indicated by a State supplement because of State law. Crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such crops. The State Director may extend the sale time within State law limits.

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FmHA real estate loans and will be sold or transferred with the real estate. However, a State Supplement will be issued for any State having a time limit within which such items must be sold along with or as a part of the real estate.

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 455-8, "Notice of Sale," may be used for public or private sales.

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

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form FmHA 455-11.

(C) If the property is to be sold under a chattel mortgage, the manner of notice will be set forth in a State supplement or on an individual case basis.

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form FmHA 455-8 and a copy of the filed Notice of Federal Tax Lien (Form IRS

668). If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) *Advertising.* (i) Private sales and sales at established public auctions will be advertised by FmHA only if required by a State supplement based on State law.

(ii) Other public sales, whether under power of sale in the lien instrument or under Form FmHA 455-4, will be widely publicized to assure large attendance and a fair sale by one or more of the following methods customarily used in the area.

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 455-8, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

(B) Advertising in newspapers or spot advertising on local radio or TV stations may be used depending on the amount of property to be sold and the cost in relation to the value of the property, the customs in the area, and State law requirements. When newspaper advertising is required, a State supplement will indicate the types of newspapers to be used, the number and times of insertions of the advertisement, and the form of notice of sale. All advertising must contain non-discrimination clauses.

(7) *Payment of costs and prior lienholders.* If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this subpart or to pay prior lienholders, such costs or prior liens will be paid by use of Form FmHA 120-10, Standard Form 1034, or Standard Form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy," for newspaper or publisher's invoice for newspaper advertising and Form FmHA 2024-1, "Miscellaneous Payment System," in accordance with FmHA Instructions 2024-F and 2024-P (available in any FmHA office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State

Supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account set up for the officials or other persons found responsible for them.

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

(9) *Risk of injury.* If a farmer program loan borrower has abandoned security and the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section and then send the borrower and all cosigners on the note Forms FmHA 1924-14, 1924-25 and 1924-26. The security will be cared for as explained in paragraph (b) of this section until any appeal is concluded or the borrower has waived or forfeited the opportunity to appeal. When the appeal is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of the appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, and this determination will be made by the County Supervisor. However, an independent third party (not an FmHA employee) must determine that livestock are in danger of substantial damage. Protective advances may be made in accordance with § 1962.40(e) of this subpart.

#### § 1962.43 Liquidation of chattel security or EO property by other parties.

(a) *Sale by prior lienholders and other parties.* See § 1955.20 of Subpart A of Part 1955 of this chapter for the County Supervisor's authority to bid at such sales.

(b) *Sale by junior lienholders.* On learning through formal notice or otherwise that a junior lienholder has

begun foreclosure, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FmHA holds a prior lien; and that if the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that FmHA holds a prior lien on each item of such property as security for an indebtedness of \$—— (total principal and interest), and that any such property sold will continue to be subject to FmHA's prior lien.

(c) *Retention by other lienholders without sale.* If another lienholder notifies FmHA that it has taken possession of the security after default and proposes to keep it in satisfaction of its secured claim, the County Supervisor should promptly reply in writing that FmHA objects and insists that the property be sold in accordance with law. The County Supervisor will only write the lienholder when FmHA's estimated recovery will be substantially greater than the amount of the claim, prior liens and sale expenses. After such notice, the case will be referred to the State Director for advice.

**§ 1962.44 Distribution of liquidation sale proceeds.**

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form FmHA 455-4, Form FmHA 455-3, or Form FmHA 462-2.

(a) *Lien priorities.* (1) Federal liens. For Federal income, social security, other Federal tax liens, or liens of other Federal agencies, OGC's advice will be obtained as to lien priorities.

(2) State and local tax liens. A State supplement, if considered necessary by the State Director and OGC, will list priorities of these liens, or may provide for referral of these cases to the State Office.

(3) Chattel mortgages and other liens of private parties. A State Supplement, if considered necessary by the State Director and OGC, will list priorities of chattel mortgages, landlord's liens, mechanics and materialmen liens, and other liens of private parties.

(4) Security interest under UCC. Liens on the same collateral that are perfected by filing a financing statement under the UCC and that are still effective as constructive notice, unless otherwise provided by a State supplement, will be paid in the order of their perfection. Exceptions to this rule are listed below. A State supplement will be issued whenever necessary to explain any States deviations from these listed exceptions.

(i) A purchase money security interest in personal property will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the collateral or within 10 days thereafter. However:

(A) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession of the collateral or within 10 days thereafter.

In some States, filing a financing statement to perfect a security interest is not required. A State supplement will be issued as necessary.

(B) *Farm equipment.* A purchase money security interest in farm equipment, other than fixtures or motor vehicles required to be licensed, costing \$2,500 or less, will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not taken or filed.

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

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

(iii) When new value is given, a security interest taken in and to finance crops not more than 3 months before they are planted or otherwise become growing crops, has priority over an earlier perfected security interest for obligations that were due more than 6 months before the crops became growing crops. (b) *Order of Payment.* Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and

transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by FmHA and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of FmHA state that such bills may be paid from the sales proceeds ahead of their liens.

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to FmHA.

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to FmHA for sale, such costs incurred by FmHA after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which are prior to FmHA liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of FmHA will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substantial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in subparagraph (b)(2)(i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible, disinterested party an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If FmHA subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the FmHA lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lien-holders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to FmHA's other than the landlord's

lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed FmHA which are secured by liens on the property sold.

(5) To pay liens junior to those of FmHA in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in subparagraphs (b) (2), (3), or (5) of this section.

(8) To pay on any other FmHA debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such sale proceeds by the borrower for other purposes, provided the other FmHA debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) *Receipts.* Receipts are required for all amounts paid from the sale proceeds and are kept in the borrower's case file. Form FmHA 451-2 will be prepared only for the total amount remitted to FmHA for credit to the borrower's indebtedness.

#### § 1962.45 Reporting sales.

Form FmHA 1935-3; "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by FmHA.

#### § 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to FmHA, the County Supervisor will prepare Form FmHA 455-17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Part 1864 of this Chapter (FmHA Instruction 456.1). If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting.* The borrower's case files including Form FmHA 455-17 will

be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist (When it is necessary to send an incomplete Form FmHA 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455-17 or in a memorandum.):

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to FmHA are inadequately secured and the state has other assets from which collection could be made.

(3) FmHA's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to FmHA which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

(5) The County Supervisor recommends, but does not have authority to approve liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings.* Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, FmHA will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at FmHA's request, and any security is to be liquidated by FmHA instead of by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:

(1) Such proceedings will not be started by other parties;

(2) FmHA's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by an FmHA official as directed by OGC or it

will be referred by OGC to the U.S. Attorney for filing if representation of FmHA by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If an insured loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed when probate or administration proceedings are started, unless:

(1) After considering liens and priority rights of FmHA and other parties, costs of administration, and charges against the estate, FmHA cannot reach the assets in the estate except for FmHA's own security and FmHA will liquidate the security by foreclosure or otherwise if necessary to collect its claim, or

(2) Continuation with an individual or transfer to and assumption by another party is approved, and either the debt owed to FmHA is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(3) The debt owed to FmHA by the estate is settled under Part 1864 of this Chapter (FmHA Instruction 456.1) well ahead of the deadline for filing proof of claim.

(d) *Priority of claims.* (1) Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. These claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower or real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's, materialmen's, landlord's statutory liens, and other noncontractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the FmHA claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities.

(2) Unsecured claims will be handled as follows:

(i) The remaining assets of the estate, including any value of security for more than the amount of the secured claims against it, are to be applied first to payment of administration costs and charges against the estate and second to unsecured debts of the deceased.

(ii) If the total of the remaining assets in the estate being administered is not enough to pay all administration costs, charges against the estate, and unsecured debts of the deceased, the

Government's unsecured claims against the remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. Under such circumstances unsecured claims are payable in the following order of priority:

(A) Costs of administration and charges against the estate unless under State law they are payable after the Government's unsecured claims. Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration 31 U.S.C. § 3713 lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(e) *Withdrawal of claim.* It may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or when compromised. However, when it is necessary to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn on receipt of cash or security, or both, of a value at least equal to the amount that could be recovered under the claim against the estate. When FmHA keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect FmHA's rights under the existing notes or security instruments with respect to the retained security. In some cases, with OGC's advice, the claim may be properly handled without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. Attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. Attorney.

(f) *Liquidation of security.* When probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this Subpart and Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1), respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.

(g) *Continuation of secured debt and transfer or security.* When a surviving member of a deceased borrower's family or other person is interested in continuing the loan and taking over the security for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of the borrower's death, continuation may be approved subject to the following:

(1) Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided that individual can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments and so long as liquidation is not necessary to protect the interest of FmHA. When an individual who is liable for the indebtedness is to continue with the account, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office to change the account to that individual's name. A new case number will be assigned or, if the continuing individual already has a case number, that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased.

(2) When a surviving member of a deceased borrower's family, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to the individual and the assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of death.

(ii) The amount to be assumed and the repayment rates and terms will be the same as provided in § 1962.34(a) of this Subpart.

(iii) The State Director determines that the continuation will not adversely affect repayment of the loan.

(3) In determining whether to continue with individuals, whether they are already liable or assume the indebtedness, all pertinent factors will be considered including whether:

(i) Probate or administration proceedings have been or will be started and, with OGC's advice, whether the filing of a claim on the debt owed to

FmHA in such proceedings is necessary to protect FmHA's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security to the continuing individual and to avoid liquidating the assets so that the individual can continue with the loan on a feasible basis.

(4) If continuation is approved, all reasonable and practical steps, short of foreclosure or other litigation, will be taken to vest title to the security in the joint debtor or transferee.

(5) The deceased borrower's estate may be released from liability for the FmHA indebtedness if title to the security is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property, and the County Committee recommends release of liability.

(h) *Special servicing of deceased EO borrower cases.* If the EO loan is secured, all paragraphs in this section will be followed. If the EO loan is unsecured, paragraph (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements.

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or FmHA.

(3) If no individual listed in paragraph (h) (1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to FmHA the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession

of EO property and sell it in accordance with § 1962.42 of this Subpart. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

#### § 1962.47 Bankruptcy and insolvency.

##### (a) County Supervisor's responsibility.

(1) If a borrower becomes a debtor in proceedings under any State or Federal bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments, but will take no other action unless directed by the State Director or OGC.

(2) If the borrower has no attorney, the County Supervisor will mention this in the report sent to the State Director. The State Director will ask OGC's advice on how to handle such a case to make sure that the borrower is given any required notice of loan servicing alternatives.

(3) The County Supervisor will send Forms FmHA 1924-14, 1924-25 and 1924-26 together with Exhibit D, "Notice to Borrower's attorney Regarding Loan Servicing Options," (available in any FmHA Office) to the attorney of a farmer program loan borrower as soon as the County Supervisor learns that a bankruptcy has been filed. None of the boxes on Form FmHA 1924-25 will be checked and the blank spaces will be left blank. Exhibit D explains that FmHA wants the borrower to know about the various farmer program loan servicing tools. The bankruptcy code's automatic stay prevents FmHA from contacting the borrower directly. Exhibit D also explains that borrowers who have filed Chapter 11 and 13 bankruptcies must either dismiss their bankruptcies or request and be granted relief from the automatic stay. Then the borrower must complete and return Form FmHA 1924-26 before FmHA will consider or grant any request for servicing. Until the Chapter 11 or 13 is dismissed or relief from the automatic stay is granted, FmHA will not discuss any of the servicing options with either the borrower or the borrower's attorney. Borrowers who have filed Chapter 7 bankruptcies must either dismiss their bankruptcies or must reaffirm their entire FmHA debt on the existing terms and then return Form FmHA 1924-26. FmHA will not discuss any of the options with either the borrower or the

borrower's attorney so long as a Chapter 7 bankruptcy is pending.

(b) *State Director's responsibility.* On receipt of the file and related material, the State Director will determine whether FmHA has security for the debt and whether the debtor has other assets from which FmHA could make a substantial collection. If OGC so advises, Form FmHA 1951-6, "Borrower Account Description Flag," will be prepared and distributed according to the FMI advising the Finance Office to flag the borrower's account indicating bankruptcy action is pending (BAP).

(1) If there is no security and no other assets from which a substantial recovery could be made, the file and related material will be returned to the County Officer with a memorandum indicating the State Director's determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (within 6 months from the first date set for the first meeting of creditors), the County Supervisor will resubmit the case to the State Director.

(2) If a substantial recovery could be made, the State Director will take the following actions:

(i) The State Director will execute Form FmHA 455-18, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by OGC covering all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney, and send it to OGC with attachments that are required by a State supplement.

(ii) If a State Director knows that a judgment has been obtained by a U.S. Attorney, the State Director will notify OGC even though that judgment has been charged off.

(iii) The State Director, on OGC's advice, will instruct the County Supervisor about actions to take with respect to meetings of creditors.

(iv) If an insured loan is not held by FmHA and has not been assigned to FmHA, the State Director will arrange to have the note repurchased. If there is a problem accomplishing this, the State Director will ask OGC for advice.

(v) The State Director will take no other action without OGC's approval.

(c) *Liquidation.* (1) No security can be liquidated without OGC approval.

(2) If a bankruptcy has been dismissed, the account will be liquidated without regard to the bankruptcy.

(3) In Chapter 11 or Chapter 13 cases, if liquidation is necessary it will be

accomplished in accordance with either § 1872.17 of Part 1872 of this chapter (FmHA Instruction 465.1) or § 1962.40 of this subpart, as applicable. The advice of OGC will be obtained before any notices are sent to the borrower.

(4) In Chapter 7 farmer program loan cases, loans can be liquidated only after a discharge hearing has been held and if the borrower has not reaffirmed the debt. The borrower will be sent an acceleration notice (Exhibit E to Subpart A of Part 1955 of this chapter) and there will be no appeal of the acceleration. Then the account will be liquidated.

(5) When security is liquidated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt. Additional proceeds will be applied to the interest accrued from the date the petition in bankruptcy was filed to the date of payment. When the payments are sent to the Finance Office, the County Supervisor will give the debt the petition in bankruptcy was filed.

(d) After prior review and approval by OGC, a State Supplement will be issued to explain any rules or practices of local bankruptcy judges or trustees which affect the provisions of this section.

#### § 1962.48 [Reserved]

#### § 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section.

(a) *Criminal action.* When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA Instruction 2012-B (available in any FmHA office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA staff must coordinate with OIG in advance regarding any administrative action on the matter/borrower other than routine servicing actions on existing loans.

Cases requiring further action by OGC will be handled in accordance with paragraph (c) of this section.

(b) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FmHA's property/financial interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the action necessary to report the information required by Part II of Form FmHA 455-22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA and collection efforts may adversely affect the criminal investigation and/or criminal prosecution.

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) there is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this subpart;

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payment due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

(iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.

(v) FmHA or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.

(vi) Other conditions exist which indicate that court action may be necessary to protect FmHA's interests.

(2) Claims of less than \$800 principal will not be referred to OGC for court action unless:

(i) A statement of facts is submitted as to the exact manner in which the interest of FmHA, other than recovery of the amount involved, would be adversely affected if suit were not filed; and

(ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such exemptions or a summary of those exemptions with respect to property to which FmHA normally would look for payment such

as real estate, livestock, equipment, and income.

(3) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security on which FmHA holds a first lien usually will be liquidated before demand is made, or civil action to recover from third-party purchasers.

(i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security purchased by a converter, a demand (see Guide Letter 1962-A-1, a copy of which is available in any FmHA county office) will be sent to the purchaser at the same time that Exhibit D or E of Subpart A of Part 1955 of this chapter, is sent to the borrower.

(ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party purchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962-A-2, a copy of which is available in any FmHA county office) that FmHA security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, FmHA will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that FmHA will take no adverse action (see Guide Letter 1962-A-3, a copy of which is available in any FmHA county office). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim "at this time."

(iv) In addition, unless personal contacts with the third-party purchaser, or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not

been received, a follow-up letter (see Guide Letter 1962-A-4, a copy of which is available in any FmHA county office) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional follow-up letter will be sent to the third-party purchaser by OGC after the case has been referred to that office.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA are recommended, will be forwarded to OGC by the State Director in accordance with paragraph (c)(3) of this section.

(1) *County Office actions.* Forms FmHA 455-1, "Request for Legal Action," and FmHA 455-22 will be prepared. Form FmHA 455-2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA 455-1, 455-22, and, when applicable, FmHA 455-2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA 455-1. Appropriate recommendations regarding civil actions will be made on Forms FmHA 455-1 and FmHA 455-22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office informed of any future developments in the case. If Forms FmHA 1924-14, 1924-25 and 1924-26 have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions.* Exhibit D or Exhibit E of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded, or Form FmHA 1924-26 was not returned within the specific allowed time.

(3) *State Office actions.* (i) upon receipt of Form FmHA 455-1 and, when applicable, Form FmHA 455-2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If all the necessary information is not documented, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA 455-1 and 455-2.

The State Director may assign any qualified FmHA employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA employees are unable to obtain the additional information, the case will be returned to the State Office with an explanation of why the information is unavailable.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC for civil action, if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA 455-1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third-party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as the case has been referred to and accepted by OIG for criminal or civil investigation. The period of time during which a suit may be filed is set by federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with paragraph (b) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil aspects of the case on Form FmHA 455-1.

(A) When cases are referred to OGC, the County Office case file, Form FmHA 455-1, and, when appropriate, Form FmHA 455-2 will be transmitted. In addition, when the institution of civil court proceedings by FmHA is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof, as required by OGC, and Form FmHA 451-11, "Statement of Account," or Form FmHA 451-25, "Status of Account," and Form FmHA 455-22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for civil court or other action will be obtained from the Finance Office, or

County Office, by the State Director. When the time required for obtaining the above material or documents may jeopardize FmHA's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

(d) *Actions on cases referred to OGC.* When a civil case is referred to OGC, the State Director will notify the County Supervisor of the referral and will return the County Office case file when it is no longer needed. The State Director will also prepare and distribute Form FmHA 1951-6 according to the FMI advising the Finance Office to flag the borrower's account indicating court action is pending (CAP). After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney for civil action. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect a case which has been referred to OGC.

(e) *Actions on cases referred to the U.S. Attorney and on judgment cases (including third-party judgments).* OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Forms FmHA 450-1, "Statement of Account," to such borrowers. OGC will also notify the State Director when a judgment (including third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will notify the Finance Office to establish a judgment account by submitting Form FmHA 455-20, "Notice of Judgment."

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to

FmHA by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FmHA security interest or any pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, FmHA employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA 451-1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA will be handled by issuing Form FmHA 451-1 and converting and transmitting such payments as provided in Subpart B of Part 1951 of this chapter. The U.S. Attorney will be informed through OGC

of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when

it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with § 1864.12 of Part 1864 of this chapter (FmHA Instruction 456.1, paragraph XII).

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be

obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

**§ 1962.50 [Reserved]**

Exhibits A, B, C, and D

Note. Exhibits A, B, C, and D do not appear in the Code of Federal Regulations.

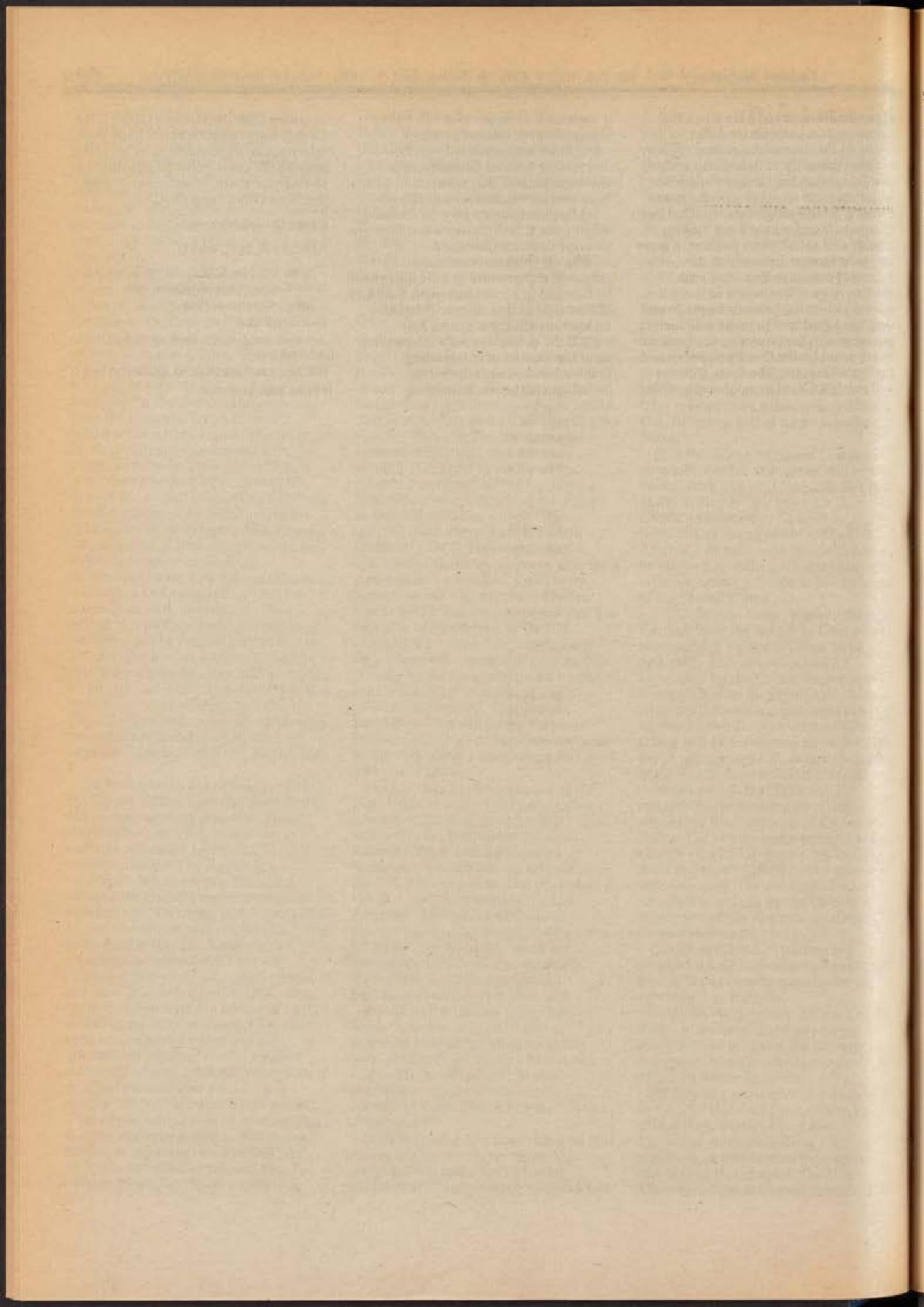
Dated: October 4, 1985.

**Harris D. Blake**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 85-25644 Filed 10-31-85; 8:45 am]

BILLING CODE 3410-07-M



# Reader Aids

Federal Register

Vol. 50, No. 212

Friday, November 1, 1985

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## FEDERAL REGISTER PAGES AND DATES, NOVEMBER

45591- 45804..... 1

## 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 October 31, 1985

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	November 18	December 2	December 16	December 31	January 30
November 4	November 19	December 4	December 19	January 3	February 3
November 5	November 20	December 5	December 20	January 6	February 3
November 6	November 21	December 6	December 23	January 6	February 4
November 7	November 22	December 9	December 23	January 6	February 5
November 8	November 25	December 9	December 23	January 7	February 6
November 12	November 27	December 12	December 27	January 13	February 10
November 13	November 29	December 13	December 30	January 13	February 11
November 14	November 29	December 16	December 30	January 13	February 12
November 15	December 2	December 16	December 30	January 14	February 13
November 18	December 3	December 18	January 2	January 17	February 18
November 19	December 4	December 19	January 3	January 21	February 18
November 20	December 5	December 20	January 6	January 21	February 18
November 21	December 6	December 23	January 6	January 21	February 19
November 22	December 9	December 23	January 6	January 21	February 20
November 25	December 10	December 26	January 9	January 24	February 24
November 26	December 11	December 26	January 10	January 27	February 24
November 27	December 12	December 27	January 13	January 27	February 25
November 29	December 16	December 30	January 13	January 28	February 27